http://register.state.va.us Virginia Code Commission

# Virginia Register of Regulations

VOL. 23 ISS. 22 PUBLISHED EVERY OTHER WEEK BY THE VIRGINIA CODE COMMISSION JULY 9, 2007

## TABLE OF CONTENTS



THE VIRGINIA REGISTER OF REGULATIONS (USPS-001831) is published biweekly, with quarterly cumulative indices published in January, April, July and October, for $160.00 per year by LexisNexis Matthew Bender, 1275 Broadway, Albany, NY 12204. Periodical postage is paid at Albany, NY and at additional mailing offices. POSTMASTER: Send address changes to LexisNexis Matthew Bender, 1275 Broadway, Albany, NY 12204.

# THE VIRGINIA REGISTER INFORMATION PAGE

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

**ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS**

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

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

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

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

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

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

A regulation becomes effective at the conclusion of the 30-day final adoption period, or at any other later date specified by the promulgating agency, unless (i) a legislative objection has been filed, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 21-day objection period; (ii) the Governor exercises his authority to require the agency to provide for additional public comment, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the period for which the Governor has provided for additional public comment; (iii) the Governor and the General Assembly exercise their authority to suspend the effective date of a regulation until the end of the next regular legislative session; or (iv) the agency suspends the regulatory process, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 30-day public comment period and no earlier than 15 days from publication of the readopted action.

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

**FAST-TRACK RULEMAKING PROCESS**

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.

**EMERGENCY REGULATIONS**

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

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

**STATEMENT**

The foregoing constitutes a generalized statement of the procedures to be followed. For specific statutory language, it is suggested that Article 2 (§ 2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia be examined carefully.

**CITATION TO THE *VIRGINIA REGISTER***

The *Virginia Register* is cited by volume, issue, page number, and date. **23:7 VA.R. 1023-1140 December 11, 2006,** refers to Volume 23, Issue 7, pages 1023 through 1140 of the *Virginia Register* issued on December 11, 2006.

*The Virginia Register of Regulations* is published pursuant to Article 6 (§ 2.2-4031 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia.

# PUBLICATION SCHEDULE AND DEADLINES

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

**July 2007 through May 2008**

| Volume: Issue | Material Submitted By Noon* | Will Be Published On |
|---|---|---|
| **INDEX 3 Volume 23** | | **July 2007** |
| 23:22 | June 20, 2007 | July 9, 2007 |
| 23:23 | July 2, 2007 **(Monday)** | July 23, 2007 |
| 23:24 | July 18, 2007 | August 6, 2007 |
| 23:25 | August 1, 2007 | August 20, 2007 |
| 23:26 | August 15, 2007 | September 3, 2007 |
| **FINAL INDEX - Volume 23** | | **October 2007** |
| 24:1 | August 29, 2007 | September 17, 2007 |
| 24:2 | September 12, 2007 | October 1, 2007 |
| 24:3 | September 26, 2007 | October 15, 2007 |
| 24:4 | October 10, 2007 | October 29, 2007 |
| 24:5 | October 24, 2007 | November 12, 2007 |
| 24:6 | November 7, 2007 | November 26, 2007 |
| 24:7 | November 20, 2007 **(Tuesday)** | December 10, 2007 |
| **INDEX 1 Volume 24** | | **January 2008** |
| 24:8 | December 5, 2007 | December 24, 2008 |
| 24:9 | December 19, 2007 | January 7, 2008 |
| 24:10 | January 2, 2008 | January 21, 2008 |
| 24:11 | January 16, 2008 | February 4, 2008 |
| 24:12 | January 30, 2008 | February 18, 2008 |
| 24:13 | February 13, 2008 | March 3, 2008 |
| 24:14 | February 27, 2008 | March 17, 2008 |
| **INDEX 1 Volume 24** | | **April 2008** |
| 24:15 | March 12, 2008 | March 31, 2008 |
| 24:16 | March 26, 2008 | April 14, 2008 |
| 24:17 | April 9, 2008 | April 28, 2008 |
| 24:18 | April 23, 2008 | May 12, 2008 |

*Filing deadlines are Wednesdays unless otherwise specified.

# 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 2006 VAC Supplement includes final regulations published through *Virginia Register* Volume 22, Issue 22, dated July 10, 2006). 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 2. Agriculture** | | | |
| 2 VAC 5-195 (Form) | Added | 23:15 VA.R. 2512 | -- |
| 2 VAC 5-330-30 | Amended | 23:20 VA.R. 3122 | 7/12/07 |
| 2 VAC 5-490-10 through 2 VAC 5-490-90 | Amended | 23:20 VA.R. 3123-3155 | 5/23/07 |
| 2 VAC 5-490-15 | Added | 23:20 VA.R. 3130 | 5/23/07 |
| 2 VAC 5-490-25 | Added | 23:20 VA.R. 3131 | 5/23/07 |
| 2 VAC 5-490-31 through 2 VAC 5-490-39.6 | Added | 23:20 VA.R. 3132-3140 | 5/23/07 |
| 2 VAC 5-490-73 | Added | 23:20 VA.R. 3154 | 5/23/07 |
| 2 VAC 5-490-75 | Added | 23:20 VA.R. 3155 | 5/23/07 |
| 2 VAC 5-490-103 | Added | 23:20 VA.R. 3155 | 5/23/07 |
| 2 VAC 5-490-105 | Added | 23:20 VA.R. 3156 | 5/23/07 |
| 2 VAC 5-490-110 | Amended | 23:20 VA.R. 3156 | 5/23/07 |
| 2 VAC 5-490-120 | Amended | 23:20 VA.R. 3157 | 5/23/07 |
| 2 VAC 5-490-130 | Repealed | 23:20 VA.R. 3157 | 5/23/07 |
| 2 VAC 5-490-131 through 2 VAC 5-490-138 | Added | 23:20 VA.R. 3157-3162 | 5/23/07 |
| 2 VAC 5-490-140 | Amended | 23:20 VA.R. 3162 | 5/23/07 |
| 2 VAC 5-620-10 through 2 VAC 5-620-100 | Added | 23:19 VA.R. 2981-2985 | 7/1/07 |
| **Title 3. Alcoholic Beverages** | | | |
| 3 VAC 5-10-40 | Amended | 23:13 VA.R. 2117 | 5/19/07 |
| 3 VAC 5-10-50 | Amended | 23:13 VA.R. 2117 | 5/19/07 |
| 3 VAC 5-10-60 | Amended | 23:13 VA.R. 2117 | 5/19/07 |
| 3 VAC 5-10-130 | Amended | 23:13 VA.R. 2117 | 5/19/07 |
| 3 VAC 5-10-150 | Amended | 23:13 VA.R. 2117 | 5/19/07 |
| 3 VAC 5-10-230 | Amended | 23:13 VA.R. 2118 | 5/19/07 |
| 3 VAC 5-10-360 | Amended | 23:13 VA.R. 2118 | 5/19/07 |
| 3 VAC 5-10-400 | Amended | 23:13 VA.R. 2118 | 5/19/07 |
| 3 VAC 5-10-480 | Amended | 23:13 VA.R. 2129 | 5/19/07 |
| 3 VAC 5-40-20 | Amended | 23:13 VA.R. 2133 | 5/19/07 |
| 3 VAC 5-40-50 | Amended | 23:13 VA.R. 2134 | 5/19/07 |
| 3 VAC 5-60-20 | Amended | 23:13 VA.R. 2137 | 5/19/07 |
| 3 VAC 5-60-40 | Amended | 23:13 VA.R. 2138 | 5/19/07 |
| 3 VAC 5-60-80 | Amended | 23:13 VA.R. 2138 | 5/19/07 |
| 3 VAC 5-60-100 | Added | 23:13 VA.R. 2139 | 5/19/07 |
| 3 VAC 5-70-100 | Amended | 23:13 VA.R. 2142 | 5/19/07 |
| 3 VAC 5-70-150 | Amended | 23:13 VA.R. 2143 | 5/19/07 |
| 3 VAC 5-70-160 | Amended | 23:13 VA.R. 2143 | 5/19/07 |
| 3 VAC 5-70-230 | Added | 23:13 VA.R. 2143 | 5/19/07 |
| **Title 4. Conservation and Natural Resources** | | | |
| 4 VAC 20-70-100 | Amended | 23:12 VA.R. 1958 | 2/1/07 |

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

| SECTION NUMBER | ACTION | CITE | EFFECTIVE DATE |
|---|---|---|---|
| 4 VAC 20-200-10 | Amended | 23:11 VA.R. 1659 | 2/1/07 |
| 4 VAC 20-200-20 | Amended | 23:11 VA.R. 1659 | 2/1/07 |
| 4 VAC 20-200-30 | Amended | 23:11 VA.R. 1659 | 2/1/07 |
| 4 VAC 20-200-40 | Amended | 23:11 VA.R. 1660 | 2/1/07 |
| 4 VAC 20-200-50 | Amended | 23:11 VA.R. 1660 | 2/1/07 |
| 4 VAC 20-270-30 emer | Amended | 23:14 VA.R. 2276 | 3/1/07-3/30/07 |
| 4 VAC 20-270-30 | Amended | 23:17 VA.R. 2737 | 3/30/07 |
| 4 VAC 20-270-40 emer | Amended | 23:14 VA.R. 2276 | 3/1/07-3/30/07 |
| 4 VAC 20-270-40 | Amended | 23:17 VA.R. 2737 | 3/30/07 |
| 4 VAC 20-300-20 emer | Amended | 23:14 VA.R. 2277 | 3/1/07-3/30/07 |
| 4 VAC 20-300-20 | Amended | 23:17 VA.R. 2738 | 3/30/07 |
| 4 VAC 20-310-55 | Added | 23:15 VA.R. 2481 | 3/1/07 |
| 4 VAC 20-370-10 through 4 VAC 20-370-30 | Amended | 23:19 VA.R. 2986 | 5/1/07 |
| 4 VAC 20-380-50 | Amended | 23:21 VA.R. 3446 | 10/1/07 |
| 4 VAC 20-380-60 | Amended | 23:21 VA.R. 3447 | 10/1/07 |
| 4 VAC 20-430-20 | Amended | 23:17 VA.R. 2738 | 3/30/07 |
| 4 VAC 20-430-45 | Added | 23:17 VA.R. 2738 | 3/30/07 |
| 4 VAC 20-450-30 | Amended | 23:17 VA.R. 2739 | 3/30/07 |
| 4 VAC 20-490-42 | Amended | 23:10 VA.R. 1540 | 12/21/06 |
| 4 VAC 20-490-42 | Amended | 23:19 VA.R. 2986 | 5/1/07 |
| 4 VAC 20-510-10 | Amended | 23:12 VA.R. 1958 | 2/1/07 |
| 4 VAC 20-510-20 | Amended | 23:12 VA.R. 1958 | 2/1/07 |
| 4 VAC 20-510-33 | Added | 23:12 VA.R. 1959 | 2/1/07 |
| 4 VAC 20-510-35 | Added | 23:12 VA.R. 1959 | 2/1/07 |
| 4 VAC 20-510-37 | Added | 23:12 VA.R. 1959 | 2/1/07 |
| 4 VAC 20-530-10 emer | Amended | 23:12 VA.R. 1959 | 2/1/07-3/1/07 |
| 4 VAC 20-530-20 emer | Amended | 23:12 VA.R. 1959 | 2/1/07-3/1/07 |
| 4 VAC 20-530-31 emer | Amended | 23:12 VA.R. 1960 | 2/1/07-3/1/07 |
| 4 VAC 20-530-31 | Added | 23:13 VA.R. 2144 | 2/1/07-3/1/07 |
| 4 VAC 20-530-31 | Amended | 23:15 VA.R. 2482 | 3/1/07 |
| 4 VAC 20-530-32 emer | Amended | 23:12 VA.R. 1960 | 2/1/07-3/1/07 |
| 4 VAC 20-530-32 | Added | 23:13 VA.R. 2145 | 2/1/07-3/1/07 |
| 4 VAC 20-530-32 | Amended | 23:15 VA.R. 2482 | 3/1/07 |
| 4 VAC 20-610-30 | Amended | 23:11 VA.R. 1660 | 2/1/07 |
| 4 VAC 20-610-60 | Amended | 23:11 VA.R. 1662 | 2/1/07 |
| 4 VAC 20-620-50 | Amended | 23:15 VA.R. 2483 | 3/1/07 |
| 4 VAC 20-620-60 | Amended | 23:15 VA.R. 2483 | 3/1/07 |
| 4 VAC 20-620-70 | Amended | 23:15 VA.R. 2483 | 3/1/07 |
| 4 VAC 20-670-15 | Added | 23:17 VA.R. 2739 | 3/30/07 |
| 4 VAC 20-670-30 | Amended | 23:17 VA.R. 2739 | 3/30/07 |
| 4 VAC 20-720-10 emer | Amended | 23:19 VA.R. 2987 | 5/1/07-5/30/07 |
| 4 VAC 20-720-10 | Amended | 23:21 VA.R. 3447 | 5/23/07 |
| 4 VAC 20-720-20 emer | Amended | 23:19 VA.R. 2987 | 5/1/07-5/30/07 |
| 4 VAC 20-720-40 emer | Amended | 23:10 VA.R. 1540 | 1/1/07-1/30/07 |
| 4 VAC 20-720-50 emer | Amended | 23:10 VA.R. 1541 | 1/1/07-1/30/07 |
| 4 VAC 20-720-60 emer | Amended | 23:19 VA.R. 2988 | 5/1/07-5/30/07 |
| 4 VAC 20-720-60 through 4 VAC 20-720-110 | Amended | 23:21 VA.R. 3447-3449 | 5/23/07 |
| 4 VAC 20-720-70 emer | Amended | 23:19 VA.R. 2989 | 5/1/07-5/30/07 |
| 4 VAC 20-720-90 emer | Amended | 23:19 VA.R. 2989 | 5/1/07-5/30/07 |
| 4 VAC 20-720-105 emer | Added | 23:19 VA.R. 2989 | 5/1/07-5/30/07 |
| 4 VAC 20-720-105 | Added | 23:21 VA.R. 3449 | 5/23/07 |

| SECTION NUMBER | ACTION | CITE | EFFECTIVE DATE |
|---|---|---|---|
| 4 VAC 20-720-110 emer | Amended | 23:19 VA.R. 2990 | 5/1/07-5/30/07 |
| 4 VAC 20-752-20 | Amended | 23:19 VA.R. 2990 | 5/3/07 |
| 4 VAC 20-752-30 | Amended | 23:19 VA.R. 2991 | 5/3/07 |
| 4 VAC 20-890-20 | Amended | 23:19 VA.R. 2991 | 7/1/07 |
| 4 VAC 20-890-35 | Amended | 23:19 VA.R. 2991 | 7/1/07 |
| 4 VAC 20-890-40 | Amended | 23:19 VA.R. 2991 | 7/1/07 |
| 4 VAC 20-890-45 | Added | 23:19 VA.R. 2992 | 7/1/07 |
| 4 VAC 20-900-25 | Amended | 23:19 VA.R. 2992 | 7/1/07 |
| 4 VAC 20-900-35 | Amended | 23:19 VA.R. 2993 | 7/1/07 |
| 4 VAC 20-950-40 emer | Amended | 23:12 VA.R. 1961 | 2/1/07-3/1/07 |
| 4 VAC 20-950-40 | Amended | 23:15 VA.R. 2484 | 3/1/07 |
| 4 VAC 20-950-47 emer | Amended | 23:12 VA.R. 1961 | 2/1/07-3/1/07 |
| 4 VAC 20-950-47 | Amended | 23:15 VA.R. 2484 | 3/1/07 |
| 4 VAC 20-950-47 | Amended | 23:17 VA.R. 2740 | 3/30/07 |
| 4 VAC 20-950-48.2 emer | Amended | 23:12 VA.R. 1961 | 2/1/07-3/1/07 |
| 4 VAC 20-950-48.2 | Amended | 23:15 VA.R. 2484 | 3/1/07 |
| 4 VAC 20-950-48 | Amended | 23:17 VA.R. 2740 | 3/30/07 |
| 4 VAC 20-1090-30 | Amended | 23:11 VA.R. 1663 | 2/1/07 |
| 4 VAC 20-1110-10 through 4 VAC 20-1110-50 | Added | 23:19 VA.R. 2994 | 5/1/07 |
| 4 VAC 20-1120-10 through 4 VAC 20-1120-50 | Added | 23:19 VA.R. 2994-2995 | 5/1/07 |
| 4 VAC 20-1120-20 emer | Amended | 23:21 VA.R. 3449 | 5/29/07-6/28/07 |
| 4 VAC 25-20-420 | Amended | 23:13 VA.R. 2146 | 4/4/07 |
| 4 VAC 25-130 (Forms) | Amended | 23:20 VA.R. 3370-3372 | -- |
| 4 VAC 25-130-700.12 | Amended | 23:13 VA.R. 2146 | 4/4/07 |
| 4 VAC 25-130-773.21 | Amended | 23:13 VA.R. 2147 | 4/4/07 |
| 4 VAC 25-130-775.11 | Amended | 23:13 VA.R. 2147 | 4/4/07 |
| 4 VAC 25-130-775.13 | Amended | 23:13 VA.R. 2148 | 4/4/07 |
| 4 VAC 25-130-784.20 | Amended | 23:13 VA.R. 2148 | 4/4/07 |
| 4 VAC 25-130-785.25 | Amended | 23:16 VA.R. 2592 | 5/16/07 |
| 4 VAC 25-130-800.51 | Amended | 23:13 VA.R. 2149 | 4/4/07 |
| 4 VAC 25-130-816.105 | Amended | 23:13 VA.R. 2150 | 4/4/07 |
| 4 VAC 25-130-816.116 | Amended | 23:16 VA.R. 2592 | 5/16/07 |
| 4 VAC 25-130-817.11 | Amended | 23:13 VA.R. 2150 | 4/4/07 |
| 4 VAC 25-130-817.64 | Amended | 23:13 VA.R. 2151 | 4/4/07 |
| 4 VAC 25-130-817.116 | Amended | 23:16 VA.R. 2594 | 5/16/07 |
| 4 VAC 25-130-817.121 | Amended | 23:13 VA.R. 2151 | 4/4/07 |
| 4 VAC 25-130-842.15 | Amended | 23:13 VA.R. 2153 | 4/4/07 |
| 4 VAC 25-130-843.12 | Amended | 23:13 VA.R. 2153 | 4/4/07 |
| 4 VAC 25-130-843.13 | Amended | 23:13 VA.R. 2154 | 4/4/07 |
| 4 VAC 25-130-843.15 | Amended | 23:13 VA.R. 2155 | 4/4/07 |
| 4 VAC 25-130-843.16 | Amended | 23:13 VA.R. 2156 | 4/4/07 |
| 4 VAC 25-130-845.13 | Amended | 23:13 VA.R. 2156 | 4/4/07 |
| 4 VAC 25-130-845.15 | Amended | 23:13 VA.R. 2158 | 4/4/07 |
| 4 VAC 25-130-845.18 | Amended | 23:13 VA.R. 2158 | 4/4/07 |
| 4 VAC 25-130-845.19 | Amended | 23:13 VA.R. 2159 | 4/4/07 |
| 4 VAC 25-130-846.14 | Amended | 23:13 VA.R. 2159 | 4/4/07 |
| **Title 8. Education** | | | |
| 8 VAC 20-350-10 through 8 VAC 20-350-660 | Repealed | 23:12 VA.R. 1962 | 5/8/07 |
| 8 VAC 20-700-10 through 8 VAC 20-700-50 | Added | 23:10 VA.R. 1541-1543 | 2/21/07 |
| 8 VAC 20-710-10 through 8 VAC 20-710-30 | Added | 23:10 VA.R. 1543-1544 | 2/21/07 |

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

| SECTION NUMBER | ACTION | CITE | EFFECTIVE DATE |
|---|---|---|---|
| **Title 9. Environment** | | | |
| 9 VAC 5-20-21 | Amended | 23:21 VA.R. 3456 | 8/1/07 |
| 9 VAC 5-30-15 | Added | 23:21 VA.R. 3454 | 8/1/07 |
| 9 VAC 5-30-60 | Amended | 23:21 VA.R. 3454 | 8/1/07 |
| 9 VAC 5-30-65 | Amended | 23:21 VA.R. 3454 | 8/1/07 |
| 9 VAC 5-30-66 | Added | 23:21 VA.R. 3455 | 8/1/07 |
| 9 VAC 5-40-7550 through 9 VAC 5-40-7710 | Added | 23:21 VA.R. 3460-3463 | 8/1/07 |
| 9 VAC 5-50-400 | Amended | 23:17 VA.R. 2742 | 6/1/07 |
| 9 VAC 5-50-410 | Amended | 23:17 VA.R. 2742 | 6/1/07 |
| 9 VAC 5-60-60 | Amended | 23:17 VA.R. 2747 | 6/1/07 |
| 9 VAC 5-60-90 | Amended | 23:17 VA.R. 2748 | 6/1/07 |
| 9 VAC 5-60-100 | Amended | 23:17 VA.R. 2748 | 6/1/07 |
| 9 VAC 5-140-1010 through 9 VAC 5-140-1060 | Added | 23:14 VA.R. 2279-2291 | 4/18/07 |
| 9 VAC 5-140-1061 | Added | 23:14 VA.R. 2291 | * |
| 9 VAC 5-140-1062 | Added | 23:14 VA.R. 2291 | * |
| 9 VAC 5-140-1070 through 9 VAC 5-140-1150 | Added | 23:14 VA.R. 2292-2295 | 4/18/07 |
| 9 VAC 5-140-1200 through 9 VAC 5-140-1240 | Added | 23:14 VA.R. 2295-2296 | 4/18/07 |
| 9 VAC 5-140-1400 through 9 VAC 5-140-1430 | Added | 23:14 VA.R. 2296-2302 | 4/18/07 |
| 9 VAC 5-140-1500 through 9 VAC 5-140-1570 | Added | 23:14 VA.R. 2302-2306 | 4/18/07 |
| 9 VAC 5-140-1600 through 9 VAC 5-140-1620 | Added | 23:14 VA.R. 2307 | 4/18/07 |
| 9 VAC 5-140-1700 through 9 VAC 5-140-1750 | Added | 23:14 VA.R. 2307-2312 | 4/18/07 |
| 9 VAC 5-140-1800 through 9 VAC 5-140-1880 | Added | 23:14 VA.R. 2312-2317 | 4/18/07 |
| 9 VAC 5-140-2060 | Added | 23:14 VA.R. 2329 | 4/18/07 |
| 9 VAC 5-140-2061 | Added | 23:14 VA.R. 2331 | * |
| 9 VAC 5-140-2062 | Added | 23:14 VA.R. 2332 | * |
| 9 VAC 5-140-2070 | Added | 23:14 VA.R. 2333 | 4/18/07 |
| 9 VAC 5-140-2080 | Added | 23:14 VA.R. 2333 | 4/18/07 |
| 9 VAC 5-140-2100 through 9 VAC 5-140-2150 | Added | 23:14 VA.R. 2333-2336 | 4/18/07 |
| 9 VAC 5-140-2200 through 9 VAC 5-140-2240 | Added | 23:14 VA.R. 2336-2337 | 4/18/07 |
| 9 VAC 5-140-2400 through 9 VAC 5-140-2430 | Added | 23:14 VA.R. 2337-2342 | 4/18/07 |
| 9 VAC 5-140-2500 through 9 VAC 5-140-2570 | Added | 23:14 VA.R. 2342-2347 | 4/18/07 |
| 9 VAC 5-140-2600 through 9 VAC 5-140-2620 | Added | 23:14 VA.R. 2347 | 4/18/07 |
| 9 VAC 5-140-2700 through 9 VAC 5-140-2750 | Added | 23:14 VA.R. 2347-2353 | 4/18/07 |
| 9 VAC 5-140-2800 through 9 VAC 5-140-2880 | Added | 23:14 VA.R. 2353-2359 | 4/18/07 |
| 9 VAC 5-140-3010 through 9 VAC 5-140-3060 | Added | 23:14 VA.R. 2359-2368 | 4/18/07 |
| 9 VAC 5-140-3061 | Added | 23:14 VA.R. 2370 | * |
| 9 VAC 5-140-3062 | Added | 23:14 VA.R. 2371 | * |
| 9 VAC 5-140-3070 | Added | 23:14 VA.R. 2371 | 4/18/07 |
| 9 VAC 5-140-3080 | Added | 23:14 VA.R. 2371 | 4/18/07 |
| 9 VAC 5-140-3100 through 9 VAC 5-140-3150 | Added | 23:14 VA.R. 2371-2374 | 4/18/07 |
| 9 VAC 5-140-3200 through 9 VAC 5-140-3240 | Added | 23:14 VA.R. 2374-2375 | 4/18/07 |
| 9 VAC 5-140-3400 through 9 VAC 5-140-3420 | Added | 23:14 VA.R. 2375 | 4/18/07 |
| 9 VAC 5-140-3500 through 9 VAC 5-140-3570 | Added | 23:14 VA.R. 2375-2380 | 4/18/07 |
| 9 VAC 5-140-3600 through 9 VAC 5-140-3620 | Added | 23:14 VA.R. 2380-2381 | 4/18/07 |
| 9 VAC 5-140-3700 through 9 VAC 5-140-3750 | Added | 23:14 VA.R. 2381-2386 | 4/18/07 |
| 9 VAC 5-140-3800 through 9 VAC 5-140-3880 | Added | 23:14 VA.R. 2386-2391 | 4/18/07 |
| 9 VAC 5-140-5010 through 9 VAC 5-140-5750 | Added | 23:13 VA.R. 2160-2186 | 4/4/07 |
| 9 VAC 5-140-1020 | Erratum | 23:16 VA.R. 2673 | -- |

* Effective Date Suspended 23:19

| SECTION NUMBER | ACTION | CITE | EFFECTIVE DATE |
|---|---|---|---|
| 9 VAC 5-140-1061 | Erratum | 23:16 VA.R. 2673 | -- |
| 9 VAC 5-140-1062 | Erratum | 23:16 VA.R. 2673 | -- |
| 9 VAC 5-140-1130 | Erratum | 23:16 VA.R. 2673 | -- |
| 9 VAC 5-140-1420 | Erratum | 23:16 VA.R. 2673 | -- |
| 9 VAC 5-140-1700 | Erratum | 23:16 VA.R. 2673 | -- |
| 9 VAC 5-140-1740 | Erratum | 23:16 VA.R. 2673 | -- |
| 9 VAC 5-140-2020 | Erratum | 23:16 VA.R. 2673 | -- |
| 9 VAC 5-140-2030 | Erratum | 23:16 VA.R. 2673 | -- |
| 9 VAC 5-140-2040 | Erratum | 23:16 VA.R. 2673 | -- |
| 9 VAC 5-140-2060 | Erratum | 23:16 VA.R. 2673 | -- |
| 9 VAC 5-140-2062 | Erratum | 23:16 VA.R. 2673 | -- |
| 9 VAC 5-140-2740 | Erratum | 23:16 VA.R. 2673 | -- |
| 9 VAC 5-140-3062 | Erratum | 23:16 VA.R. 2673 | -- |
| 9 VAC 5-140-3840 | Erratum | 23:16 VA.R. 2673 | -- |
| 9 VAC 5-140-5020 | Erratum | 23:16 VA.R. 2672 | -- |
| 9 VAC 5-140-5060 | Erratum | 23:16 VA.R. 2672 | -- |
| 9 VAC 5-140-5100 | Erratum | 23:16 VA.R. 2672 | -- |
| 9 VAC 5-140-5150 | Erratum | 23:16 VA.R. 2672 | -- |
| 9 VAC 5-140-5420 | Erratum | 23:16 VA.R. 2672 | -- |
| 9 VAC 5-140-5510 | Erratum | 23:16 VA.R. 2672 | -- |
| 9 VAC 5-140-5540 | Erratum | 23:16 VA.R. 2672 | -- |
| 9 VAC 5-140-5560 | Erratum | 23:16 VA.R. 2672 | -- |
| 9 VAC 5-140-5600 | Erratum | 23:16 VA.R. 2672 | -- |
| 9 VAC 5-151-10 through 9 VAC 5-151-70 | Added | 23:17 VA.R. 2755-2764 | 5/31/07 |
| 9 VAC 5-240-10 through 9 VAC 5-240-50 | Added | 23:16 VA.R. 2595-2596 | 5/16/07 |
| 9 VAC 20-110-90 | Amended | 23:11 VA.R. 1665 | 3/21/07 |
| 9 VAC 20-110-110 | Amended | 23:11 VA.R. 1665 | 3/21/07 |
| 9 VAC 20-200-10 through 9 VAC 20-200-70 | Added | 23:11 VA.R. 1666-1667 | 3/21/07 |
| 9 VAC 25-71-20 | Amended | 23:15 VA.R. 2485 | 5/2/07 |
| 9 VAC 25-71-50 | Amended | 23:15 VA.R. 2485 | 5/2/07 |
| 9 VAC 25-71-70 | Amended | 23:15 VA.R. 2485 | 5/2/07 |
| 9 VAC 25-210-10 | Amended | 23:21 VA.R. 3464 | 7/25/07 |
| 9 VAC 25-210-50 | Amended | 23:21 VA.R. 3468 | 7/25/07 |
| 9 VAC 25-210-60 | Amended | 23:21 VA.R. 3469 | 7/25/07 |
| 9 VAC 25-210-75 | Added | 23:21 VA.R. 3473 | 7/25/07 |
| 9 VAC 25-210-80 through 9 VAC 25-210-115 | Amended | 23:21 VA.R. 3474-3484 | 7/25/07 |
| 9 VAC 25-210-116 | Added | 23:21 VA.R. 3484 | 7/25/07 |
| 9 VAC 25-210-130 | Amended | 23:21 VA.R. 3487 | 7/25/07 |
| 9 VAC 25-210-140 | Amended | 23:21 VA.R. 3488 | 7/25/07 |
| 9 VAC 25-210-170 | Amended | 23:21 VA.R. 3489 | 7/25/07 |
| 9 VAC 25-210-175 | Added | 23:21 VA.R. 3489 | 7/25/07 |
| 9 VAC 25-210-180 | Amended | 23:21 VA.R. 3490 | 7/25/07 |
| 9 VAC 25-210-185 | Amended | 23:21 VA.R. 3492 | 7/25/07 |
| 9 VAC 25-210-190 | Repealed | 23:21 VA.R. 3492 | 7/25/07 |
| 9 VAC 25-210-200 | Repealed | 23:21 VA.R. 3493 | 7/25/07 |
| 9 VAC 25-210-210 | Repealed | 23:21 VA.R. 3493 | 7/25/07 |
| 9 VAC 25-210-220 | Amended | 23:21 VA.R. 3493 | 7/25/07 |
| 9 VAC 25-210-230 | Amended | 23:21 VA.R. 3493 | 7/25/07 |
| 9 VAC 25-210-260 | Amended | 23:21 VA.R. 3494 | 7/25/07 |
| 9 VAC 25-720-50 | Amended | 23:11 VA.R. 1669 | 3/21/07 |

| SECTION NUMBER | ACTION | CITE | EFFECTIVE DATE |
|---|---|---|---|
| 9 VAC 25-720-50 | Amended | 23:15 VA.R. 2486 | 5/2/07 |
| 9 VAC 25-720-60 | Amended | 23:12 VA.R. 1966 | 5/21/07 |
| 9 VAC 25-720-80 | Amended | 23:11 VA.R. 1670 | 3/21/07 |
| 9 VAC 25-720-90 | Amended | 23:11 VA.R. 1671 | 3/21/07 |
| 9 VAC 25-720-100 | Amended | 23:11 VA.R. 1671 | 3/21/07 |
| 9 VAC 25-720-130 | Amended | 23:15 VA.R. 2487 | 5/2/07 |
| **Title 10. Finance and Financial Institutions** | | | |
| 10 VAC 5-40-50 | Added | 23:18 VA.R. 2882 | 5/1/07 |
| 10 VAC 5-160-40 | Amended | 23:13 VA.R. 2187 | 2/10/07 |
| **Title 11. Gaming** | | | |
| 11 VAC 10-20-310 | Amended | 23:18 VA.R. 2883 | 5/31/07 |
| 11 VAC 10-20-330 | Amended | 23:18 VA.R. 2884 | 5/31/07 |
| 11 VAC 10-20-340 | Amended | 23:18 VA.R. 2891 | 5/31/07 |
| 11 VAC 10-100-30 | Amended | 23:18 VA.R. 2892 | 5/31/07 |
| 11 VAC 10-110-30 | Amended | 23:18 VA.R. 2893 | 5/31/07 |
| 11 VAC 10-110-90 | Amended | 23:18 VA.R. 2893 | 5/31/07 |
| 11 VAC 10-120-80 | Amended | 23:18 VA.R. 2894 | 5/31/07 |
| 11 VAC 10-130-10 | Amended | 23:11 VA.R. 1672 | 1/10/07 |
| 11 VAC 10-130-10 | Amended | 23:18 VA.R. 2894 | 4/30/07 |
| 11 VAC 10-130-60 | Amended | 23:11 VA.R. 1673 | 1/10/07 |
| 11 VAC 10-140-12 | Added | 23:18 VA.R. 2896 | 5/31/07 |
| 11 VAC 10-140-15 | Added | 23:18 VA.R. 2896 | 5/31/07 |
| 11 VAC 10-140-210 | Amended | 23:18 VA.R. 2896 | 5/31/07 |
| 11 VAC 10-150-12 | Added | 23:18 VA.R. 2897 | 5/31/07 |
| 11 VAC 10-150-15 | Added | 23:18 VA.R. 2897 | 5/31/07 |
| 11 VAC 10-180-10 | Amended | 23:20 VA.R. 3164 | 5/18/07 |
| 11 VAC 10-180-20 | Amended | 23:20 VA.R. 3164 | 5/18/07 |
| 11 VAC 10-180-60 | Amended | 23:20 VA.R. 3166 | 5/18/07 |
| 11 VAC 10-180-80 | Amended | 23:20 VA.R. 3167 | 5/18/07 |
| **Title 12. Health** | | | |
| 12 VAC 5-70-10 through 12 VAC 5-70-50 | Repealed | 23:13 VA.R. 2187 | 4/4/07 |
| 12 VAC 5-71-10 through 12 VAC 5-71-190 | Added | 23:13 VA.R. 2188-2195 | 4/4/07 |
| 12 VAC 5-90 (Forms) | Erratum | 23:15 VA.R. 2507-2509 | -- |
| 12 VAC 5-90-10 | Amended | 23:15 VA.R. 2488 | 5/2/07 |
| 12 VAC 5-90-40 | Amended | 23:15 VA.R. 2493 | 5/2/07 |
| 12 VAC 5-90-80 | Amended | 23:15 VA.R. 2493 | 5/2/07 |
| 12 VAC 5-90-90 | Amended | 23:15 VA.R. 2497 | 5/2/07 |
| 12 VAC 5-90-100 | Amended | 23:15 VA.R. 2500 | 5/2/07 |
| 12 VAC 5-90-103 | Added | 23:15 VA.R. 2500 | 5/2/07 |
| 12 VAC 5-90-107 | Added | 23:15 VA.R. 2502 | 5/2/07 |
| 12 VAC 5-90-110 | Amended | 23:15 VA.R. 2503 | 5/2/07 |
| 12 VAC 5-90-130 | Amended | 23:15 VA.R. 2504 | 5/2/07 |
| 12 VAC 5-90-225 | Amended | 23:15 VA.R. 2504 | 5/2/07 |
| 12 VAC 5-90-250 through 12 VAC 5-90-280 | Amended | 23:15 VA.R. 2505-2506 | 5/2/07 |
| 12 VAC 5-90-330 | Amended | 23:15 VA.R. 2506 | 5/2/07 |
| 12 VAC 5-90-350 | Amended | 23:15 VA.R. 2507 | 5/2/07 |
| 12 VAC 5-90-360 | Amended | 23:15 VA.R. 2507 | 5/2/07 |
| 12 VAC 5-190-10 through 12 VAC 5-190-690 | Repealed | 23:21 VA.R. 3498 | 7/25/07 |
| 12 VAC 5-191-10 through 12 VAC 5-191-320 | Added | 23:21 VA.R. 3498-3509 | 7/25/07 |
| 12 VAC 5-371-10 | Amended | 23:10 VA.R. 1544 | 3/1/07 |
| 12 VAC 5-371-20 | Repealed | 23:10 VA.R. 1546 | 3/1/07 |

| SECTION NUMBER | ACTION | CITE | EFFECTIVE DATE |
|---|---|---|---|
| 12 VAC 5-371-30 | Amended | 23:10 VA.R. 1547 | 3/1/07 |
| 12 VAC 5-371-40 | Amended | 23:10 VA.R. 1547 | 3/1/07 |
| 12 VAC 5-371-50 | Repealed | 23:10 VA.R. 1548 | 3/1/07 |
| 12 VAC 5-371-60 | Amended | 23:10 VA.R. 1548 | 3/1/07 |
| 12 VAC 5-371-70 through 12 VAC 5-371-130 | Amended | 23:10 VA.R. 1548-1551 | 3/1/07 |
| 12 VAC 5-371-150 | Amended | 23:10 VA.R. 1551 | 3/1/07 |
| 12 VAC 5-371-160 | Amended | 23:10 VA.R. 1551 | 3/1/07 |
| 12 VAC 5-371-190 | Amended | 23:10 VA.R. 1551 | 3/1/07 |
| 12 VAC 5-371-200 | Amended | 23:10 VA.R. 1552 | 3/1/07 |
| 12 VAC 5-371-400 | Amended | 23:10 VA.R. 1552 | 3/1/07 |
| 12 VAC 5-371-410 | Amended | 23:10 VA.R. 1552 | 3/1/07 |
| 12 VAC 5-410-10 | Amended | 23:10 VA.R. 1554 | 3/1/07 |
| 12 VAC 5-410-30 | Amended | 23:10 VA.R. 1555 | 3/1/07 |
| 12 VAC 5-410-70 | Amended | 23:10 VA.R. 1555 | 3/1/07 |
| 12 VAC 5-410-80 | Amended | 23:10 VA.R. 1555 | 3/1/07 |
| 12 VAC 5-410-100 | Amended | 23:10 VA.R. 1555 | 3/1/07 |
| 12 VAC 5-410-110 | Amended | 23:10 VA.R. 1555 | 3/1/07 |
| 12 VAC 5-410-130 | Amended | 23:10 VA.R. 1555 | 3/1/07 |
| 12 VAC 5-410-140 | Amended | 23:10 VA.R. 1555 | 3/1/07 |
| 12 VAC 5-410-150 | Amended | 23:10 VA.R. 1556 | 3/1/07 |
| 12 VAC 5-410-180 | Amended | 23:10 VA.R. 1556 | 3/1/07 |
| 12 VAC 5-410-210 | Amended | 23:10 VA.R. 1556 | 3/1/07 |
| 12 VAC 5-410-220 | Amended | 23:10 VA.R. 1557 | 3/1/07 |
| 12 VAC 5-410-270 | Amended | 23:10 VA.R. 1558 | 3/1/07 |
| 12 VAC 5-410-442 | Amended | 23:10 VA.R. 1558 | 3/1/07 |
| 12 VAC 5-410-445 | Amended | 23:10 VA.R. 1559 | 3/1/07 |
| 12 VAC 5-410-650 | Amended | 23:10 VA.R. 1560 | 3/1/07 |
| 12 VAC 5-410-720 | Amended | 23:10 VA.R. 1560 | 3/1/07 |
| 12 VAC 5-410-760 | Amended | 23:10 VA.R. 1560 | 3/1/07 |
| 12 VAC 5-410-1150 | Amended | 23:10 VA.R. 1560 | 3/1/07 |
| 12 VAC 5-410-1170 | Amended | 23:10 VA.R. 1561 | 3/1/07 |
| 12 VAC 5-410-1350 | Amended | 23:10 VA.R. 1561 | 3/1/07 |
| 12 VAC 5-410-1380 | Amended | 23:10 VA.R. 1561 | 3/1/07 |
| 12 VAC 30-10-140 | Amended | 23:16 VA.R. 2653 | 7/1/07 |
| 12 VAC 30-10-560 | Amended | 23:14 VA.R. 2396 | 9/1/07 |
| 12 VAC 30-20-140 | Amended | 23:14 VA.R. 2397 | 9/1/07 |
| 12 VAC 30-30-20 emer | Amended | 23:20 VA.R. 3169 | 5/30/07-5/29/08 |
| 12 VAC 30-30-60 | Added | 23:11 VA.R. 1673 | 3/7/07 |
| 12 VAC 30-40-10 | Amended | 23:11 VA.R. 1674 | 3/7/07 |
| 12 VAC 30-40-20 | Amended | 23:18 VA.R. 2897 | 7/1/07 |
| 12 VAC 30-40-105 emer | Added | 23:20 VA.R. 3170 | 5/30/07-5/29/08 |
| 12 VAC 30-40-280 emer | Amended | 23:20 VA.R. 3171 | 5/30/07-5/29/08 |
| 12 VAC 30-40-290 | Amended | 23:14 VA.R. 2398 | 9/1/07 |
| 12 VAC 30-40-290 emer | Amended | 23:20 VA.R. 3172 | 5/30/07-5/29/08 |
| 12 VAC 30-50-20 | Amended | 23:16 VA.R. 2654 | 7/1/07 |
| 12 VAC 30-50-35 | Added | 23:11 VA.R. 1675 | 3/7/07 |
| 12 VAC 30-50-60 | Amended | 23:16 VA.R. 2654 | 7/1/07 |
| 12 VAC 30-50-75 | Added | 23:11 VA.R. 1676 | 3/7/07 |
| 12 VAC 30-50-130 | Amended | 23:21 VA.R. 3518 | 1/1/08 |
| 12 VAC 30-50-141 emer | Added | 23:21 VA.R. 3510 | 7/1/07-6/30/08 |

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

| SECTION NUMBER | ACTION | CITE | EFFECTIVE DATE |
|---|---|---|---|
| 12 VAC 30-50-151 emer | Added | 23:21 VA.R. 3510 | 7/1/07-6/30/08 |
| 12 VAC 30-50-181 emer | Added | 23:21 VA.R. 3510 | 7/1/07-6/30/08 |
| 12 VAC 30-50-228 emer | Added | 23:21 VA.R. 3511 | 7/1/07-6/30/08 |
| 12 VAC 30-50-320 | Amended | 23:16 VA.R. 2654 | 7/1/07 |
| 12 VAC 30-50-321 | Added | 23:16 VA.R. 2655 | 7/1/07 |
| 12 VAC 30-50-325 | Added | 23:16 VA.R. 2655 | 7/1/07 |
| 12 VAC 30-50-328 | Added | 23:16 VA.R. 2655 | 7/1/07 |
| 12 VAC 30-50-461 emer | Added | 23:21 VA.R. 3512 | 7/1/07-6/30/08 |
| 12 VAC 30-50-490 | Amended | 23:20 VA.R. 3175 | 7/11/07 |
| 12 VAC 30-50-530 | Amended | 23:11 VA.R. 1676 | 3/7/07 |
| 12 VAC 30-60-250 emer | Added | 23:21 VA.R. 3513 | 7/1/07-6/30/08 |
| 12 VAC 30-60-255 emer | Added | 23:21 VA.R. 3515 | 7/1/07-6/30/08 |
| 12 VAC 30-70-311 | Amended | 23:19 VA.R. 3003 | 7/1/07 |
| 12 VAC 30-70-321 | Amended | 23:19 VA.R. 3003 | 7/1/07 |
| 12 VAC 30-70-331 | Amended | 23:20 VA.R. 3225 | 8/25/07 |
| 12 VAC 30-70-341 | Amended | 23:19 VA.R. 3003 | 7/1/07 |
| 12 VAC 30-70-391 | Amended | 23:19 VA.R. 3004 | 7/1/07 |
| 12 VAC 30-80-30 | Amended | 23:20 VA.R. 3232 | 7/11/07 |
| 12 VAC 30-80-32 emer | Added | 23:21 VA.R. 3516 | 7/1/07-6/30/08 |
| 12 VAC 30-80-95 | Added | 23:21 VA.R. 3520 | 1/1/08 |
| 12 VAC 30-80-190 | Amended | 23:19 VA.R. 3004 | 7/1/07 |
| 12 VAC 30-80-190 | Amended | 23:20 VA.R. 3225 | 8/25/07 |
| 12 VAC 30-80-190 | Amended | 23:20 VA.R. 3242 | 7/11/07 |
| 12 VAC 30-90-31 | Amended | 23:19 VA.R. 3005 | 7/1/07 |
| 12 VAC 30-90-41 | Amended | 23:20 VA.R. 3226 | 8/25/07 |
| 12 VAC 30-90-271 | Amended | 23:20 VA.R. 3229 | 8/25/07 |
| 12 VAC 30-90-290 | Amended | 23:20 VA.R. 3230 | 8/25/07 |
| 12 VAC 30-90-264 | Amended | 23:14 VA.R. 2400 | 4/18/07 |
| 12 VAC 30-110-950 | Amended | 23:18 VA.R. 2898 | 7/1/07 |
| 12 VAC 30-120-61 | Amended | 23:16 VA.R. 2655 | 7/1/07 |
| 12 VAC 30-120-62 | Amended | 23:16 VA.R. 2657 | 7/1/07 |
| 12 VAC 30-120-64 | Amended | 23:16 VA.R. 2659 | 7/1/07 |
| 12 VAC 30-120-65 | Amended | 23:16 VA.R. 2660 | 7/1/07 |
| 12 VAC 30-120-66 | Amended | 23:16 VA.R. 2660 | 7/1/07 |
| 12 VAC 30-120-68 | Amended | 23:16 VA.R. 2661 | 7/1/07 |
| 12 VAC 30-120-310 emer | Amended | 23:21 VA.R. 3516 | 7/1/07-6/30/08 |
| 12 VAC 30-120-380 emer | Amended | 23:21 VA.R. 3517 | 7/1/07-6/30/08 |
| 12 VAC 30-120-700 through 12 VAC 30-120-750 | Amended | 23:20 VA.R. 3177-3192 | 7/11/07 |
| 12 VAC 30-120-752 | Amended | 23:20 VA.R. 3192 | 7/11/07 |
| 12 VAC 30-120-753 | Amended | 23:20 VA.R. 3194 | 7/11/07 |
| 12 VAC 30-120-754 | Amended | 23:20 VA.R. 3195 | 7/11/07 |
| 12 VAC 30-120-756 | Amended | 23:20 VA.R. 3197 | 7/11/07 |
| 12 VAC 30-120-758 | Amended | 23:20 VA.R. 3198 | 7/11/07 |
| 12 VAC 30-120-760 | Amended | 23:20 VA.R. 3198 | 7/11/07 |
| 12 VAC 30-120-762 | Amended | 23:20 VA.R. 3199 | 7/11/07 |
| 12 VAC 30-120-764 | Amended | 23:20 VA.R. 3199 | 7/11/07 |
| 12 VAC 30-120-766 | Amended | 23:20 VA.R. 3201 | 7/11/07 |
| 12 VAC 30-120-768 | Repealed | 23:20 VA.R. 3204 | 7/11/07 |
| 12 VAC 30-120-770 | Amended | 23:20 VA.R. 3206 | 7/11/07 |
| 12 VAC 30-120-772 | Amended | 23:20 VA.R. 3211 | 7/11/07 |
| 12 VAC 30-120-774 | Amended | 23:20 VA.R. 3211 | 7/11/07 |

| SECTION NUMBER | ACTION | CITE | EFFECTIVE DATE |
|---|---|---|---|
| 12 VAC 30-120-776 | Amended | 23:20 VA.R. 3213 | 7/11/07 |
| 12 VAC 30-120-780 | Repealed | 23:20 VA.R. 3215 | 7/11/07 |
| 12 VAC 30-120-790 | Repealed | 23:20 VA.R. 3216 | 7/11/07 |
| 12 VAC 30-120-1600 through 12 VAC 30-120-1660 | Added | 23:20 VA.R. 3244-3251 | 7/11/07 |
| 12 VAC 30-130-900 | Amended | 23:12 VA.R. 1967 | 3/21/07 |
| 12 VAC 30-130-910 | Amended | 23:12 VA.R. 1968 | 3/21/07 |
| 12 VAC 30-130-930 | Amended | 23:12 VA.R. 1968 | 3/21/07 |
| 12 VAC 30-135-10 through 12 VAC 30-135-40 | Amended | 23:21 VA.R. 3520-3522 | 11/1/07 |
| 12 VAC 30-135-80 | Amended | 23:21 VA.R. 3522 | 11/1/07 |
| 12 VAC 30-141-740 | Amended | 23:19 VA.R. 3006 | 7/1/07 |
| 12 VAC 35-45-10 | Amended | 23:10 VA.R. 1562 | 2/21/07 |
| 12 VAC 35-45-25 | Added | 23:10 VA.R. 1565 | 2/21/07 |
| 12 VAC 35-45-70 | Amended | 23:10 VA.R. 1564 | 2/21/07 |
| 12 VAC 35-45-80 | Amended | 23:10 VA.R. 1564 | 2/21/07 |
| 12 VAC 35-45-210 | Added | 23:10 VA.R. 1564 | 2/21/07 |
| 12 VAC 35-105-20 | Amended | 23:10 VA.R. 1567 | 2/21/07 |
| 12 VAC 35-105-30 | Amended | 23:10 VA.R. 1575 | 2/21/07 |
| 12 VAC 35-105-115 emer | Added | 23:10 VA.R. 1566 | 1/3/07-1/2/08 |
| 12 VAC 35-105-590 | Amended | 23:10 VA.R. 1575 | 2/21/07 |
| 12 VAC 35-105-660 | Amended | 23:10 VA.R. 1576 | 2/21/07 |
| 12 VAC 35-105-925 | Added | 23:20 VA.R. 3252 | 7/11/07 |
| 12 VAC 35-210-10 through 12 VAC 35-210-120 | Added | 23:21 VA.R. 3525-3529 | 7/25/07 |
| **Title 13. Housing** | | | |
| 13 VAC 5-111-10 through 13 VAC 5-111-400 | Repealed | 23:12 VA.R. 1971 | 3/21/07 |
| 13 VAC 5-112-10 through 13 VAC 5-112-560 | Added | 23:12 VA.R. 1971-1994 | 3/21/07 |
| **Title 14. Insurance** | | | |
| 14 VAC 5-200-20 | Repealed | 23:17 VA.R. 2766 | 9/1/07 |
| 14 VAC 5-200-30 through 14 VAC 5-200-60 | Amended | 23:17 VA.R. 2766-2770 | 9/1/07 |
| 14 VAC 5-200-70 through 14 VAC 5-200-90 | Amended | 23:17 VA.R. 2770-2774 | 9/1/07 |
| 14 VAC 5-200-110 | Amended | 23:17 VA.R. 2774 | 9/1/07 |
| 14 VAC 5-200-120 | Amended | 23:17 VA.R. 2777 | 9/1/07 |
| 14 VAC 5-200-153 | Amended | 23:17 VA.R. 2777 | 9/1/07 |
| 14 VAC 5-200-170 | Amended | 23:17 VA.R. 2780 | 9/1/07 |
| 14 VAC 5-200-175 | Amended | 23:17 VA.R. 2781 | 9/1/07 |
| 14 VAC 5-200-181 | Added | 23:17 VA.R. 2782 | 9/1/07 |
| 14 VAC 5-200-183 | Added | 23:17 VA.R. 2782 | 9/1/07 |
| 14 VAC 5-200-185 | Amended | 23:17 VA.R. 2783 | 9/1/07 |
| 14 VAC 5-200-187 | Amended | 23:17 VA.R. 2785 | 9/1/07 |
| 14 VAC 5-200-200 | Amended | 23:17 VA.R. 2786 | 9/1/07 |
| 14 VAC 5-200-201 | Added | 23:17 VA.R. 2788 | 9/1/07 |
| 14 VAC 5-200-205 | Added | 23:17 VA.R. 2788 | 9/1/07 |
| 14 VAC 5-321-10 | Amended | 23:10 VA.R. 1577 | 1/1/07 |
| 14 VAC 5-321-20 | Amended | 23:10 VA.R. 1577 | 1/1/07 |
| 14 VAC 5-321-30 | Amended | 23:10 VA.R. 1578 | 1/1/07 |
| 14 VAC 5-321-70 | Added | 23:10 VA.R. 1578 | 1/1/07 |
| 14 VAC 5-322-10 through 14 VAC 5-322-50 | Added | 23:10 VA.R. 1579-1581 | 1/1/07 |
| **Title 16. Labor and Employment** | | | |
| 16 VAC 25-55-10 and 16 VAC 25-55-20 | Added | 23:12 VA.R. 1995-1996 | 3/22/07 |
| 16 VAC 25-75-10 | Added | 23:21 VA.R. 3544 | 7/26/07 |
| 16 VAC 25-90-1910.268 (b) (7) | Repealed | 23:21 VA.R. 3545 | 7/26/07 |

| SECTION NUMBER | ACTION | CITE | EFFECTIVE DATE |
|---|---|---|---|
| 16 VAC 25-90-1910.134 | Amended | 23:12 VA.R. 1997 | 3/21/07 |
| 16 VAC 25-90-1910.1000 | Amended | 23:12 VA.R. 1996 | 3/21/07 |
| 16 VAC 25-90-1910.1001 | Amended | 23:12 VA.R. 1997 | 3/21/07 |
| 16 VAC 25-90-1910.1017 | Amended | 23:12 VA.R. 1997 | 3/21/07 |
| 16 VAC 25-90-1910.1018 | Amended | 23:12 VA.R. 1997 | 3/21/07 |
| 16 VAC 25-90-1910.1025 | Amended | 23:12 VA.R. 1997 | 3/21/07 |
| 16 VAC 25-90-1910.1027 | Amended | 23:12 VA.R. 1997 | 3/21/07 |
| 16 VAC 25-90-1910.1028 | Amended | 23:12 VA.R. 1997 | 3/21/07 |
| 16 VAC 25-90-1910.1029 | Amended | 23:12 VA.R. 1997 | 3/21/07 |
| 16 VAC 25-90-1910.1043 | Amended | 23:12 VA.R. 1997 | 3/21/07 |
| 16 VAC 25-90-1910.1044 | Amended | 23:12 VA.R. 1997 | 3/21/07 |
| 16 VAC 25-90-1910.1045 | Amended | 23:12 VA.R. 1997 | 3/21/07 |
| 16 VAC 25-90-1910.1047 | Amended | 23:12 VA.R. 1997 | 3/21/07 |
| 16 VAC 25-90-1910.1048 | Amended | 23:12 VA.R. 1997 | 3/21/07 |
| 16 VAC 25-90-1910.1050 | Amended | 23:12 VA.R. 1997 | 3/21/07 |
| 16 VAC 25-90-1910.1052 | Amended | 23:12 VA.R. 1997 | 3/21/07 |
| 16 VAC 25-100-1915.5 | Amended | 23:12 VA.R. 1998 | 3/21/07 |
| 16 VAC 25-100-1915.505 | Amended | 23:12 VA.R. 1998 | 3/21/07 |
| 16 VAC 25-100-1915.507 | Amended | 23:12 VA.R. 1998 | 3/21/07 |
| 16 VAC 25-100-1915.1000 | Amended | 23:12 VA.R. 1996 | 3/21/07 |
| 16 VAC 25-100-1915.1001 | Amended | 23:12 VA.R. 1997 | 3/21/07 |
| 16 VAC 25-175-1926.55 | Added | 23:12 VA.R. 1996 | 3/21/07 |
| 16 VAC 25-175-1926.60 | Amended | 23:12 VA.R. 1997 | 3/21/07 |
| 16 VAC 25-175-1926.62 | Amended | 23:12 VA.R. 1997 | 3/21/07 |
| 16 VAC 25-175-1926.1002, Appendix A of Subpart W | Amended | 23:12 VA.R. 1999 | 3/21/07 |
| 16 VAC 25-175-1926.1101 | Amended | 23:12 VA.R. 1997 | 3/21/07 |
| 16 VAC 25-175-1926.1127 | Amended | 23:12 VA.R. 1997 | 3/21/07 |
| 16 VAC 25-190-1928.52 | Amended | 23:12 VA.R. 1999 | 3/21/07 |
| 16 VAC 25-190-1928.53, Appendix B to Subpart C | Amended | 23:12 VA.R. 1999 | 3/21/07 |
| **Title 18. Professional and Occupational Licensing** | | | |
| 18 VAC 5-10-10 through 18 VAC 5-10-90 | Amended | 23:11 VA.R. 1678-1680 | 4/23/07 |
| 18 VAC 10-20-230 | Amended | 23:21 VA.R. 3548 | 9/10/07 |
| 18 VAC 10-20-420 | Amended | 23:21 VA.R. 3550 | 8/1/07 |
| 18 VAC 10-20-440 | Amended | 23:21 VA.R. 3551 | 8/1/07 |
| 18 VAC 10-20-450 | Amended | 23:21 VA.R. 3551 | 8/1/07 |
| 18 VAC 15-20 (Forms) | Added | 23:15 VA.R. 2514 | -- |
| 18 VAC 15-30 (Forms) | Amended | 23:15 VA.R. 2514 | -- |
| 18 VAC 25-21-80 | Amended | 23:21 VA.R. 3557 | 8/1/07 |
| 18 VAC 25-21-90 | Amended | 23:21 VA.R. 3558 | 8/1/07 |
| 18 VAC 25-21-180 | Amended | 23:21 VA.R. 3558 | 8/1/07 |
| 18 VAC 25-21-230 through 18 VAC 25-21-280 | Added | 23:21 VA.R. 3559-3560 | 8/1/07 |
| 18 VAC 30-10-10 through 18 VAC 30-10-80 | Amended | 23:20 VA.R. 3276-3277 | 8/25/07 |
| 18 VAC 30-10-100 | Amended | 23:20 VA.R. 3277 | 8/25/07 |
| 18 VAC 30-10-110 | Amended | 23:20 VA.R. 3277 | 8/25/07 |
| 18 VAC 30-10-120 | Amended | 23:20 VA.R. 3277 | 8/25/07 |
| 18 VAC 41-60-10 through 18 VAC 41-60-220 | Added | 23:12 VA.R. 2000-2009 | 4/1/07 |
| 18 VAC 45-20-40 | Amended | 23:21 VA.R. 3562 | 9/10/07 |
| 18 VAC 47-20-10 | Amended | 23:21 VA.R. 3563 | 8/1/07 |
| 18 VAC 47-20-35 | Added | 23:21 VA.R. 3564 | 8/1/07 |
| 18 VAC 47-20-210 | Amended | 23:21 VA.R. 3564 | 8/1/07 |
| 18 VAC 47-20-240 | Repealed | 23:21 VA.R. 3564 | 8/1/07 |

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

| SECTION NUMBER | ACTION | CITE | EFFECTIVE DATE |
|---|---|---|---|
| 18 VAC 47-20-250 | Added | 23:21 VA.R. 3564 | 8/1/07 |
| 18 VAC 47-20-260 | Added | 23:21 VA.R. 3565 | 8/1/07 |
| 18 VAC 47-20-270 | Added | 23:21 VA.R. 3565 | 8/1/07 |
| 18 VAC 50-30-10 through 18 VAC 50-30-50 | Amended | 23:12 VA.R. 2020-2025 | 4/1/07 |
| 18 VAC 50-30-60 | Repealed | 23:12 VA.R. 2025 | 4/1/07 |
| 18 VAC 50-30-70 | Amended | 23:12 VA.R. 2025 | 4/1/07 |
| 18 VAC 50-30-80 | Repealed | 23:12 VA.R. 2025 | 4/1/07 |
| 18 VAC 50-30-90 through 18 VAC 50-30-150 | Amended | 23:12 VA.R. 2026-2028 | 4/1/07 |
| 18 VAC 50-30-180 | Repealed | 23:12 VA.R. 2028 | 4/1/07 |
| 18 VAC 50-30-185 | Added | 23:12 VA.R. 2028 | 4/1/07 |
| 18 VAC 50-30-190 | Amended | 23:12 VA.R. 2028 | 4/1/07 |
| 18 VAC 50-30-200 | Amended | 23:12 VA.R. 2029 | 4/1/07 |
| 18 VAC 50-30-210 through 18 VAC 50-30-260 | Added | 23:12 VA.R. 2030-2031 | 4/1/07 |
| 18 VAC 60-10-10 through 18 VAC 60-10-80 | Amended | 23:20 VA.R. 3283-3284 | 8/25/07 |
| 18 VAC 60-10-100 | Amended | 23:20 VA.R. 3284 | 8/25/07 |
| 18 VAC 60-10-110 | Amended | 23:20 VA.R. 3284 | 8/25/07 |
| 18 VAC 60-10-120 | Amended | 23:20 VA.R. 3284 | 8/25/07 |
| 18 VAC 60-20-210 | Amended | 23:20 VA.R. 3286 | 8/25/07 |
| 18 VAC 60-20-180 | Amended | 23:15 VA.R. 2510 | 5/2/07 |
| 18 VAC 65-40-10 | Amended | 23:12 VA.R. 2031 | 3/21/07 |
| 18 VAC 65-40-40 | Amended | 23:12 VA.R. 2031 | 3/21/07 |
| 18 VAC 65-40-90 | Amended | 23:12 VA.R. 2032 | 3/21/07 |
| 18 VAC 65-40-110 | Amended | 23:12 VA.R. 2032 | 3/21/07 |
| 18 VAC 65-40-130 | Amended | 23:12 VA.R. 2032 | 3/21/07 |
| 18 VAC 65-40-160 | Repealed | 23:12 VA.R. 2032 | 3/21/07 |
| 18 VAC 65-40-220 | Amended | 23:12 VA.R. 2032 | 3/21/07 |
| 18 VAC 65-40-250 | Amended | 23:12 VA.R. 2032 | 3/21/07 |
| 18 VAC 65-40-300 | Repealed | 23:12 VA.R. 2032 | 3/21/07 |
| 18 VAC 65-40-320 | Amended | 23:12 VA.R. 2033 | 3/21/07 |
| 18 VAC 65-40-340 | Amended | 23:12 VA.R. 2033 | 3/21/07 |
| 18 VAC 75-10-10 through 18 VAC 75-10-80 | Amended | 23:20 VA.R. 3288-3290 | 8/25/07 |
| 18 VAC 75-10-100 | Amended | 23:20 VA.R. 3290 | 8/25/07 |
| 18 VAC 75-10-110 | Amended | 23:20 VA.R. 3290 | 8/25/07 |
| 18 VAC 75-10-120 | Amended | 23:20 VA.R. 3290 | 8/25/07 |
| 18 VAC 75-20-60 | Amended | 23:21 VA.R. 3574 | 9/10/07 |
| 18 VAC 75-20-70 | Amended | 23:21 VA.R. 3575 | 9/10/07 |
| 18 VAC 75-20-120 | Added | 23:21 VA.R. 3575 | 9/10/07 |
| 18 VAC 75-20-130 | Added | 23:21 VA.R. 3575 | 9/10/07 |
| 18 VAC 75-20-140 | Added | 23:21 VA.R. 3575 | 9/10/07 |
| 18 VAC 76-30-10 through 18 VAC 76-30-80 | Amended | 23:20 VA.R. 3292-3294 | 8/25/07 |
| 18 VAC 76-30-100 | Amended | 23:20 VA.R. 3294 | 8/25/07 |
| 18 VAC 76-30-110 | Amended | 23:20 VA.R. 3294 | 8/25/07 |
| 18 VAC 76-30-120 | Amended | 23:20 VA.R. 3294 | 8/25/07 |
| 18 VAC 85-10 through 18 VAC 85-10-70 | Amended | 23:20 VA.R. 3296-3297 | 8/25/07 |
| 18 VAC 85-10-90 | Amended | 23:20 VA.R. 3297 | 8/25/07 |
| 18 VAC 85-10-100 | Amended | 23:20 VA.R. 3297 | 8/25/07 |
| 18 VAC 85-10-110 | Amended | 23:20 VA.R. 3298 | 8/25/07 |
| 18 VAC 85-20-30 | Amended | 23:20 VA.R. 3299 | 8/25/07 |
| 18 VAC 85-20-235 | Amended | 23:11 VA.R. 1692 | 4/21/07 |
| 18 VAC 85-20-290 | Amended | 23:13 VA.R. 2206 | 4/4/07 |

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

| SECTION NUMBER | ACTION | CITE | EFFECTIVE DATE |
|---|---|---|---|
| 18 VAC 85-101-50 | Amended | 23:15 VA.R. 2511 | 5/2/07 |
| 18 VAC 85-130-10 through 18 VAC 85-130-170 | Added | 23:10 VA.R. 1582-1586 | 2/21/07 |
| 18 VAC 90-10-10 through 18 VAC 90-10-80 | Amended | 23:20 VA.R. 3307-3309 | 8/25/07 |
| 18 VAC 90-10-100 | Amended | 23:20 VA.R. 3309 | 8/25/07 |
| 18 VAC 90-10-110 | Amended | 23:20 VA.R. 3309 | 8/25/07 |
| 18 VAC 90-10-120 | Amended | 23:20 VA.R. 3309 | 8/25/07 |
| 18 VAC 90-20-60 | Amended | 23:12 VA.R. 2033 | 3/21/07 |
| 18 VAC 90-25-15 through 18 VAC 90-25-80 | Amended | 23:21 VA.R. 3576-3581 | 7/25/07 |
| 18 VAC 90-25-71 | Added | 23:21 VA.R. 3580 | 7/25/07 |
| 18 VAC 90-25-72 | Added | 23:21 VA.R. 3580 | 7/25/07 |
| 18 VAC 90-25-81 | Added | 23:21 VA.R. 3581 | 7/25/07 |
| 18 VAC 90-25-100 through 18 VAC 90-25-130 | Amended | 23:21 VA.R. 3581-3583 | 7/25/07 |
| 18 VAC 90-30-120 | Amended | 23:14 VA.R. 2404 | 4/18/07 |
| 18 VAC 90-30-230 | Amended | 23:12 VA.R. 2034 | 3/21/07 |
| 18 VAC 90-40-140 | Amended | 23:12 VA.R. 2034 | 3/21/07 |
| 18 VAC 90-60-10 through 18 VAC 90-60-120 | Added | 23:19 VA.R. 3008-3012 | 7/1/07 |
| 18 VAC 90-60-120 | Erratum | 23:20 VA.R. 3378 | -- |
| 18 VAC 105-10-10 through 18 VAC 105-10-80 | Amended | 23:20 VA.R. 3315-3316 | 8/25/07 |
| 18 VAC 105-10-100 | Amended | 23:20 VA.R. 3316 | 8/25/07 |
| 18 VAC 105-10-110 | Amended | 23:20 VA.R. 3316 | 8/25/07 |
| 18 VAC 105-10-120 | Amended | 23:20 VA.R. 3316 | 8/25/07 |
| 18 VAC 110-10-10 through 18 VAC 110-10-80 | Amended | 23:20 VA.R. 3318-3320 | 8/25/07 |
| 18 VAC 110-10-100 | Amended | 23:20 VA.R. 3320 | 8/25/07 |
| 18 VAC 110-10-110 | Amended | 23:20 VA.R. 3320 | 8/25/07 |
| 18 VAC 110-10-120 | Amended | 23:20 VA.R. 3320 | 8/25/07 |
| 18 VAC 110-20-285 | Amended | 23:17 VA.R. 2791 | 5/30/07 |
| 18 VAC 112-10-10 through 18 VAC 112-10-80 | Amended | 23:20 VA.R. 3327-3329 | 8/25/07 |
| 18 VAC 112-10-100 | Amended | 23:20 VA.R. 3329 | 8/25/07 |
| 18 VAC 112-10-110 | Amended | 23:20 VA.R. 3329 | 8/25/07 |
| 18 VAC 112-10-120 | Amended | 23:20 VA.R. 3329 | 8/25/07 |
| 18 VAC 115-10-10 through 18 VAC 115-10-80 | Amended | 23:20 VA.R. 3331-3332 | 8/25/07 |
| 18 VAC 115-10-100 | Amended | 23:20 VA.R. 3332 | 8/25/07 |
| 18 VAC 115-10-110 | Amended | 23:20 VA.R. 3333 | 8/25/07 |
| 18 VAC 115-10-120 | Amended | 23:20 VA.R. 3333 | 8/25/07 |
| 18 VAC 115-20-20 | Amended | 23:14 VA.R. 2404 | 4/18/07 |
| 18 VAC 115-20-130 | Amended | 23:21 VA.R. 3584 | 7/25/07 |
| 18 VAC 115-30-30 | Amended | 23:14 VA.R. 2405 | 4/18/07 |
| 18 VAC 115-40-20 | Amended | 23:14 VA.R. 2405 | 4/18/07 |
| 18 VAC 115-50-20 | Amended | 23:14 VA.R. 2405 | 4/18/07 |
| 18 VAC 115-50-110 | Amended | 23:21 VA.R. 3585 | 7/25/07 |
| 18 VAC 115-60-20 | Amended | 23:14 VA.R. 2406 | 4/18/07 |
| 18 VAC 115-60-130 | Amended | 23:21 VA.R. 3587 | 7/25/07 |
| 18 VAC 120-30-10 | Amended | 23:21 VA.R. 3589 | 8/1/07 |
| 18 VAC 120-30-30 | Amended | 23:21 VA.R. 3590 | 8/1/07 |
| 18 VAC 120-30-40 | Amended | 23:21 VA.R. 3590 | 8/1/07 |
| 18 VAC 120-30-50 | Amended | 23:21 VA.R. 3591 | 8/1/07 |
| 18 VAC 120-30-55 | Added | 23:21 VA.R. 3591 | 8/1/07 |
| 18 VAC 120-30-90 | Repealed | 23:21 VA.R. 3592 | 8/1/07 |
| 18 VAC 120-30-100 | Amended | 23:21 VA.R. 3588 | 8/1/07 |
| 18 VAC 120-30-100 | Amended | 23:21 VA.R. 3592 | 8/1/07 |
| 18 VAC 120-30-130 | Amended | 23:21 VA.R. 3592 | 8/1/07 |

| SECTION NUMBER | ACTION | CITE | EFFECTIVE DATE |
|---|---|---|---|
| 18 VAC 120-30-150 | Amended | 23:21 VA.R. 3592 | 8/1/07 |
| 18 VAC 120-30-160 | Amended | 23:21 VA.R. 3592 | 8/1/07 |
| 18 VAC 120-30-180 | Amended | 23:21 VA.R. 3592 | 8/1/07 |
| 18 VAC 120-30-190 | Amended | 23:21 VA.R. 3593 | 8/1/07 |
| 18 VAC 120-30-200 | Amended | 23:21 VA.R. 3593 | 8/1/07 |
| 18 VAC 120-30-220 | Amended | 23:21 VA.R. 3593 | 8/1/07 |
| 18 VAC 120-30-230 | Amended | 23:21 VA.R. 3594 | 8/1/07 |
| 18 VAC 120-30-240 | Amended | 23:21 VA.R. 3594 | 8/1/07 |
| 18 VAC 120-30-250 | Amended | 23:21 VA.R. 3594 | 8/1/07 |
| 18 VAC 120-30-270 | Amended | 23:21 VA.R. 3594 | 8/1/07 |
| 18 VAC 120-30-280 | Amended | 23:21 VA.R. 3595 | 8/1/07 |
| 18 VAC 120-30-290 | Added | 23:21 VA.R. 3595 | 8/1/07 |
| 18 VAC 120-30-300 | Added | 23:21 VA.R. 3595 | 8/1/07 |
| 18 VAC 120-30-310 | Added | 23:21 VA.R. 3595 | 8/1/07 |
| 18 VAC 125-10-10 through 18 VAC 125-10-80 | Amended | 23:20 VA.R. 3346-3348 | 8/25/07 |
| 18 VAC 125-10-100 | Amended | 23:20 VA.R. 3348 | 8/25/07 |
| 18 VAC 125-10-110 | Amended | 23:20 VA.R. 3348 | 8/25/07 |
| 18 VAC 125-10-120 | Amended | 23:20 VA.R. 3348 | 8/25/07 |
| 18 VAC 125-20-30 | Amended | 23:12 VA.R. 2035 | 3/21/07 |
| 18 VAC 125-30-20 | Amended | 23:12 VA.R. 2035 | 3/21/07 |
| 18 VAC 140-10-10 through 18 VAC 140-10-80 | Amended | 23:20 VA.R. 3350-3351 | 8/25/07 |
| 18 VAC 140-10-100 | Amended | 23:20 VA.R. 3351 | 8/25/07 |
| 18 VAC 140-10-110 | Amended | 23:20 VA.R. 3352 | 8/25/07 |
| 18 VAC 140-10-120 | Amended | 23:20 VA.R. 3352 | 8/25/07 |
| 18 VAC 145-30-40 | Amended | 23:20 VA.R. 3352 | 7/12/07 |
| **Title 19. Public Safety** | | | |
| 19 VAC 30-20-80 | Amended | 23:10 VA.R. 1587 | 3/1/07 |
| **Title 21. Securities and Retail Franchising** | | | |
| 21 VAC 5-10 | Erratum | 23:18 VA.R. 2935 | -- |
| 21 VAC 5-20 | Erratum | 23:18 VA.R. 2935 | -- |
| 21 VAC 5-110 | Erratum | 23:18 VA.R. 2935 | -- |
| **Title 22. Social Services** | | | |
| 22 VAC 15-10-40 | Amended | 23:10 VA.R. 1587 | 3/1/07 |
| 22 VAC 15-10-50 | Amended | 23:10 VA.R. 1587 | 3/1/07 |
| 22 VAC 15-30-10 | Amended | 23:20 VA.R. 3353 | 7/11/07 |
| 22 VAC 15-30-310 | Amended | 23:20 VA.R. 3356 | 7/11/07 |
| 22 VAC 15-30-580 | Amended | 23:20 VA.R. 3358 | 7/11/07 |
| 22 VAC 40-20-10 | Repealed | 23:20 VA.R. 3364 | 8/1/07 |
| 22 VAC 40-25-10 through 22 VAC 40-25-70 | Amended | 23:20 VA.R. 3360-3364 | 8/1/07 |
| 22 VAC 40-25-45 | Added | 23:20 VA.R. 3363 | 8/1/07 |
| 22 VAC 40-540-10 | Repealed | 23:20 VA.R. 3364 | 8/1/07 |
| 22 VAC 40-600-10 through 22 VAC 40-600-240 | Repealed | 23:20 VA.R. 3364 | 8/1/07 |
| 22 VAC 40-601-10 through 22 VAC 40-601-40 | Added | 23:20 VA.R. 3365-3366 | 8/1/07 |
| 22 VAC 40-740-10 | Amended | 23:10 VA.R. 1588 | 3/1/07 |
| 22 VAC 40-740-15 | Added | 23:10 VA.R. 1591 | 3/1/07 |
| 22 VAC 40-740-20 | Repealed | 23:10 VA.R. 1592 | 3/1/07 |
| 22 VAC 40-740-21 | Added | 23:10 VA.R. 1592 | 3/1/07 |
| 22 VAC 40-740-30 | Repealed | 23:10 VA.R. 1593 | 3/1/07 |
| 22 VAC 40-740-31 | Added | 23:10 VA.R. 1593 | 3/1/07 |
| 22 VAC 40-740-40 | Amended | 23:10 VA.R. 1593 | 3/1/07 |

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

| SECTION NUMBER | ACTION | CITE | EFFECTIVE DATE |
|---|---|---|---|
| 22 VAC 40-740-50 | Amended | 23:10 VA.R. 1594 | 3/1/07 |
| 22 VAC 40-740-60 | Amended | 23:10 VA.R. 1595 | 3/1/07 |
| 22 VAC 40-740-70 | Added | 23:10 VA.R. 1596 | 3/1/07 |
| 22 VAC 40-740-80 | Added | 23:10 VA.R. 1596 | 3/1/07 |
| 22 VAC 40-880-200 | Amended | 23:20 VA.R. 3367 | 8/1/07 |
| 22 VAC 40-880-250 | Amended | 23:20 VA.R. 3367 | 8/1/07 |
| 22 VAC 40-880-270 | Amended | 23:20 VA.R. 3367 | 8/1/07 |
| 22 VAC 40-880-350 | Amended | 23:20 VA.R. 3368 | 8/1/07 |
| 22 VAC 40-880-620 | Amended | 23:20 VA.R. 3369 | 8/1/07 |
| **Title 24. Transportation and Motor Vehicles** | | | |
| 24 VAC 30-155 | Erratum | 23:21 VA.R. 3619 | -- |
| 24 VAC 30-155-10 through 24 VAC 30-155-100 | Added | 23:18 VA.R. 2915-2930 | 7/1/07 |
| 24 VAC 30-320 | Repealed | 23:16 VA.R. 2665 | 3/22/07 |
| 24 VAC 30-325-10 | Added | 23:16 VA.R. 2665 | 3/22/07 |
| 24 VAC 30-325-20 | Added | 23:16 VA.R. 2666 | 3/22/07 |
| 24 VAC 30-330 | Repealed | 23:16 VA.R. 2665 | 3/22/07 |

## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF DENTISTRY

### Initial Agency Notice

Title of Regulation: **18 VAC 60-20. Regulations Governing the Practice of Dentistry and Dental Hygiene.**

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

Name of Petitioner: Debra Duke Tanner, RDH.

Nature of Petitioner's Request: To clarify that the acts of scaling, root planning or scaling and root planning of natural and restored teeth are services that may be delegated by the dentist to a dental hygienist but not to a dental assistant.

Agency's Plan for Disposition of Request: The board is requesting public comment on the petition and will consider the request for an amendment at its meeting on September 7, 2007.

Public comments may be submitted until August 8, 2007.

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114, or email elaine.yeatts@dhp.virginia.gov.

VA.R. Doc. No. R07-282; Filed June 19, 2007, 12:11 p.m.

# NOTICES OF INTENDED REGULATORY ACTION

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

## TITLE 4. CONSERVATION AND NATURAL RESOURCES

### DEPARTMENT OF MINES, MINERALS AND ENERGY

#### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Department of Mines, Minerals and Energy intends to consider amending regulations entitled **4 VAC 25-130, Coal Surface Mining Reclamation Regulations.** The purpose of the proposed action is to achieve consistency with federal standards on revegetation, topsoil, and water diversion structures during reclamation of mined lands. The action will also implement a 30-day deadline for filing applications for review and requests for hearing on decisions not to take enforcement action under the regulation.

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

Statutory Authority: §§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Public comments may be submitted until 5 p.m. on August 8, 2007.

**Contact:** David Spears, Regulatory Coordinator, Department of Mines, Minerals and Energy, 202 N. 9th St., 8th Floor, Richmond, VA 23219-3402, telephone (804) 692-3212, FAX (804) 692-3237, or email david.spears@dmme.virginia.gov.

VA.R. Doc. No. R07-275; Filed June 15, 2007, 10:30 a.m.

## TITLE 8. EDUCATION

### STATE BOARD OF EDUCATION

#### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Education intends to consider amending regulations entitled **8 VAC 20-100, Regulations Governing Literary Loan Applications in Virginia.** The purpose of the proposed action is to review and revise the regulation in order to ensure that it comports with the requirements of legislation enacted by the 2007 Acts of Assembly. There are several major elements considered for addition, deletion or revision. They include (i) revising the definitions section; (ii) requiring that a school board's application to the Board of Education for a loan from the Literary Fund is authorized by the governing body and the school board; (iii) adding a provision requiring the board not to disburse any proceeds of any approved loan before its receipt of the concurrent approval of the governing body at the time of initial disbursement and an acceptable opinion of bond counsel obtained by the local governing body as to the validity of the loan; (iv) removing provisions that require the examination of a title to property on an application for a loan, the certificate of the clerk of court or copy of a lease on the application for a loan, and the submission of the application and certificate of title to the Attorney General; (v) reviewing and revising each section of the current regulations to ensure compliance with the Code of Virginia; and (vi) adding provisions that may be necessary for the general administration of the program by the Department of Education.

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

Statutory Authority: §§ 22.1-142 and 22.1-161 of the Code of Virginia.

Public comments may be submitted until 5 p.m. on August 8, 2007.

**Contact:** Dr. Margaret N. Roberts, Office of Policy and Communications, Department of Education, P.O. Box 2120, Richmond, VA 23218-2120, telephone (804) 225-2540, FAX (804) 225-2524, or email margaret.roberts@doe.virginia.gov.

VA.R. Doc. No. R07-280; Filed June 20, 2007, 11:43 a.m.

#### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Education intends to consider repealing regulations entitled **8 VAC 20-280, Regulations Governing Jointly Owned and Operated Schools and Jointly Operated Programs** and promulgating regulations entitled **8 VAC 20-281, Regulations Governing Jointly Owned and Operated Schools and Jointly Operated Programs.** The 2003 Acts of Assembly passed legislation allowing academic-year Governor's schools to choose a fiscal agent from among the treasurers of the cities and/or counties participating in this joint school program. Current law dictates that each of the regional programs other than the Governor's schools designate a fiscal agent according to the physical location of the school. Chapter 45 of the 2007 Acts of Assembly, will permit all joint school boards to designate a fiscal agent from among participating school divisions regardless of the physical location of the school beginning July 1, 2007. This bill resulted from a legislative proposal put forth by the Department of Education

to streamline the operation of joint schools. As a result of this legislation and the language that needs to be added to address changes that have been made in the operation of joint schools and joint programs since the regulation was written, these regulations need to be revised. Because the changes will be extensive, this will be accomplished by repealing the current regulation and promulgating a new regulation.

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

Statutory Authority: § 22.1-16 of the Code of Virginia.

Public comments may be submitted until 5 p.m. on August 8, 2007.

**Contact:** Dr. Margaret N. Roberts, Office of Policy and Communications, Department of Education, P.O. Box 2120, Richmond, VA 23218-2120, telephone (804) 225-2540, FAX (804) 225-2524, or email margaret.roberts@doe.virginia.gov.

VA.R. Doc. No. R07-279; Filed June 20, 2007, 11:42 a.m.

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Education intends to consider amending regulations entitled **8 VAC 20-131, Regulations Establishing Standards for Accrediting Public Schools in Virginia.** The purpose of the proposed action is to review the requirements for graduation (8 VAC 20-131-50), school and community communications (8 VAC 20-131-270), expectations for school accountability (8 VAC 20-131-280), and recognitions and rewards for school accountability performance (8 VAC 20-131-325). This review will include the role of graduation rates in the accountability measures for school accreditation as well as changes necessitated by actions taken by the 2007 General Assembly, including the following legislation:

1. Chapters 859 and 919 of the 2007 Acts of Assembly require the board to establish the requirements for a technical diploma.

2. Chapter 351 of the 2007 Acts of Assembly requires the board to modify the provisions of the Board of Education's Seal for Excellence in Civics Education to emphasize community service.

3. The Senate Education and Health Committee, while not taking action on HB 3201, related to removing students from classes, requested the Chairman write a letter to the Board of Education asking that the board consider this issue in its review of applicable regulations, and report back to the patron and the committee.

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

Statutory Authority: § 22.1-253.13:3 of the Code of Virginia.

Public comments may be submitted until 5 p.m. on July 13, 2007.

**Contact:** Anne Wescott, Assistant Superintendent, Policy and Communications, Department of Education, P.O. Box 2120, Richmond, VA 23218-2120, telephone (804) 225-2403, FAX (804) 225-2524, or email anne.wescott@doe.virginia.gov.

VA.R. Doc. No. R07-228; Filed May 23, 2007, 11:18 a.m.

## TITLE 9. ENVIRONMENT

### STATE AIR POLLUTION CONTROL BOARD

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Air Pollution Control Board intends to consider promulgating regulations entitled **9 VAC 5-45, Consumer and Commercial Products Regulation.** The purpose of the proposed action is to adopt new and revised standards for the control of volatile organic compound (VOC) emissions from certain consumer and commercial products within the Northern Virginia and Fredericksburg VOC Emissions Control Areas. This action is being taken to allow Virginia to meet its obligation to implement control measures in areas designated as nonattainment under the eight-hour ozone standard and to implement contingency measures within former nonattainment areas that have been redesignated as ozone maintenance 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.

Public comments may be submitted until 5 p.m. on July 25, 2007.

**Contact:** Gary E. Graham, Department of Environmental Quality, 629 E. Main St., P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4103, FAX (804) 698-4510, or email gegraham@deq.virginia.gov.

VA.R. Doc. No. R07-264; Filed June 1, 2007, 9:10 a.m.

# TITLE 12. HEALTH

## DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Department of Medical Assistance Services intends to consider amending regulations entitled **12 VAC 30-30, Groups Covered and Agencies Responsible for Eligibility Determination,** and amending regulations entitled **12 VAC 30-40, Eligibility Conditions and Requirements.** The purpose of the proposed action is to implement a mandated Medicaid buy-in program per the requirement of the 2006 Appropriation Act. The buy-in program will help protect the health and welfare of the citizens of the Commonwealth by creating an incentive for disabled Medicaid enrollees who desire to be employed to have added income that will not count against their eligibility income limits. This reduces the financial restrictions to which such enrollees may be subject.

The agency does not intend to hold a public hearing on the proposed action 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 July 11, 2007.

**Contact:** Jack Quigley, Policy and Research Division, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-1300, FAX (804) 786-1680 or email jack.quigley@dmas.virginia.gov.

VA.R. Doc. No. R07-219; Filed May 21, 2007, 4:15 p.m.

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Department of Medical Assistance Services intends to consider amending regulations entitled:

**12 VAC 30-50, Amount Duration and Scope of Medical and Remedial Care Services.**

**12 VAC 30-60, Standards Established and Methods Used to Assure High Quality Care.**

**12 VAC 30-80, Methods and Standards for Establishing Payment Rates; Other Types of Care.**

**12 VAC 30-120, Waivered Services.**

The purpose of the proposed action is to include emergency services; evaluation and assessment; outpatient services; intensive outpatient services; targeted case management; day treatment and opioid treatment services. Substance abuse services, with the exception of residential and day treatment services for pregnant and postpartum women are not currently a part of the state plan. The addition of these services will fill a gap in the continuum of care for Medicaid emrollees.

MEDALLION Primary Care Case Management (PCCM) recipients will have substance abuse services covered by Medicaid. These services are not subject to required referrals by the primary care physician. Medallion II recipients who are enrolled in an MCO will have outpatient services (excluding intensive outpatient services) and assessment and evaluation services covered by the MCOs. All other mandates substance services to be covered (emergency services (crisis), intensive outpatient services, day treatment services, opioid treatment services, and substance abuse case management services) will be carved out of the MCO and covered by DMAS.

The agency does not intend to hold a public hearing on the proposed action 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 July 25, 2007.

**Contact:** Catherine Hancock, Policy & Research Division, Department of Medical Assistance Services, 600 E. Broad St., Richmond, VA 23219, telephone (804) 225-4272, FAX (804) 786-1680, or email catherine.hancock@dmas.virginia.gov.

VA.R. Doc. No. R07-262; Filed May 30, 2007, 2:51 p.m.

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

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Mental Health, Mental Retardation And Substance Abuse Services Board intends to consider amending regulations entitled **12 VAC 35-105, Rules and Regulations for the Licensing of Providers of Mental Health, Mental Retardation, Substance Abuse, the Individual Family Developmental Disabilities Support Waiver, and Residential Brain Injury Services.** The purpose of the proposed action is to update the regulations to be consistent with current statutory mandates and standards of practice.

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

Statutory Authority: §§ 37.2-203 and 37.2-404 of the Code of Virginia.

Public comments may be submitted until July 27, 2007.

**Contact:** Leslie Anderson, Director, Office of Licensing, Department of Mental Health, Mental Retardation and

Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 371-6885, FAX (804) 692-0066 or email leslie.anderson@dmhmrsas.virginia.gov.

VA.R. Doc. No. R07-260; Filed May 25, 2007, 11:33 a.m.

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Mental Health, Mental Retardation And Substance Abuse Services Board intends to consider amending regulations entitled **12 VAC 35-190, Regulations Establishing Procedures for Voluntarily Admitting Persons Who are Mentally Retarded to State Mental Retardation Facilities.** The purpose of the proposed action is to revise the regulations to clarify, update and respond to changes in practice related to admissions to state mental retardation facilities.

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

Statutory Authority: § 37.2-203 of the Code of Virginia.

Public comments may be submitted until July 27, 2007.

**Contact:** Dawn Traver, Office of Mental Retardation Services, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, 1220 Bank St., Richmond, VA 23218-1797, telephone (757) 253-4316, FAX ( 757) 253-5440, or email dawn.traver@co.dmhmrsas.virginia.gov.

VA.R. Doc. No. R07-261; Filed May 25, 2007, 11:33 a.m.

## TITLE 16. LABOR AND EMPLOYMENT

### DEPARTMENT OF LABOR AND INDUSTRY

### Apprenticeship Council

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Department of Labor and Industry intends to consider amending regulations entitled **16 VAC 20-20, Regulations Governing the Administration of Apprenticeship Programs in the Commonwealth of Virginia.** The purpose of the proposed action is to add new definitions and makes language changes to clarify the Regulations Governing the Administration of Apprenticeship Programs in the Commonwealth of Virginia.

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

Statutory Authority: § 40.1-6 of the Code of Virginia.

Public comments may be submitted until 5 p.m. on July 26, 2007.

**Contact:** Beverley G. Donati, Program Director, Department of Labor and Industry, Powers-Taylor Bldg., 13 S. 13th St., Richmond, VA 23219, telephone (804) 786-2382, FAX (804) 786-8418, or email bev.donati@doli.virginia.gov.

VA.R. Doc. No. R07-259; Filed May 31, 2007, 11:45 a.m.

### VIRGINIA WORKERS' COMPENSATION COMMISSION

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Virginia Workers' Compensation Commission intends to consider amending regulations entitled **16 VAC 30-50, Rules of the Virginia Workers' Compensation Commission.** The purpose of the proposed action is to establish permissible charges and other requirements regarding the provision of medical records, reports, and medical opinions in the workers' compensation context.

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

Statutory Authority: § 65.2-210 of the Code of Virginia.

Public comments may be submitted until August 23, 2007.

**Contact:** Deborah Hathcock, Virginia Workers' Compensation Commission, Office of the Chair, 1000 DMV Drive, Richmond, VA 23220, telephone (804) 367-8657, FAX (877) 299-7360 or email deborah.hathcock@vwc.state.va.us.

VA.R. Doc. No. R07-281; Filed June 19, 2007, 3:11 p.m.

## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF ACCOUNTANCY

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Accountancy intends to consider amending regulations entitled **18 VAC 5-21, Board of Accountancy Regulations.** The purpose of the proposed action is to provide clarification to those CPA exam candidates who qualified under the education requirements of the Board of Accountancy to sit for the CPA exam prior to July 1, 2006. The board seeks to set a deadline of December 31, 2008, for these CPA candidates to pass the CPA exam. The goal of the board is to enable these candidates to be able

to complete the CPA exam in a timely manner and within an achievable deadline, without creating an undue burden on them.

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

Statutory Authority: §§ 54.1-4402 and 54.1-4410 of the Code of Virginia.

Public comments may be submitted until July 11, 2007.

**Contact:** Nancy Taylor Feldman, Executive Director, Board of Accountancy, 3600 W. Broad St., Suite 378, Richmond, VA 23230, telephone (804) 367-8505, FAX (804) 367-2174 or email boa@boa.virginia.gov.

VA.R. Doc. No. R07-211; Filed May 14, 2007, 12:49 p.m.

## BOARD OF DENTISTRY

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Dentistry intends to consider amending regulations entitled **18 VAC 60-20, Regulations Governing the Practice of Dentistry and Dental Hygiene.** The purpose of the proposed action is to specify requirements for informed consent in the performance of dental treatments.

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

Statutory Authority: § 54.1-2400 and Chapter 27 (§ 54.1-2700) of Title 54.1 of the Code of Virginia.

Public comments may be submitted until 5 p.m. on July 11, 2007.

**Contact:** Sandra Reen, Executive Director, Board of Dentistry, 6603 W. Broad Street, 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9906, FAX (804) 662-9943, or email sandra.reen@dhp.virginia.gov.

VA.R. Doc. No. R07-241; Filed May 23, 2007, 10:44 a.m.

## BOARD OF MEDICINE

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Medicine intends to consider amending regulations entitled **18 VAC 85-50, Regulations Governing the Practice of Physician Assistants.** The purpose of the proposed action is to set out requirements for prescribing opioids for managements of chronic pain.

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

Statutory Authority: § 54.1-2400 and Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1 of the Code of Virginia.

Public comments may be submitted until 5 p.m. on July 11, 2007.

**Contact:** William L. Harp, M.D., Executive Director, Department of Health Professions, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943, or email william.harp@dhp.virginia.gov.

VA.R. Doc. No. R07-237; Filed May 23, 2007, 10:44 a.m.

## BOARD OF OPTOMETRY

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Optometry intends to consider amending regulations entitled **18 VAC 105-20, Regulations Governing the Practice of Optometry.** The purpose of the proposed action is to make technical changes to clarify the continuing education rules and consider requirements for face-to-face or interactive hours.

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

Statutory Authority: § 54.1-2400 and Chapter 32 (§ 54.1-3200 et seq.) of Title 54.1 of the Code of Virginia.

Public comments may be submitted until 5 p.m. on July 11, 2007.

**Contact:** Elizabeth A. Carter, Ph.D., Executive Director, Board of Optometry, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9910, FAX (804) 662-7098, or email elizabeth.carter@dhp.virginia.gov.

VA.R. Doc. No. R07-238; Filed May 23, 2007, 10:44 a.m.

## BOARD OF PHYSICAL THERAPY

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Physical Therapy intends to consider amending regulations entitled **18 VAC 112-20, Regulations Governing the Practice of Physical Therapy.** The purpose of the proposed action is to clarify and simplify definitions and requirements for trainees and for foreign-trained applicants, specify the additional clinical training or course work required to retake the examination after three failures, add evidence of competency for licensure by endorsement, clarify the responsibilities of physical therapist in the evaluation and discharge of a patient and in the supervision of physical therapist assistants or other personnel, and modify the requirements for renewal or reinstatement of licensure. The board will consider the

addition of provisions on standards of professional practice and grounds for unprofessional conduct.

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 July 25, 2007.

**Contact:** Lisa R. Hahn, Executive Director, Board of Physical Therapy, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9924, FAX (804) 662-9523, or email lisa.hahn@dhp.virginia.gov.

VA.R. Doc. No. R07-269; Filed June 5, 2007, 11:25 a.m.

### BOARD OF COUNSELING

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Counseling intends to consider amending regulations entitled **18 VAC 115-50, Regulations Governing the Practice of Marriage and Family Therapy.** The purpose of the proposed action is to change the requirements for supervision of residency and licensure by endorsement.

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 July 11, 2007.

**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 email evelyn.brown@dhp.virginia.gov.

VA.R. Doc. No. R07-239; Filed May 23, 2007, 10:44 a.m.

### BOARD OF PSYCHOLOGY

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Psychology intends to consider amending regulations entitled **18 VAC 125-20, Regulations Governing the Practice of Psychology.** The purpose of the proposed action is to respond to a petition for rulemaking for fewer hours of face-to-face continuing education, and to update and clarify its requirements for continuing education.

The agency does not intend 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 July 11, 2007.

**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, or email evelyn.brown@dhp.virginia.gov.

VA.R. Doc. No. R06-216; Filed May 23, 2007, 10:44 a.m.

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Psychology intends to consider amending regulations entitled **18 VAC 125-30, Regulations Governing the Certification of Sex Offender Treatment Providers.** The purpose of the proposed action is to respond to a petition for rulemaking that requested fewer supervised hours in experience required for persons who already hold a license as a clinical psychologist and to require at least six hours of continuing education focused on the treatment of that population for annual renewal.

The agency does not intend 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 July 11, 2007.

**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, or email evelyn.brown@dhp.virginia.gov.

VA.R. Doc. No. R07-240; Filed May 23, 2007, 10:44 a.m.

## TITLE 22. SOCIAL SERVICES

### STATE BOARD OF SOCIAL SERVICES

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Social Services intends to consider amending regulations entitled **22 VAC 40-690, Virginia Child Care Provider Scholarship Program.** The purpose of the proposed action is to amend the regulation to employ more efficient business practices and to implement an applicant selection process that will address the immediate need to improve the qualifications of child care providers and to enhance the quality of child care services offered to children and families in the Commonwealth.

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

Statutory Authority: § 63.2-217 of the Code of Virginia.

Public comments may be submitted until 5 p.m. on July 11, 2007.

**Contact:** Zelda Boyd, Program Development Consultant, Department of Social Services, Division of Child Care and Development, 7 N. 8th St., Richmond, VA 23219, telephone (804) 726-7616, FAX (804) 726-7655, or email zelda.boyd@dss.virginia.gov.

VA.R. Doc. No. R07-214; Filed May 21, 2007, 9:48 a.m.

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Social Services intends to consider amending regulations entitled **22 VAC 40-705, Child Protective Services.** The purpose of the proposed action is to conduct a comprehensive review of the Child Protective Services regulation. The regulation addresses the key functions in protecting children from abuse and neglect. The State Board of Social Services will recommend amendments to reflect recent changes in the Code of Virginia to the definition of an abused or neglected child and will also propose several amendments of a housekeeping nature and may propose additional amendments based on public comment.

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

Statutory Authority: § 63.2-217 and Chapter 15 (§ 63.2-1500 et seq.) of Title 63.2 and of the Code of Virginia.

Public comments may be submitted until 5 p.m. on July 11, 2007.

**Contact:** Nan McKenney, CPS Policy Supervisor, Department of Social Services, 7 N. 8th St., 4th Floor, Richmond, VA 23219, telephone (804) 726-7569, FAX (804) 726-7895 or email nan.mckenney@dss.virginia.gov.

VA.R. Doc. No. R07-215; Filed May 21, 2007, 9:47 a.m.

## TITLE 23. TAXATION

### DEPARTMENT OF TAXATION

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Department of Taxation intends to consider amending regulations entitled **23 VAC 10-210, Retail Sales and Use Tax.** The purpose of the proposed action is to amend the current retail sales and use tax regulation on fabrication to more accurately set forth policy.

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

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public comments may be submitted until 5 p.m. on July 11, 2007.

**Contact:** Mark Haskins, Director, Policy Development, Department of Taxation, 600 E. Main St., Richmond, VA 23219, telephone (804) 371-2296, FAX (804) 371-2355 or email mark.haskins@tax.virginia.gov.

VA.R. Doc. No. R07-243; Filed May 23, 2007, 9:58 a.m.

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Department of Taxation intends to consider amending regulations entitled **23 VAC 10-210, Retail Sales and Use Tax.** The purpose of the proposed action is to amend the existing regulation (23 VAC 10-210-680, Gifts Purchased in Virginia) to reflect a statutory change enacted by 2005 General Assembly defining "gift transaction" for sales and use tax purposes and allowing the dealer the option of collecting the tax in the state of the recipient or collecting the Virginia tax, provided the dealer is registered in the recipient state and the recipient is someone other than the purchaser. Tax will amend the regulation to reflect the law change and set their policy with respect to this change. The regulation will also provide processes and procedures for dealers to obtain approval from the Tax Commissioner prior to collecting the tax in the state of the recipient.

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

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public comments may be submitted until 5 p.m. on July 11, 2007.

**Contact:** Mark Haskins, Director, Policy Development, Department of Taxation, 600 E. Main St., Richmond, VA 23219, telephone (804) 371-2296, FAX (804) 371-2355 or email mark.haskins@tax.virginia.gov.

VA.R. Doc. No. R07-245; Filed May 23, 2007, 9:58 a.m.

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Department of Taxation intends to consider amending regulations entitled **23 VAC 10-210, Retail Sales and Use Tax.** The purpose of the proposed action is to amend the current regulation (23 VAC 10-210-730, Hotels, Motels, Tourist Camps, etc.) to reflect the 2004 legislative change that provides that Internet access services

furnished with accommodations qualify as a tax-exempt service and not a service in connection with accommodations.

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

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public comments may be submitted until 5 p.m. on July 11, 2007.

**Contact:** Mark Haskins, Director, Policy Development, Department of Taxation, 600 E. Main St., Richmond, VA 23219, telephone (804) 371-2296, FAX (804) 371-2355 or email mark.haskins@tax.virginia.gov.

VA.R. Doc. No. R07-246 ; Filed May 23, 2007, 9:58 a.m.

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Department of Taxation intends to consider amending regulations entitled **23 VAC 10-210, Retail Sales and Use Tax.** The purpose of the proposed action is to amend the existing regulation (23 VAC 10-210-840, Leases and Rentals) to clarify what constitutes "gross proceeds" with respect to leases and rentals and to distinguish leases and rentals from conditional sales.

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

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public comments may be submitted until 5 p.m. on July 11, 2007.

**Contact:** Mark Haskins, Director, Policy Development, Department of Taxation, 600 E. Main St., Richmond, VA 23219, telephone (804) 371-2296, FAX (804) 371-2355 or email mark.haskins@tax.virginia.gov.

VA.R. Doc. No. R07-247; Filed May 23, 2007, 9:58 a.m.

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Department of Taxation intends to consider amending regulations entitled **23 VAC 10-210, Retail Sales and Use Tax.** The purpose of the proposed action is to amend the current regulation (23 VAC 10-210-910, Maintenance Contracts and Warranty Plans) to implement 1994 General Assembly action changing the sales and use tax application to parts and labor maintenance contracts.

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

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public comments may be submitted until 5 p.m. on July 11, 2007.

**Contact:** Mark Haskins, Director, Policy Development, Department of Taxation, 600 E. Main St., Richmond, VA 23219, telephone (804) 371-2296, FAX (804) 371-2355 or email mark.haskins@tax.virginia.gov.

VA.R. Doc. No. R07-248; Filed May 23, 2007, 9:58 a.m.

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Department of Taxation intends to consider amending regulations entitled **23 VAC 10-210, Retail Sales and Use Tax.** The purpose of the proposed action is to amend the current regulation (23 VAC 10-210-920, Manufacturing and Processing) to clarify numerous manufacturing and processing issues that are the subject of frequent audit appeals and ruling requests.

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

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public comments may be submitted until 5 p.m. on July 11, 2007.

**Contact:** Mark Haskins, Director, Policy Development, Department of Taxation, 600 E. Main St., Richmond, VA 23219, telephone (804) 371-2296, FAX (804) 371-2355 or email mark.haskins@tax.virginia.gov.

VA.R. Doc. No. R07-249; Filed May 23, 2007, 9:58 a.m.

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Department of Taxation intends to consider amending regulations entitled **23 VAC 10-210, Retail Sales and Use Tax.** The purpose of the proposed action is to amend the regulation (23 VAC 10-210-1020, Motor Vehicles Refinishers, Painters, and Car Washers) to conform with 2005 law change. Specifically, tax will amend the regulation to reflect the change to the definitions of "retail sale" and "sale at retail."

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

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public comments may be submitted until 5 p.m. on July 11, 2007.

**Contact:** Mark Haskins, Director, Policy Development, Department of Taxation, 600 E. Main St., Richmond, VA 23219, telephone (804) 371-2296, FAX (804) 371-2355 or email mark.haskins@tax.virginia.gov.

VA.R. Doc. No. R07-250; Filed May 23, 2007, 9:58 a.m.

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Department of Taxation intends to consider amending regulations entitled **23 VAC 10-210, Retail Sales and Use Tax.** The purpose of the proposed action is to amend the current regulation (23 VAC 10-210-1080, Occasional Sales) to provide clarification regarding the exemption available for "occasional sales."

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

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public comments may be submitted until 5 p.m. on July 11, 2007.

**Contact:** Mark Haskins, Director, Policy Development, Department of Taxation, 600 E. Main St., Richmond, VA 23219, telephone (804) 371-2296, FAX (804) 371-2355 or email mark.haskins@tax.virginia.gov.

VA.R. Doc. No. R07-244; Filed May 23, 2007, 9:58 a.m.

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Department of Taxation intends to consider amending regulations entitled **23 VAC 10-210, Retail Sales and Use Tax.** The purpose of the proposed action is to amend the existing regulation (23 VAC 10-210-2032, Penalties and Interest Audits) to set forth alternative methods for computation of the use tax compliance ratio for determining the application of penalty to audit findings.

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

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public comments may be submitted until 5 p.m. on July 11, 2007.

**Contact:** Mark Haskins, Director, Policy Development, Department of Taxation, 600 E. Main St., Richmond, VA 23219, telephone (804) 371-2296, FAX (804) 371-2355 or email mark.haskins@tax.virginia.gov.

VA.R. Doc. No. R07-252; Filed May 23, 2007, 9:58 a.m.

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Department of Taxation intends to consider amending regulations entitled **23 VAC 10-210, Retail Sales and Use Tax.** The purpose of the proposed action is to amend the regulation (23 VAC 10-210-2090, Pollution Control Equipment and Facilities) to reflect a statutory change enacted by the 2005 General Assembly, to set forth the original intent of the retail sales tax exemption as it relates to pollution control equipment.

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

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public comments may be submitted until 5 p.m. on July 11, 2007.

**Contact:** Mark Haskins, Director, Policy Development, Department of Taxation, 600 E. Main St., Richmond, VA 23219, telephone (804) 371-2296, FAX (804) 371-2355 or email mark.haskins@tax.virginia.gov.

VA.R. Doc. No. R07-251; Filed May 23, 2007, 9:58 a.m.

## TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

### DEPARTMENT OF MOTOR VEHICLES

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Department of Motor Vehicles intends to consider promulgating regulations entitled **24 VAC 20-81, Hauling Permits.** The purpose of the proposed action is to establish requirements for the issuance of permits to haul overweight and overdimension vehicles over the highways of Virginia.

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

Statutory Authority: § 46.2-203 and Article 18 (§ 46.2-1139 et seq.) of Chapter 10 of Title 46.2 of the Code of Virginia.

Public comments may be submitted until July 25, 2007.

**Contact:** Ron Thompson, Senior Policy Analyst, Department of Motor Vehicles, P.O. Box 27412, Richmond, VA 23269-0001, telephone (804) 367-1844, FAX (804) 367-6631, toll-free 1-800-435-5137 or email ronald.thompson@dmv.virginia.gov.

VA.R. Doc. No. R07-271; Filed June 5, 2007, 3:29 p.m.

### BOARD OF TOWING AND RECOVERY OPERATORS

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board for Towing and Recovery Operators intends to consider promulgating regulations entitled **24 VAC 27-30, Regulations Governing the Practice of Towing and Recovery Operators.** The purpose of the proposed action is to create a new regulation to provide for the licensure, practice, and discipline of towing and recovery operators. A public meeting on this action is

scheduled on July 16, 2007, at 9 a.m. at the Department of Motor Vehicles, 2300 West Broad Street, Room 702, Richmond, Virginia.

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

Statutory Authority: § 46.2-2805 of the Code of Virginia.

Public comments may be submitted until 5 p.m. on July 25, 2007.

**Contact:** Benjamin Foster, Executive Director, Board for Towing & Recovery Operators, Virginia Department of Motor Vehicles, P.O. Box 27412, Richmond, VA 23269, telephone (804) 367-0226, FAX (804) 367-6631, or email benjamin.foster@dmv.virginia.gov.

VA.R. Doc. No. R07-270; Filed June 5, 2007, 11:17 a.m.

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board for Towing and Recovery Operators intends to consider promulgating regulations entitled **24 VAC 27-50, Regulations Governing the Provision of Public Safety Towing and Recovery Services**. The purpose of the proposed action is to carry out the mandate of § 46.2-2826 of the Code of Virginia to establish regulations required of Class A and Class B operators to provide public safety towing and recovery services. A public meeting on this action is scheduled on July 16, 2007, at 9 a.m. at the Department of Motor Vehicles, 2300 West Broad Street, Room 702, Richmond, Virginia.

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

Statutory Authority: § 46.2-2826 of the Code of Virginia.

Public comments may be submitted until 5 p.m. on July 25, 2007.

**Contact:** Benjamin Foster, Executive Director, Board for Towing & Recovery Operators, Virginia Department of Motor Vehicles, P.O. Box 27412, Richmond, VA 23269, telephone (804) 367-0226, FAX (804) 367-6631, or email benjamin.foster@dmv.virginia.gov.

VA.R. Doc. No. R07-277; Filed June 5, 2007, 11:18 a.m.

## TITLE 2. AGRICULTURE

### PESTICIDE CONTROL BOARD

### Reproposed Regulation

Title of Regulation: **2 VAC 20-51. Regulations Governing Pesticide Applicator Certification Under Authority of Virginia Pesticide Control Act (amending 2 VAC 20-51-10 through 2 VAC 20-51-50, 2 VAC 20-51-70, 2 VAC 20-51-90, 2 VAC 20-51-100, 2 VAC 20-51-160, 2 VAC 20-51-170, 2 VAC 20-51-200, and 2 VAC 20-51-210).**

Statutory Authority: § 3.1-249.30 of the Code of Virginia.

Public Comments: Public comments may be submitted until 5 p.m. on September 10, 2007.

Public Hearing Information: A public hearing was previously held on the initial proposed regulation.

Agency Contact: W. Wayne Surles, Program Manager, Pesticide Control Board, P.O. Box 1163, Richmond, VA 23218, telephone (804) 371-6558, FAX (804) 371-8598, or email wayne.surles@vdacs.virginia.gov.

Basis: Section 3.1-249.30 of the Code of Virginia authorizes the board to adopt regulations that may be necessary to carry out the purposes of the Virginia Pesticide Control Act. Section 3.1-249.51 B of the Code of Virginia authorizes the board to specify by regulation the amount of training, which may include a period of service, required to qualify a person for each classification or subclassification of certification as a commercial applicator or registered technician. Section 3.1-249.52 A of the Code of Virginia prohibits anyone, except growers of agricultural commodities trading personal services, from applying pesticides of any kind for compensation of any kind, without first obtaining certification as either a commercial applicator or registered technician in accordance with regulations promulgated by the board. In addition, § 3.1-249.53 A of the Code of Virginia requires all state agencies, municipal corporations or other governmental agencies to be subject to the provisions of the Virginia Pesticide Control Act (Act) and regulations adopted under the Act. Section 3.1-249.54 A of the Code of Virginia requires growers of agricultural commodities to be certified according to regulations promulgated by the board in order to apply restricted use pesticides (RUP). Section 3.1-249.55 of the Code of Virginia authorizes the board to provide for the biennial payment of commercial applicator and registered technician certificate renewal fees. Lastly, § 3.1-249.56 A of the Code of Virginia requires, through regulations of the board, the reporting of pesticide accidents, incidents, or loss.

Purpose: The regulation is necessary to protect health, safety and welfare of citizens because it ensures that those individuals applying pesticides are properly trained so that they may apply pesticides in a manner that will not harm themselves, other people or the environment. Also, by requiring the training and certification of pesticide applicators, citizens are able to save considerable money in that necessary pesticide applications are made using only the amounts required to control targeted pests.

By requiring applicators not for hire to record the uses of all pesticides applied it will be easier to determine, during investigations of complaints of misuse of pesticides, whether the pesticides were applied according to the label and law. Currently, records are required only for the use of restricted use pesticides.

Removing the provision that currently allows for businesses to give (proctor) examinations to their employees seeking certification as registered technicians will eliminate an opportunity for fraud by some proctors thereby helping to ensure that only qualified applicators are applying pesticides on citizen's property. Also, requiring registered technicians to receive on-the-job training in each of the categories or subcategories in which they plan to work will help ensure the safety and welfare of Virginia's citizens. Currently, once a person has received 20 hours of on-the-job training in one category or subcategory, he is not mandated to receive any training at all in another category prior to applying pesticides. A lack of knowledge of associated pest control strategies and environmental hazards carries the potential for personal health and environmental hazards.

Substance: Substantive changes to existing sections include:

1. Adding language making some definitions easier to read and clarifying the meaning of a not-for-hire applicator and the requirements of such applicators to keep records of pesticide applications.

2. Adding a definition of a "competent person" on the advice of the Attorney General's office.

3. Deleting definitions that are not used in the regulations.

4. Adding language to clarify the type of supervision required for people training to become certified applicators and registered technicians.

5. Adding language to bring the regulation into compliance with the Virginia Pesticide Control Act as it relates to daycare center not-for-hire applicators.

6. Adding language stating the exact application process for pesticide applicators, including the payment of appropriate fees.

7. Adding language to clarify the training necessary for registered technicians when applying pesticides in more than one category activity.

8. Adding language to ensure that applicators cannot apply pesticides unless they have been certified in a particular category.

9. Amending language to better state the conditions under which an illiterate person might be granted a certificate.

10. Adding language to require registered technician applicants to complete the process of training and testing within an accepted time frame as well as making the process easier to understand.

11. Deleting language that currently allows businesses and agencies to proctor their own registered technician examinations.

12. Adding language to clarify the conditions required for certification of applicators applying paint containing pesticides.

13. Adding language to allow the board to designate additional categories of commercial applicators to meet federal mandates.

14. Adding language clarifying what adverse effects need to be reported.

15. Adding language to make the process for suspending a certificate for nonpayment of a civil penalty more easily understood.

16. Adding language to clarify what data needs to be reported in the case of pesticide accidents and incidents.

Issues: The advantages of the amendments include (i) the regulation will be easier to read and understand for the industry and the regulators; (ii) requirements for supervision and training of applicators and registered technicians will be easier to understand by the public and industry and will help ensure that only knowledgeable people will be applying pesticides; and (iii) recordkeeping requirements will be implemented to assist the public and the agency in determining whether pesticides have been applied according to label directions.

There are no disadvantages to the public or the Commonwealth of Virginia.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Regulation. The Virginia Pesticide Control Board (Board) proposes to amend the existing Regulations Governing Pesticide Applicator Certification Under Authority of Virginia Pesticide Control Act. Specifically, the Board proposes to (1) eliminate the provision allowing businesses or agencies to proctor the registered technician examination to their own employees, (2) establish minimum training requirements for registered technicians seeking to work in pesticide application categories or subcategories that are different from the category in which they received their original training, (3) require that a record be maintained for all pesticides applied (not just restricted use pesticides) by commercial applicators not for hire and registered technicians not for hire,[1] (4) specify that direct on-site supervision requires a certified applicator's constant visual contact with the individuals under supervision, (5) establish a time frame within which a person would have to finish training and take the registered technician examination, and (6) add a category of "miscellaneous" for commercial applicator certification.

Results of Analysis. There is insufficient data to accurately compare the magnitude of the benefits versus the costs. Detailed analysis of the benefits and costs can be found in the next section.

Estimated Economic Impact. Under the existing regulation, certified commercial applicators may be authorized by the Virginia Department of Agriculture and Consumer Services (VDACS) to proctor registered technician examinations. Authorized proctors may administer and grade the examination and shall notify VDACS of the grade received by the applicants. The Board proposes to eliminate the provision allowing certified commercial applicators to administer and grade registered technician examinations. All applicants for registered technician certification will be required to take the examination at the Department of Motor Vehicle (DMV) Customer Service Centers or other authorized VDACS testing sites.

According to VDACS, the proctorship provision was introduced in response to industry complaints about the length of time it took to get certified. Prior to this provision, applicants for registered technician certification were required to take the test at a limited number of locations during certain days of each month. The average length of time to get certified was 22 days. The introduction of the proctorship system and the administrative changes made to the certification system by VDACS[2] reduced the average waiting period to 12 days. In 1999, VDACS began administering the

[1] Commercial applicator not for hire and registered technicians not for hire refer to those that use or supervise the use of pesticides as part of his job duties only on property owned or leased by him or his employer. It also applies to governmental employees who use or supervise the use of pesticides, whether on property owned or leased by them or their employers or not, in the performance of their official duties.

[2] For example, the use of fax to report exam results.

examination through DMV. The examination can be taken at any DMV Customer Service Centers across the state and at any time during regular office hours. According to VDACS, the DMV system has significantly reduced the waiting period to get certified. In some cases, individuals could get certified within 3 days of submitting their applications.

VDACS estimates that the proposed elimination of the proctorship provision would add one hour of travel and processing time to the testing time for applicants who would have opted for a proctored exam. In the year of 2006, 1,022 applicants for registered technician certification chose to take the examination under the proctorship system and 1,331 chose to take it under the DMV system. Assuming that approximately 1,000 applicants would have chosen to take an exam administered by their employers every year and with an estimated cost of $10 per hour, the proposed change will likely result in a total cost of $10,000.

The proposed regulation may impose an additional cost of $2,000 per year for the state to administer registered technician exams through DMV.[3] However, this cost will likely be offset by savings from not having to process the 1,000 paper test forms submitted by proctors or administer the proctorship system.

The proposed elimination of the proctorship system will ensure that only qualified individuals get certified and apply pesticides on citizen's property, which will better protect public health and the environment. According to VDACS, the pass rate for the registered technician examinations in 2003 was 61% under the DMV system and 95% under the proctorship system. Given that the DMV system is likely to be fair and is likely to provide accurate results, the significantly higher pass rate under the proctorship system indicates that there might be possibilities that unqualified individuals get certified through an exam administered by their employers, even allowing for differences in ability. The proposed elimination of the proctor system will likely provide benefit by reducing the risk to public health and the environment.

The proposed regulation will establish minimum standards for on-the-job training for registered technicians seeking to work in any application category or subcategory that is different from the category in which they received their original training. Currently there are no training requirements for registered technicians who shift to categories of pesticide application in which they have no prior training. The proposed change requires that, before registered technicians begin working in any application category or subcategory that is different from the category in which they received their original training, they shall receive additional training from a commercial applicator on: 1) pesticides to be used, including reading and understanding the label, 2) application equipment and techniques, 3) pests to be controlled, 4) personal protective equipment and clothing, and 5) environmental concerns, including storage and disposal of pesticides applied. The commercial applicator providing training to a registered technician shall be certified in the category or subcategory for which he is providing the training and shall provide proof to VDACS of such training on forms provided by VDACS.

This proposed change will ensure that applicators are aware of the unique attributes of each application category and apply the pesticide accordingly. According to VDACS, each pesticide application category has unique aspects to it. Although VDACS is not aware of any specific instances that public health or environmental problems occur when registered technicians applying pesticides in categories different from the one they received original training, the additional training requirement would reduce the potential hazards to public health and the environment. The requirement for the commercial applicators to provide and report additional training when a registered technician is shifted into another category of pesticide application is projected to cost $150 per registered technician. VDACS estimates that no more than 600 registered technicians will apply pesticides in categories different from the one they received original training, thus the total cost from this proposed change will be as much as $90,000 per year. The proposed change will also impose an additional cost of $115 per year to VDACS for processing up to 600 single-page forms.

The proposed regulation requires that commercial applicators not for hire and registered technicians not for hire shall maintain a record of each pesticide applied, both restricted use pesticide and general use pesticide. Under the existing regulations, records are required only for the use of restricted use pesticides by the commercial applicators not for hire (registered technician not for hire are not allowed to apply restricted use pesticides). The additional record-keeping requirement will assist VDACS in investigating complaints of misuse of pesticides and make it easier to determine whether the pesticides were applied in accordance with regulations. There have been instances when the inappropriate application of even general use pesticides has created a public health hazard. For example, two individuals died in 1986 following fumigation with a general use pesticide. Thus, to the extent that this proposed change allows for better enforcement of existing regulations, it is likely to produce some economic benefits.

According to VDACS, since applicators not for hire make applications only to their employer's property, the number of applications and thus the number of records they need to maintain is not large. Also, many businesses have been maintaining the records of general use pesticides as their regular business practice. Therefore, this proposed change will likely impose a small amount of cost to the commercial

[3] Source: VDACS.

applicators not for hire and registered technicians not for hire. VDACS estimates that this proposed change will affect no more than 260 applicators not for hire. Assuming that 50 applications are made per year by each applicator not for hire and each record costs $0.17, the total estimated cost imposed by this proposed change will be $2,210 per year.[4]

The proposed regulation clarifies that direct on-site supervision requires a certified applicator's constant visual contact with the individuals under supervision.[5] The current definition of direct on-site supervision only requires that a certified applicator be physically present on the property where the pesticides are being applied. VDACS believes that trainees and uncertified individuals should be visually monitored while applying pesticides. To the extent that closer monitoring could reduce the instances of inappropriate pesticide applications and improve on-the-job training to individuals seeking certification as registered technician, this proposed clarification will better protect the public health and the environment. Some businesses may have to increase the number of hours worked by certified applicators or increase the ratio of certified applicators to uncertified applicators, which may create additional economic cost for these businesses.

The proposed regulation requires that individuals hired or transferred into a position that involves the commercial use of pesticides must take the registered technician examination within 90 days of employment or transfer. The existing regulation states that individuals are to take the examination within 90 days of submitting the application and paying the fee. According to VDACS, the proposed change is intended to ensure that individuals seeking certification as registered technicians get certified within a reasonable amount of time. Under the existing regulations, the 90-day limit comes into effect only after the individual has submitted the application and paid the fees. Some individuals may take advantage of the current language and may be applying pesticides as trainees for a long time without the intent to get certified. By instituting a 90-day limit from the time an individual takes up a position involving the commercial use of pesticides, the Board intends to prevent individuals from operating as "perpetual trainees" and ensure that they get certified within a reasonable amount of time.

However, the proposed regulation does not require that an individual who fails the first or previous examinations has to take the next registered technician examination within a reasonable period of time.[6] There exists the possibility that an individual who fails the first examination continues to apply pesticides without the intent of taking further examinations to get certified. VDACS has agreed to suggest that the Board make appropriate changes at the final stage to minimize this possibility.

The proposed regulation establishes an additional category of "miscellaneous" for commercial applicator certification. According to VDACS, this proposed change is intended to allow for certification of applicators using pesticides that are newly classified as restricted use by the U.S. Environmental Protection Agency (EPA) but not covered by the current certification regulations. Currently VDACS certifies applicators in the use of new restricted use pesticides under one of the existing application categories. The proposed change will make the categories for commercial applicator certification accurately reflect the type of pesticide application without imposing any significant adverse impact.

The Board also proposes several changes to make the regulation consistent with the Virginia Pesticide Control Act. For example, commercial pesticide applicators not-for-hire will be required to be certified when using pesticides in areas open to the public at daycare facilities (together with educational institutions, health care facilities, and convalescent facilities). Certification under the category of "marine antifoulant paints" will be required only when a commercial applicator uses or supervise the use of a marine antifoulant paint containing restricted use pesticides. These changes will improve the understanding and implementation of the regulation without any adverse impact.

Businesses and Entities Affected. The proposed regulation will affect businesses and individuals involved in pesticide application. According to VDACS, there are approximately 2,100 businesses licensed to apply pesticides. As of September 2006, there are 7,162 commercial applicators and 5,908 registered technicians operating in Virginia, including 1,955 commercial applicators not for hire and 2,534 registered technicians not for hire.[7] Approximately 1,000 individuals will have to take the registered technician examination under the DMV system every year who would have taken the examination under the proctor system. Currently there are 265 commercial applicators authorized to proctor registered technician examination for their employees.

Localities Particularly Affected. The proposed regulation applies to all localities in the Commonwealth.

Projected Impact on Employment. Some of the proposed changes, such as the record-keeping requirement of general

[4] Calculation: $0.17*50*260=$2,210.

[5] Individuals seeking certification as registered technicians must receive on-the-job training in the proper application of pesticides under the direct on-site supervision of a certified commercial applicator for at least 20 hours during the six-month period prior to applying for certification in addition to other requirements.

[6] The proposed regulation states that applicants who do not pass the examination on their first attempt are eligible to be reexamined 10 days from the date of the first examination, with a new certification fee paid. If they fail on the second or subsequent attempts, they must wait 30 days from the date of last examination, with a new certification fee paid.

[7] The number of commercial applicators not for hire and registered technicians not for hire includes government employees.

use pesticides and the additional training requirement for registered technicians applying pesticides in a category different from the one in which they received their original training, will likely increase costs for the pesticide businesses and reduce their profit, which may have a small negative impact on their employment. The requirement that direct on-site supervision entails a certified applicator's constant visual contact with the individuals under supervision may force some businesses to increase the number of hours worked by certified applicators or increase the ratio of certified applicators to uncertified applicators. The 90-day limit upon which an individual applying pesticides has to take the registered technician examination will likely reduce the number of uncertified employees and seasonal employees.

Effects on the Use and Value of Private Property. The proposed regulation will ensure that pesticides are applied properly by qualified individuals and will reduce the potential hazards to public health and the environment, which may have a positive impact on the value of residential properties near where pesticides are applied. On the other hand, most of the proposed changes, such as the record-keeping requirement of general use pesticides, the additional training requirement for registered technicians working in different categories or subcategories, the clarification of direct on-site supervision as involving a certified applicator's constant visual contact, and the 90-day limit for registered technician examination, will likely increase the cost for the pesticide businesses and reduce their profit, which may have a small negative impact on their asset value.

Small Businesses: Costs and Other Effects. The record-keeping requirement of general use pesticides and the additional training requirement for registered technicians working in different categories or subcategories will likely increase the cost for the small businesses and reduce their profit. The clarification that direct on-site supervision requires constant visual contact may cause some small businesses to increase the number of hours worked by certified applicators or increase the ratio of certified applicators to uncertified applicators. Small businesses can no longer hire uncertified employees or seasonal employees for a long time under the revised time frame for taking registered technician examination, which may increase their costs. According to VDACS, all of the pesticide businesses being affected are small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed regulations will ensure that pesticides are applied properly by qualified individuals and will reduce the potential hazards to public health and the environment. There are no other alternatives that can achieve the same result with less adverse impact.

Legal Mandate. 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. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007 H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

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

Summary:

*The proposed amendments (i) add new definitions to clarify who must be certified and keep pesticide application records; (ii) add new definitions to clarify the required supervision standard for people training to become applicators; (iii) add categories and subcategories of pesticide applicators; (iv) establish minimum standards for on-the-job training for registered technicians when working in different categories or subcategories; (v) establish a time frame within which a person would have to finish training and take the registered technician examination; (vi) eliminate the provision allowing businesses or agencies to proctor the registered technician examination to their own employees; and (vii) require applicators not for hire to keep records of all pesticides applied, not just those that are restricted use.*

**2 VAC 20-51-10. Definitions.**

The following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise. An asterisk or double asterisk following a definition indicates that the definition has been taken from the Virginia Pesticide Control Act, Article 1 (§ 3.1-249.27 et seq.) or Article 4 (§ 3.1-249.59 et seq.), respectively, of Chapter 14.1 of Title 3.1 of the Code of Virginia.

"Accident" means an unexpected, undesirable event, involving the use or presence of a pesticide, that adversely affects man or the environment.

"Act" means the Virginia Pesticide Control Act (§ 3.1-249.27 et seq. of the Code of Virginia).

~~"Adjuvant" means any substance added to a pesticide formulation to enhance the effect of the active ingredient.~~

"Agricultural commodity" means any plant or part thereof, or animal, or animal product, produced by a person, including farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturists, floriculturists, orchardists, foresters, nurserymen, wood treaters not for hire, or other comparable persons, primarily for sale, consumption, propagation, or other use by man or animals.*

"Board" means the Pesticide Control Board.*

"Board-approved training" means a course which includes, at a minimum, study and review of all the material contained in an edition used in Virginia of (i) a basic pesticide applicator certification training core manual and (ii) a certification training manual for each specific category pertaining to the type of pesticide application to be done.

"Certificate" means the document issued to a certified applicator or registered technician who has completed all the requirements of Article 3 (§ 3.1-249.51 et seq.) of Chapter 14.1 of Title 3.1 of the Code of Virginia.

"Certification" or "certified" means the recognition granted by the Pesticide Control Board to an applicator upon satisfactory completion of board-approved requirements.*

"Chemigation" means the application of any pesticide through an irrigation system.

"Commercial applicator" means any applicator who has completed the requirements as determined by the board, including appropriate training and time in service, to apply for a certification, and who uses or supervises the use of any pesticide for any purpose or on any property, other than as provided in the definition of private applicator.*

"Commercial applicator not for hire" means any commercial applicator who uses or supervises the use of pesticides as part of his job duties only on property owned or leased by him or his employer. ~~This definition shall~~ It also ~~apply~~ applies to governmental employees who use or supervise the use of pesticides, whether on property owned or leased by them or their employers or not, in the performance of their official duties.

"Commissioner" means the Commissioner of Agriculture and Consumer Services.*

"Competent person" means a person having the demonstrated ability to perform the task to which he is assigned.

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

"Drift" means the physical movement of pesticide through the air at the time of pesticide application or soon thereafter from the target site to any nontarget or off-target site. Pesticide drift will not include movement of pesticides to nontarget or off-target sites caused by erosion, migration, volatility, or windblown soil particles that occurs after application unless specifically addressed on the pesticide product label with respect to drift control requirements.

"EPA" means the United States Environmental Protection Agency.

"Fumigant" means any substance which by itself or in combination with any other substance emits or liberates a gas or gases, fumes or vapors~~, which gas or gases, fumes or vapors, when liberated and used,~~ that will destroy vermin, rodents, insects, and other pests, and are usually lethal, poisonous, noxious, or dangerous to human life.

"Fungicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any fungi or plant disease.*

"Herbicide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any weed.*

"Incident" means a definite and separate occurrence or event, involving the use or presence of a pesticide, that adversely affects man or the environment.

"Insecticide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any insects which may be present in any environment whatsoever.*

"Knowledge" means the possession and comprehension of pertinent facts, together with the ability to use them in dealing with specific problems and situations within the pesticide context.

"Label" means the written, printed, or graphic matter on, or attached to, the pesticide or device, or the immediate container thereof, and the outside container or wrapper of the retail package, if any, of the pesticide or device.*

"Labeling" means all labels and other written, printed, or graphic matter (i) upon the pesticide or device or any of its containers or wrappers, (ii) accompanying the pesticide or device at any time, or (iii) to which reference is made on the label or in literature accompanying the pesticide or device, except when accurate, nonmisleading reference is made to current official publications of the agricultural experiment station, the Virginia Polytechnic Institute and State University, the Department of Agriculture and Consumer Services, the State Board of Health, or similar federal institutions or other official agencies of the Commonwealth

or other states when such states are authorized by law to conduct research in the field of pesticides.*

"Licensed" or "licensee" means those businesses which, when meeting the requirements established by the Pesticide Control Board, are issued a license to engage in the sale, storage, distribution, recommend the use, or application of pesticides in Virginia in exchange for compensation.*

"Marine antifoulant paint" means any compound, coating, paint or treatment applied or used for the purpose of controlling freshwater or marine fouling organisms on vessels.**

~~"Nontarget organism" means any living organism, including but not limited to animals, insects, and plants, other than the one against which the pesticide is intended to be applied.~~

"Pesticide" means (i) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, fungi, bacteria, weeds, or other forms of plant or animal life or viruses, except viruses on or in living man or other animals, which the commissioner shall declare to be a pest; (ii) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; and (iii) any substance which is intended to become an active ingredient thereof.*

"Pesticide business" means any person engaged in the business of: distributing, applying or recommending the use of a product; or storing, selling, or offering for sale pesticides directly to the user. The term "pesticide business" does not include (i) wood treaters not for hire; (ii) seed treaters not for hire; (iii) operations which produce agricultural products unless the owners or operators of such operations described in clauses (i), (ii), and (iii) are engaged in the business of selling or offering for sale pesticides, or distributing pesticides to persons outside of that agricultural producing operation in connection with commercial transactions; or (iv) businesses exempted by regulations adopted by the board.*

"Private applicator" means an applicator who uses or supervises the use of any pesticide which is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by him or his employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person.*

~~"Reentry interval" as noted on the pesticide label, means the amount of time which must elapse between the time of a pesticide application and the time when it is safe for a person to enter the treated area without label required personal protective equipment.~~

"Registered technician" means an individual who renders services similar to those of a certified commercial applicator, but who has not completed all the training or time in service requirements to be eligible for examination for certification as a commercial applicator and is limited to application of general use pesticides. However, if he applies restricted use pesticides he shall do so only under the direct supervision of a certified commercial applicator.*

"Registered technician not for hire" means any registered technician who uses or supervises the use of pesticides as part of his job duties only on property owned or leased by him or his employer. It also applies to governmental employees who use or supervise the use of pesticides, whether on property owned or leased by them or their employers or not, in the performance of their official duties.

"Repeat violation" means another violation following the first violation of the same provision of the Virginia Pesticide Control Act or the federal Insecticide, Fungicide, and Rodenticide Act (7 USC § 136 et seq.), or regulations adopted pursuant thereto, committed within a three-year period commencing with the date of official notification of the first violation of the provision.

"Restricted entry interval" means the time after the end of a pesticide application during which entry into the treated area is restricted.

"Restricted use pesticide" or "pesticide classified for restricted use" means any pesticide classified for restricted use by the administrator of the EPA under the provisions of 1947 (7 USC § 3(d)(1)(c)) of the federal Insecticide, Fungicide, and Rodenticide Act (as amended).

"Rodenticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating rodents or any other vertebrate animal which the commissioner shall declare to be a pest.*

~~"Synergism" means the interaction of two or more active ingredients in a pesticide formulation which produce a total pesticidal effect that is greater than the sum of the ingredients.~~

"Tributyltin compounds" means any compound having three normal butyl groups attached to a tin atom and with or without an anion such as chloride, fluoride, or oxide.**

"Under the direct supervision of" means the act or process whereby the application of a pesticide is made by a competent person acting under the instructions and control of a certified applicator who is responsible for the actions of that person.*

"Under the direct on-site supervision of" means the act or process whereby the application of a pesticide is made by a competent person acting under the instructions and control of a certified applicator who is responsible for the actions of that person and is physically present on the property upon which the ~~pesticides are~~ pesticide is being applied, and is in constant visual contact with the person applying the pesticide.

~~"Unreasonable adverse effects on the environment" means any unreasonable risk to man or the environment, taking into~~

~~account the economic, social, and environmental costs and benefits of the use of any pesticide.*~~

"Use" means the employment of a pesticide for the purposes of (i) preventing, destroying, repelling, or mitigating any pest or (ii) regulating plant growth, causing defoliation or desiccation of plants. The term "use" shall include application or mixing, and shall include handling or transfer of a pesticide after the manufacturer's original seal is broken. The term "use" shall also include any act with respect to a particular pesticide which is consistent with the label directions for that particular pesticide.*

"Vessel" means every description of watercraft, other than a seaplane, used or capable of being used as a means of transportation on the water, whether self-propelled or otherwise, and includes barges and tugs.**

**2 VAC 20-51-20. General requirements for certification.**

A. The following persons must be certified as pesticide applicators:

1. Commercial applicators;

2. Registered technicians; and

3. Private applicators.

B. Commercial applicators not for hire must be certified only when using any pesticide in the following areas except as noted in subsection C of this section:

1. Areas open to the general public at daycare facilities, educational institutions, health care facilities, and convalescent facilities;

2. Areas where open food is stored, processed, or sold; and

3. Recreational lands over five acres in size.

C. Employees of local, state, and federal governmental agencies who use or supervise the use of any [ ~~pesticides~~ pesticide ] on any area in the performance of their official duties must be certified as either commercial applicators not for hire or registered technicians, but they are exempt from any certification fees.

D. All persons desiring certification as pesticide applicators must:

1. Complete board-approved training appropriate for the desired classification; ~~and~~

2. Submit a completed application to the commissioner; and

~~2.~~ 3. Pass required examination(s).

a. Applicants who do not pass the examination on their first attempt are eligible to be reexamined for the same category 10 days from the date of the first examination.

b. Applicants who fail on the second or subsequent attempts must wait 30 days from the date of the last examination before being reexamined in the same category.

c. Applicants requesting reexamination must resubmit a completed application to the commissioner or his duly authorized agent and pay the nonrefundable applicator certification fee ~~again~~ as determined by 2 VAC 20-30, Rules and Regulations Governing the Pesticide Fees Charged by the Department of Agriculture and Consumer Services Under the Virginia Pesticide Control Act.

E. Persons with a history of repeat violations of federal or state pesticide laws or whose certification or pesticide business license has been revoked within the two-year period immediately prior to application are not eligible for certification. Such persons may appear before the board to show why they should be granted certification as outlined under provisions of § 3.1-249.63 D of the Code of Virginia.

F. Applicants for certification cannot engage in the activity for which they are requesting certification, unless participating in supervised direct on-site training, until certification has been issued by the commissioner. Commercial applicators may not apply pesticides in any category or subcategory activity until they have passed the category-specific examination and obtained the appropriate certification.

G. A commercial or private applicator or registered technician may request a duplicate of the certification card if the applicator's or technician's card has been lost, stolen, mutilated or destroyed. The department shall issue a duplicate card to the applicator or technician upon payment of the costs of duplication.

**2 VAC 20-51-30. Specific certification requirements for commercial applicators.**

A. In addition to the general requirements listed in 2 VAC 20-51-20, applicants for commercial applicator certification shall meet the following requirements:

1. Certification as a registered technician, as well as employment as a registered technician for at least a year; or

2. One year of education, training, or experience in a pesticide related field which provides the equivalent practical knowledge of proper pesticide use required of a registered technician.

B. The application process for commercial applicators is as follows:

1. The application must be in writing to the commissioner; and

2. The application must contain:

a. Name;

b. Principal business address in the Commonwealth and elsewhere;

c. Qualifications and proposed operations; and

d. Classification(s) desired.

Individuals seeking certification as commercial applicators must pay a fee as determined by ~~regulations promulgated by the Pesticide Control Board~~ 2 VAC 20-30, Rules and Regulations Governing the Pesticide Fees Charged by the Department of Agriculture and Consumer Services Under the Virginia Pesticide Control Act.

C. Applicants shall, within 90 days after submitting the application and paying the fee, report to an authorized testing location and take the required examinations.

D. Aerial pesticide application applicants must meet the requirements of the Federal Aviation Agency, the Department of Aviation of the Commonwealth, and any other applicable federal or state laws or regulations to operate aerial equipment.

**2 VAC 20-51-40. Specific certification requirements for private applicators.**

A. Each applicant for a private applicator's certificate shall apply to the commissioner and then report to an authorized testing location within 90 days and take an examination for each certification category, specified in 2 VAC 20-51-80, applicable to his operation. The application shall contain the applicant's name, address and classification desired for certification.

B. Persons who cannot read or understand labels ~~will~~ shall not be certified as private applicators unless they demonstrate competence to apply restricted use pesticides on their own properties. After consulting the appropriate Virginia Cooperative Extension [ ~~Service~~ ] agent, a department pesticide investigator may recommend that the board grant a waiver of the literacy requirement. Persons certified under this waiver shall obtain certification in the categories of limited certificate or single product certification as described in 2 VAC 20-51-80. ~~Recommendations shall be based upon personal knowledge of the individuals' competence to apply restricted use pesticides on their own properties.~~

**2 VAC 20-51-50. Certification procedures for registered technicians.**

A. In addition to the general requirements listed in 2 VAC 20-51-20, individuals seeking certification as registered technicians must:

1. Receive on-the-job training in the proper application of pesticides under the direct on-site supervision of a certified commercial applicator for at least 20 hours during the six-month period prior to applying for certification;

2. Complete at least 20 hours of board-approved training;

3. Submit an application form with the fee established by regulations of the Pesticide Control Board; and

4. ~~Pass~~ Take the examination within 90 days after ~~submitting the application and paying the fee~~ an individual is hired or transferred into a position where duties and functions involve the commercial use of pesticides. Individuals not passing the examination must follow the procedures outlined in 2 VAC 20-51-20 D 3.

B. ~~Certified commercial applicators may apply to the commissioner, or his duly authorized agent, in writing, for authorization to proctor the registered technician exam. Authorized proctors may administer and grade the examinations, and shall notify the commissioner, or his duly authorized agent, of the grade received by the applicant. Failure to safeguard examination materials or follow testing procedures shall result in revocation of authority to proctor the registered technician examination.~~ Before registered technicians begin working in any application category or subcategory that is different from the category in which they received their original training, they shall receive additional training from a commercial applicator in the following aspects of pesticide application as it relates to the proposed category or subcategory of work:

1. Pesticides to be used, including reading and understanding the label;

2. Application equipment and techniques;

3. Pests to be controlled;

4. Personal protective equipment and clothing; and

5. Environmental concerns, including storage and disposal of pesticides applied.

The commercial applicator providing training to a registered technician shall be certified in the category or subcategory for which he is providing the training and shall provide proof to the department of such training on forms provided by the department. Such forms must be received by the department within 10 calendar days of the completion of such training.

**2 VAC 20-51-70. Categories for commercial applicator certification.**

A. Commercial applicators must be certified in one or more of the following commercial applicator categories or subcategories:

1. Agricultural pest control.

a. Agricultural plant pest control. This subcategory is for commercial applicators who will be using or supervising the use of pesticides in production of agricultural crops, or on grasslands, or noncrop agricultural lands.

b. Agricultural animal pest control. This subcategory is for commercial applicators who will be using or

supervising the use of pesticides on agriculturally related animals.

c. Fumigation of soil and agricultural products. This subcategory is for commercial applicators who will be using or supervising the use of pesticides for soil fumigation in production of an agricultural commodity and the application of pesticides for fumigation of agricultural products. Certification in this subcategory requires concurrent certification in the agricultural plant pest control category.

d. Chemigation. This subcategory is for commercial applicators who will be using or supervising the use of pesticides through an irrigation system. Certification in this subcategory requires concurrent certification in the agricultural plant pest control category.

2. Forest pest control. This category is for commercial applicators who will be using or supervising the use of pesticides in forests, forest nurseries, and seed orchards.

3. Ornamental and turf pest control.

a. Ornamental pest control. This subcategory is for commercial applicators who will be using or supervising the use of pesticides in the maintenance and production of ornamental trees, shrubs, and flowers in and out-of-doors.

b. Turf pest control. This subcategory is for commercial applicators who will be using or supervising the use of pesticides in the production and maintenance of turf, including, but not limited to, turf in golf courses, residential lawns, parks, and cemeteries.

4. Seed treatment (excluding fumigation). This category is for commercial applicators who will be using or supervising the use of pesticides on seeds.

5. Aquatic pest control.

a. Aquatic pest control - general. This subcategory is for commercial applicators who will be using or supervising the use of pesticides in or on standing or running water, for the express purpose of controlling pests. This excludes applicators engaged in public health related activities included in subdivision 8 of this subsection, public health pest control.

b. Marine antifoulant paints. This subcategory is for commercial applicators who will be using or supervising the use of marine antifoulant paints containing tributyltin or other restricted use pesticides.

6. Right-of-way pest control. This category is for commercial applicators who will be using or supervising the use of pesticides in the maintenance of public rights-of-way and in the maintenance of fence lines, structural perimeters or other similar areas.

7. Industrial, institutional, structural, and health-related pest control.

a. General pest control (excluding fumigation). This subcategory is for commercial applicators who will be using or supervising the use of pesticides to control household type pests, pests that inhabit or infest structures, stored products, and residential food preparation areas, and pests capable of infesting or contaminating foods and foodstuffs at any stage of processing facilities.

b. Wood-destroying pest control (excluding fumigation). This subcategory is for commercial applicators who will be using or supervising the use of pesticides to control organisms that destroy structures made of wood.

c. Fumigation. This subcategory is for commercial applicators who will be using or supervising the use of fumigant-type pesticides.

d. Vertebrate pest control (excluding structural invaders). This subcategory is for commercial applicators who will be using or supervising the use of pesticides to control vertebrate pest animals.

e. Sewer root pest control. This subcategory is for commercial applicators who use pesticides for sewer line root control.

8. Public health pest control. This category is for commercial applicators who will be using or supervising the use of pesticides for the management and control of pests having medical and public health significance.

9. Regulatory pest control. This category is for federal, state, and local governmental employee applicators who will be using or supervising the use of pesticides in the control of regulated pests.

10. Demonstration and research pest control. This category is for commercial applicators who will be demonstrating the proper use and techniques of application of pesticides (including classroom demonstration), or who will be supervising such demonstration. It also includes applicators who will be conducting pesticide research on greenhouse or field plots.

11. Aerial pesticide application. This category is for commercial applicators who will be using or supervising the use of any pesticide applied by fixed- or rotary-wing aircraft.

12. Wood preservation and wood product treatment. This category is for commercial applicators who will be using or supervising the use of pesticides at treating plants and sawmills for preservative treatment of wood and wood products.

13. Miscellaneous. This category is to be used to designate categories or subcategories of commercial applicators using specific pesticides or uses for which the U.S. EPA may mandate certification in order to allow for the pesticide or use.

B. A commercial applicator certified in one category and seeking initial certification in one or more additional categories shall meet the certification requirements of each of the new categories in which he desires certification.

**2 VAC 20-51-90. Determination of general knowledge and qualifications for private and commercial applicators and registered technicians.**

A. Applicants shall be tested on their knowledge and qualifications concerning the use and handling of pesticides. The examination will test the applicants' general knowledge required for all categories, and the additional knowledge specifically required for each category or subcategory in which an applicator desires to be certified.

B. All applicants for certification as private or commercial applicators or registered technicians shall demonstrate practical knowledge of the principles and practices of pest control and the safe use of pesticides, as contained in a basic pesticide applicator certification training core manual. Testing will be based on problems and situations in the following areas:

1. Federal and Commonwealth of Virginia pesticide laws and regulations;

2. Understanding and interpreting pesticide labels;

3. Handling of accidents and incidents;

4. Proper methods of storing, mixing/loading, transporting, handling, applying, and disposing of pesticides;

5. Safety and health, including proper use of personal protective equipment;

6. Potential adverse effects caused by the application of pesticides under various climatic or environmental conditions, such as drift from the target area, pesticide run-off, ground water and drinking water contamination, and hazard to endangered species; and

7. Recognizing common pests and general pest biology.

**2 VAC 20-51-100. Specific knowledge required for the categories of commercial applicators.**

Applicants for commercial applicator certification shall possess the skills and knowledge associated with the chosen category(s) as they pertain to those items listed in 2 VAC 20-51-90 B 1 through 6, including recognizing category specific pests and their biology as contained in ~~a~~ the appropriate Virginia category specific training manual(s).

**2 VAC 20-51-160. Revocation of certificate by the board.**

A. ~~Any of the violative acts listed under § 3.1-249.63 C of the Code of Virginia shall constitute grounds for revocation by the board of a certificate.~~ The board may, after opportunity for a hearing, deny, suspend, revoke or modify a certificate upon any violation of any act set out in § 3.1-249.63 C of the Code of Virginia.

B. ~~The board shall suspend the license or certificate of an individual if a civil penalty issued to the person is not paid within 60 days of issuance unless the business or person challenges such civil penalty pursuant to § 3.1-249.70 F of the Code of Virginia.~~ If the board imposes a civil penalty upon a person and such civil penalty is not paid within 60 days thereof, the certificate of such person shall automatically be suspended until payment in full is made. If the person appeals the board's order imposing the civil penalty, then the person may forward the proposed amount of the civil penalty to the commissioner's office for placement in an interest-bearing trust account in the State Treasurer's office. Upon such an amount being held, the suspension shall not be imposed or shall be lifted, as the case may be. This provision relates only to a suspension caused by a failure to pay the civil penalty and does not affect any suspension or revocation of a certificate for any other reason.

**2 VAC 20-51-170. Reporting of pesticide accidents and incidents.**

A. Commercial or private applicators or registered technicians shall report any pesticide accident or incident in which they are involved that constitutes a threat to any person, to public health or safety, or to the environment, as a result of the use or presence of any pesticide. The accident or incident shall be reported whether or not a restricted use pesticide is involved.

[ ~~B. The applicator shall make the initial notification to the department's Office of Pesticide Services by telephone within a reasonable time, not to exceed 48 hours after the accident or incident occurrence, should circumstances prevent immediate notification. The applicator shall prepare and submit a full written report of the accident or incident to the Office of Pesticide Services within 10 days after the initial notification.~~ ]

[ ~~C.~~ B. ] When the accident or incident involves a discharge or spillage of a pesticide, the applicator shall contact the department for guidance to determine whether the discharged or spilled amount is a reportable quantity.

[ ~~D.~~ C. ] The applicator shall make the initial notification to the department's Office of Pesticide Services by telephone within a reasonable time, not to exceed 48 hours after the accident or incident occurrence, should circumstances prevent immediate notification. The applicator shall prepare and submit a written report of the accident or incident to the

Office of Pesticide Services within 10 working days after the initial notification. The report shall include the following:

1. Name of individuals involved in accident or incident;

2. Name of pesticide involved;

3. Quantity of pesticide spilled, and containment procedures;

4. Time, date, and location of accident or incident;

5. Mitigating actions taken; and

6. Name (or description if unnamed) and location of bodies of water nearby where contamination of such bodies of water could reasonably be expected to occur due to natural or manmade actions.

**2 VAC 20-51-200. General recordkeeping requirements for commercial applicators not for hire and registered technicians not for hire.**

A. Commercial applicators not for hire and registered technicians not for hire, being exempt from the pesticide business license requirement of the board and the recordkeeping requirements under this license, are required to maintain pesticide application records as prescribed in this chapter. These records shall be maintained by the commercial applicator not for hire and the registered technician not for hire for a period of two years.

B. Records governed by this regulation shall be made available for inspection by the commissioner, or his duly authorized agent, during normal business hours upon written request. Records not readily available shall be submitted to the commissioner within 72 hours, if so requested in writing.

C. Persons possessing records governed by this part shall fully comply with the requirements contained in 7 USC § 136f and regulations adopted pursuant thereto.

**2 VAC 20-51-210. Specific recordkeeping requirements for commercial applicators not for hire and registered technicians not for hire.**

Commercial applicators not for hire and registered technicians not for hire shall maintain a record of each ~~restricted use~~ pesticide applied, containing the following:

1. Name of property owner, address or location, and, as applicable, phone number of the site of application;

2. Name and certification number (or certification number of the supervising certified applicator) of the person making the application;

3. Day, month, and year of application;

4. Type of plants, crops, animals, or sites treated and [ ~~principle~~ principal ] pests to be controlled;

5. Acreage, area, or number of plants or animals treated;

6. Brand name or common product name of pesticide used;

7. EPA registration number;

8. Amounts of pesticide concentrate and amount of diluent used, by weight or volume, in mixture applied; and

9. Type of application equipment used.

NOTICE: The forms used in administering 2 VAC 20-51, Regulations Governing Pesticide Applicator Certification Under Authority of Virginia Pesticide Control Act are not being published; however, the name of each form is listed below. The forms are available for public inspection at the Department of Agriculture and Consumer Services, 1100 Bank Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

Record of Required Additional Registered Technician Training (proposed).

Commercial Pesticide Applicator Certification Application - A, Form VDACS-07211 (eff. ~~11/98~~ 11/01).

Pesticide Registered Technician Application, Form VDACS-07212 (eff. ~~11/98~~ 11/01).

Private Pesticide Applicator Request for Authorization to Take Pesticide Applicator Examination at Department of Motor Vehicles Customer Service Center (eff. 12/98).

Application for Reciprocal Pesticide Applicator Certificate, Form VDACS-07210 (eff. ~~7/95~~ 7/00).

Power of Attorney (not dated).

Commercial Pesticide Applicator Request for Authorization to Take Pesticide Applicator Examination - B, Form VDACS-07218 (eff. ~~11/98~~ 11/01).

Commercial Pesticide Applicator Certification Exam~~, Form VDACS-07216 (not dated)~~ bubble answer sheet, 2003.

Private Pesticide Applicator Certification Exam bubble answer sheet, 2003.

Virginia Registered Technician Certification Examination Answer Sheet (eff. 2/98).

Not-For-Hire Virginia Registered Technician Certification Examination Answer Sheet (eff. 2/98).

VA.R. Doc. No. R04-77; Filed June 12, 2007, 9:56 a.m.

# TITLE 4. CONSERVATION AND NATURAL RESOURCES

## DEPARTMENT OF MINES, MINERALS AND ENERGY

### Final Regulation

Title of Regulation: **4 VAC 25-50. Rules and Regulations Governing the Certification of Diesel Engine Mechanics in Underground Coal Mines (repealing 4 VAC 25-50-10 through 4 VAC 25-50-110).**

Statutory Authority: §§ 45.1-161.28, 45.1-161.29, 45.1-161.34 and 45.1-161.35 of the Code of Virginia.

Effective Date: August 8, 2007.

Agency Contact: David Spears, Regulatory Coordinator, Department of Mines, Minerals and Energy, 202 North 9th Street, 8th Floor, Richmond, VA 23219-3402, telephone (804) 692-3212, FAX (804) 692-3237, email david.spears@dmme.virginia.gov.

Summary:

*The Board of Coal Mining Examiners is repealing this regulation because the essential elements in the regulation have been incorporated in the certification regulation for coal miners.*

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

VA.R. Doc. No. R98-27; Filed June 15, 2007, 10:30 a.m.

### Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Department of Mines, Minerals and Energy will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **4 VAC 25-130. Coal Surface Mining Reclamation Regulations (amending 4 VAC 25-130-777.17).**

Statutory Authority: §§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Effective Date: August 8, 2007.

Agency Contact: David Spears, Regulatory Coordinator, Department of Mines, Minerals and Energy, 202 North 9th Street, 8th Floor, Richmond, VA 23219-3402, telephone (804) 692-3212, FAX (804) 692-3237, email david.spears@dmme.virginia.gov.

Summary:

*The amendment increases the permit fee for coal surface mining from $12 to $26 per acre for the total permitted acreage, and the annual anniversary fee from $6 to $13 per acre disturbed. The revision makes the regulation consistent with the Code of Virginia.*

**4 VAC 25-130-777.17. Permit fees.**

An application for a surface coal mining and reclamation permit issued under this chapter shall be accompanied by a permit fee of ~~twelve dollars ($12.00)~~ $26.00 per acre or any fraction thereof for the total acreage permitted. An anniversary fee of ~~six dollars ($6.00)~~ $13.00 per acre or any fraction thereof for areas disturbed under the permit shall be payable annually on each anniversary date of the permit. The fees shall be in the form of cash, cashier's check, certified check or personal check.

VA.R. Doc. No. R07-276; Filed June 15, 2007, 10:29 a.m.

# TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

## BOARD OF CORRECTIONS

### Final Regulation

Title of Regulation: **6 VAC 15-20. Regulations Governing Certification and Inspection (amending 6 VAC 15-20-10 through 6 VAC 15-20-230).**

Statutory Authority: § 53.1-5 of the Code of Virginia.

Effective Date: August 9, 2007.

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Summary:

*The amendments account for changes in the internal structure of the department's auditing unit. The amendments require that correctional facilities and programs provide documentation for any waivers that the board has obtained and eliminate the requirement that the auditing unit send enumerated compliance forms to correctional facilities each time they are audited.*

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

**6 VAC 15-20-10. Definitions.**

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

"Appeal" means the action taken by a facility or program administrator when there is disagreement with a compliance audit finding.

"Audit report" means the official report of compliance audit findings prepared by the ~~Certification~~ Compliance and Accreditation Unit supervisor for the department and submitted to the board.

"Board" means the State Board of Corrections.

"Certification analyst" means a person assigned to the ~~Certification~~ Compliance and Accreditation Unit who serves as chairperson or team leader of the certification team.

"Certification/accreditation team" means ~~those~~ persons appointed by the ~~deputy director~~ Compliance and Accreditation Unit manager or the American Correctional Association to conduct compliance audits.

"~~Certification~~ Compliance and Accreditation Unit" means the organizational unit of the department responsible for scheduling and conducting compliance audits to board standards.

"Compliance" means that no deficiency was cited by the certification team or that cited deficiencies have been corrected through completion of the tasks identified in the plan of action.

"Compliance audit" ~~or audit"~~ means an on-site official review of a facility or program by the certification team to evaluate compliance with standards promulgated by the board.

"Compliance and Accreditation Unit local facilities supervisor" means an individual responsible to the Compliance and Accreditation Unit manager for supervising the Board of Corrections' local facilities inspections.

"Compliance and Accreditation Unit manager" means an individual responsible to the Deputy Director of Administration for managing the Board of Corrections' certification process.

"Compliance and Accreditation Unit supervisor" means an individual responsible to the Compliance and Accreditation Unit manager for supervising the Board of Corrections' certification process.

"Compliance documentation" means specific documents or information including records, reports, observations and verbal responses required to verify compliance with standards by a facility or program.

"Decertified" means a status imposed by the board when it is determined that a facility or program has not met a minimum acceptable level of compliance with standards.

"Deficiency" means noncompliance with a specific ~~board~~ standard.

"Department" means the Department of Corrections.

"Deputy director" means the administrative head or designee of a division of the Department of Corrections.

"Director" means the Director of the Department of Corrections.

"Facility" means the physical plant of a state, local or private correctional facility or community correctional facility.

"Facility or program administrator" means the individual responsible for the operation of a facility or program subject to standards, rules or regulations of the board.

"Inspection" means an on-site official review of a local correctional facility by local facilities managers to assess compliance with life, health and safety standards promulgated by the board.

"Interim compliance audit" means an on-site official review of a facility or program by the ~~Certification~~ Compliance and Accreditation Unit ~~staff~~ to evaluate compliance with standards promulgated by the board which occurs at an interval other than the regular schedule as provided in 6 VAC 15-20-20. The interim compliance audit may consist of a determination of compliance with all standards applicable to the facility or program or may be limited to specific standards as directed by the board.

"Life, health~~,~~ and safety alert" means a process by which the board is provided immediate notice by department staff of life, health and safety deficiencies identified in local facilities/programs.

"Life, health, safety standards" ~~or "LHS standards"~~ means those standards directly related to life, health or safety issues as identified by the board.

"Local correctional facility" means a jail, regional jail, or lockup.

"Plan of action" means a document stating what has been or will be done to bring all deficiencies into compliance with standards, including a description of the activities undertaken, staff responsibilities, and a time table for completion.

"Preparatory audit" means an unofficial review of a facility or program by regional ~~or central office~~ staff or the Compliance and Accreditation Unit to evaluate compliance with standards promulgated by the board.

"Private correctional facility" means a facility ~~which~~ that is operated by an entity which has entered into a legal agreement to provide any correctional services to the

Department of Corrections with respect to inmates under the custody of the Commonwealth.

"Probation and parole district" means under the authority of the Director of the Department of Corrections, the Commonwealth is divided into as many separate districts as deemed necessary to provide professional investigation and supervision of the offender in the community under conditions of probation, parole or postrelease supervision and special conditions as set by the court or the Parole Board.

"Probationary certification" means a status granted by the board for a specific period of time to correct deficiencies within the control of the facility or program.

"Program" means a system of services provided to offenders by probation and parole offices and other community-based services.

"Region" means the geographic area in which a facility or program is located as established by the department.

"Regional ~~administrator/~~director" means the administrative head of a specific geographic region within the department.

"Regional office" means the administrative offices of a specific region within the department.

"Unconditional certification" means that a facility or program is in 100% compliance with all applicable standards based upon the receipt of the plan of action.

"Variance" means a decision by the board to suspend the requirements of a specific standard for a specific period of time.

**6 VAC 15-20-30. Frequency of audits.**

A. All state, local, private and community correctional facilities and programs operated by or affiliated with the department shall be audited every three years.

1. The regional office or local facilities' office staff shall notify the ~~Certification~~ Compliance and Accreditation Unit ~~staff~~ supervisor in writing within 30 days after a new facility or program accepts the first offender.

2. The regional ~~or central~~ office staff shall conduct a preparatory audit of a new facility or program during the first six months of operation.

3. The ~~Certification~~ Compliance and Accreditation Unit ~~staff~~ shall conduct a compliance audit during the second six months of operation and on a regular schedule thereafter as provided by this section.

B. The scheduled compliance audit may be postponed for up to six months due to bona fide security or emergency situations.

1. The facility or program administrator shall notify the ~~certification analyst~~ Compliance and Accreditation Unit manager and provide details of the circumstances requiring the postponement.

2. The ~~certification analyst~~ Compliance and Accreditation Unit supervisor shall complete a written notice of change and ~~submit it to the Certification Unit supervisor for approval~~ send copies of the approved written notice of change to the board, facility or program administrator, the appropriate regional director and the team members.

~~3. The certification analyst shall send copies of the approved written notice of change to the board, facility or program administrator, the appropriate regional administrator/director, and the team members.~~

C. Any state, local, private or community correctional facility or program may be scheduled for an interim compliance audit at the direction of the board. An interim audit may be scheduled for a facility or program ~~which~~ that has:

1. Undergone renovations or additions that have resulted in additional inmate capacity or significant changes to the numbers and duties of security staff;

2. Exhibited difficulty in maintaining compliance with the board's standards;

3. Been cited for noncompliance with the board's standards as a result of Department of Corrections inspections, Department of Health inspections or informal visits made by Department of Corrections' staff; or

4. Been placed in probationary or decertified status.

**6 VAC 15-20-40. Preparation for audit.**

A. The ~~Certification~~ Compliance and Accreditation Unit ~~staff~~ supervisor shall develop an annual audit schedule.

1. The schedule shall be submitted to the ~~appropriate deputy director~~ Compliance and Accreditation Unit manager for review, comment and approval.

2. Upon approval, the ~~Certification~~ Compliance and Accreditation Unit ~~staff~~ supervisor shall:

a. Disseminate the final schedule ~~to the regional offices~~ as appropriate, and

b. Review the schedule as necessary and make adjustments for additional audits.

3. Changes to the final audit schedule shall be agreed upon by the ~~appropriate deputy director and the Certification Unit supervisor~~ Compliance and Accreditation Unit manager.

4. The ~~Certification~~ Compliance and Accreditation Unit ~~staff~~ supervisor shall notify the facility or program administrator of the change. Changes shall not extend the audit date beyond the established frequency limits without board approval.

B. The ~~deputy director~~ Compliance and Accreditation Unit manager shall appoint certification team members.

1. Team members shall have prior audit experience or have completed certification training.

2. At least one person shall be a staff member of the same type of facility or program being audited.

3. All team members shall be from outside of the region in which the facility or program is located. The certification team auditing local correctional facilities shall consist at minimum of a certification analyst and a local facilities manager.

4. The ~~team leader~~ certification analyst shall act as team leader and shall coordinate and facilitate the audit.

~~5. The certification team auditing local correctional facilities shall consist of a certification analyst and a local facilities manager.~~

C. The ~~Certification~~ Compliance and Accreditation Unit ~~staff~~ shall notify the facility or program administrator in writing at least 30 days prior to a compliance audit. ~~A copy of this chapter, a copy of the standards compliance form, and a list of the compliance documentation required during an audit shall be enclosed with the notification.~~

D. A certification analyst ~~shall~~ should visit the facility or program administrator prior to an audit to discuss the audit process as needed. ~~Exceptions to~~ The visit ~~prior to an audit~~ shall be documented and approved by the ~~Certification~~ Compliance and Accreditation Unit supervisor.

**6 VAC 15-20-50. On-site audit procedures.**

A. The certification analyst shall, on the first day of the audit, orient the team to the audit process and afford the facility or program administrator an opportunity to brief the team on aspects of the facility or program ~~which~~ that may have a bearing on the audit.

~~1.~~ B. The facility or program administrator shall grant the team access to all documents, staff and areas of the facility or program ~~which~~ that are relevant to establishing compliance.

C. A facility or program with an approved variance shall provide such documentation to the certification team.

~~2.~~ D. Data shall be collected through documentation, interview and observation.

~~3.~~ E. The certification analyst shall brief the facility or program administrator daily on audit progress and preliminary findings. At this time, the facility or program administrator may introduce additional data having a bearing on the team's findings.

~~4.~~ F. The entire certification team shall ~~make~~ be included in compliance decisions.

~~a.~~ 1. When a team member finds an indication of noncompliance, the team member shall notify the entire team and provide all available information regarding the standard in question.

~~b. A majority vote of~~ 2. The team leader shall ~~determine~~ obtain consensus of the members to the compliance.

~~c.~~ 3. If a ~~majority vote~~ consensus cannot be obtained, the matter shall be referred to the ~~appropriate deputy director by the Certification~~ Compliance and Accreditation Unit supervisor.

~~5.~~ G. The team shall hold a ~~meeting~~ final debriefing with the facility or program administrator to discuss the team's compliance audit findings. ~~At this time the facility or program administrator may introduce additional data having a bearing on the team's findings.~~

~~6.~~ H. At the request of the facility or program administrator, the certification ~~analyst~~ team shall report compliance audit findings to facility or program staff.

**6 VAC 15-20-60. Audit findings.**

The ~~Certification~~ Compliance and Accreditation Unit ~~staff~~ shall mail the audit findings to the facility or program administrator~~, the regional office,~~ and the ~~Board of Corrections~~ regional office within five working days following the compliance audit.

**6 VAC 15-20-70. Development of a plan of action.**

A. A plan of action shall be developed for all deficiencies noted in the compliance audit findings. ~~The regional office or Certification Unit staff shall be available to assist the facility or program administrator in developing the plan of action. 1.~~ The plan of action must identify the following:

~~a.~~ 1. The tasks required to correct a noted deficiency;

~~b.~~ 2. The personnel responsible for completing the tasks; and

~~c.~~ 3. The actual or proposed date of task completion.

~~2.~~ B. The facility or program administrator shall submit the plan of action to the regional office or ~~Certification~~ Compliance and Accreditation Unit (for local facilities) as appropriate within 10 working days of receipt of the notification of deficiencies.

~~3.~~ C. The regional ~~administrator/~~director or designee, or ~~Certification~~ Compliance and Accreditation Unit ~~supervisor~~ manager shall review the plan of action. If approved, it shall be submitted ~~to the deputy director~~ within 10 working days of receipt~~.~~ as follows:

1. Regional director to the Deputy Director of Community Corrections;

2. Regional director to the Deputy Director of Operations;

3. Compliance and Accreditation Unit manager.

~~4.~~ D. The Deputy Director of Community Corrections/Deputy Director of Operations/Compliance and Accreditation Unit manager shall ~~either~~ approve, amend or return the plan of action to the regional ~~administrator/~~director or ~~Certification Unit supervisor~~ local facility administrator for revision within 10 working days of receipt.

~~5.~~ E. The regional ~~administrator/~~director or local facilities administrator shall complete any ~~revisions~~ revision requested and return the plan to the Deputy Director of Community Corrections/Deputy Director of Operations/Compliance and Accreditation Unit manager within 10 working days of receipt.

~~6.~~ F. The ~~deputy director~~ Compliance and Accreditation Unit manager may grant one 30-day extension to a facility or program administrator for the development of a plan of action. The ~~deputy director~~ Compliance and Accreditation Unit manager shall notify the board of the extension and its justification. The board may grant additional extensions.

~~7.~~ G. If a facility or program administrator fails to submit a plan of action within the time specified, the ~~department~~ Compliance and Accreditation Unit supervisor shall submit the audit report with recommendations to the board.

**6 VAC 15-20-80. Variance requests.**

A variance may be requested by a facility or program administrator when unable to comply with a standard.

1. Variance requests shall be submitted along with the plan of action for any deficiencies cited during the audit. Local correctional facilities shall submit the variance request directly to the board with the plan of action. Variance requests from other facilities/programs shall follow the procedures listed below. Variance requests shall include:

a. The standard that cannot be met;

b. Justification for variance;

c. The time frame for the variance.

2. Local correctional facilities and community adult residential programs shall submit the variance request directly to the board.

~~2.~~ 3. The regional ~~administrator/~~director ~~or Certification Unit supervisor~~ shall make a recommendation on the variance request and submit it and the plan of action to either the Deputy Director of Operations or Deputy Director of Community Corrections.

~~3.~~ 4. The Deputy Director of Operations or Deputy Director of Community Corrections shall review the variance request ~~and plan of action~~ or requests and either submit them to the board with a recommendation for approval or return ~~them~~ the disapproved request to the regional ~~administrator/~~director ~~for revision~~.

5. The Compliance and Accreditation Unit manager, for the deputy director, shall forward ~~all~~ the variance ~~requests~~ request to the board with a recommendation for approval.

~~4. Variance requests shall include:~~

~~a. Standard which cannot be met; and~~

~~b. Justification for variance.~~

~~5. A facility or program with an approved variance shall provide such documentation to the certification team.~~

**6 VAC 15-20-90. Appeal process [ for audits/inspections ] and schedule.**

~~A facility or program administrator may appeal a decision of noncompliance from audit findings using the following appeal levels and guidelines:~~

~~1.~~ A. The appeal review levels are:

~~a.~~ 1. Deputy Director of Operations for state correctional facilities;

~~b.~~ 2. Deputy Director of Community Corrections for state community correctional units and probation and parole districts; ~~and~~

~~c.~~ 3. Board of Corrections ~~(if a~~ for locally or privately operated ~~facility~~ community facilities or ~~program)~~ programs.

~~2.~~ B. Appeals shall be submitted to either the regional office or ~~Certification~~ the Compliance and Accreditation Unit ~~staff~~ (as noted above) along with the plan of action within 10 working days of receipt of the notification of deficiencies. The regional director or the Compliance and Accreditation Unit supervisor shall submit the appeal and the plan of action to the Deputy Director of Operations/Deputy Director of Community Corrections within five working days of receipt.

~~3. The regional administrator/director or Certification Unit supervisor shall submit the appeal and the plan of action to the deputy director within five working days of receipt. Upon receipt of notification from the deputy director, the Certification Unit supervisor shall coordinate a review of the appeal issues with the persons identified in subdivision 1 of this section.~~

C. If the appeal is denied at any level, the facility or program administrator may request that the appeal be forwarded to the next level.

~~4.~~ D. Each appeal level shall complete its review of the appeal and notify the ~~Certification~~ Compliance and Accreditation Unit supervisor of its decision within five working days ~~of~~ upon receipt of the appeal.

~~5.~~ E. Upon completion of the board's review of the appeal, notification of ~~its~~ the decision shall be forwarded no later than five days after the board meeting to the facility or program administrator.

~~6.~~ F. If the appeal is ultimately denied ~~at any level, the facility or program administrator shall:~~ by the board, the Compliance and Accreditation Unit will review and confirm the submitted plan of action and present a final recommendation for consideration by the board at the following board meeting.

~~a. Submit a plan of action for the specific deficiency in question to the regional administrator/director or Certification Unit supervisor; or~~

~~b. Request that the appeal be forwarded to the next level.~~

~~7. If the appeal is ultimately denied by the board or other level, the facility or program administrator shall submit a plan of action for the deficiency which was appealed within a time frame specified by the review level.~~

**6 VAC 15-20-100. Board action on audit results.**

A. The ~~Certification~~ Compliance and Accreditation Unit supervisor shall submit audit reports to the board no later than ~~75~~ 60 days after completion of the audit. Audit reports shall include:

1. A list of deficiencies;

2. Plans of corrective action and completion status;

3. Similar deficiencies from the previous audit; and

4. Recommended action for consideration by the board.

B. Based upon the audit report the board shall take one of the following actions:

1. A letter requesting corrective action on deficiencies within a specific time frame shall be issued to the facility or program.

2. A certificate of unconditional certification shall be issued to a facility or program that has complied with all applicable standards.

3. A letter of probationary certification may be issued to a facility or program that has not met all applicable standards if the board grants a specific period of time to correct deficiencies. The department shall provide periodic status reports to the board.

4. A letter of decertification will be issued by the board when a facility or program does not meet the requirements for certification within the time limits approved by the board. The ~~department~~ Compliance and Accreditation Unit supervisor shall provide status reports to the board during this period and notify the board when all deficiencies have been corrected.

C. A facility or program's certification status shall remain in effect until subsequent board action.

**6 VAC 15-20-110. Notifications.**

The ~~Certification Unit staff~~ Compliance and Accreditation Unit supervisor shall notify the facility or program administrator of ~~a facility or program's~~ the certification status immediately following the board's action. The facility or program administrator shall post the letter or certificate in a place conspicuous to the public.

**6 VAC 15-20-120. Actions that can be taken when decertified.**

When a facility or program is decertified the board may consider taking the following actions in compliance with statutes, policies, and procedures established by the board, the department or other state or federal agencies:

1. Board action for facilities or programs that are state or privately operated may include, but not be limited to, the following:

a. The facility or program ~~director~~ administrator authorized to take action may bring about a reorganization of the facility or program structure or other personnel actions deemed necessary to bring it into compliance with standards; or

b. The facility or program may be closed in accordance with established procedures.

2. Board action for facilities and programs that are locally operated may include, but not be limited to, the following:

a. Recommend that the facility or program administrator authorized to take action bring about a reorganization of the facility or program structure or other personnel actions deemed necessary to bring it into compliance with standards; ~~or~~

b. Recommend that the facility or program be closed or contractual agreements terminated in accordance with established procedures; or

c. Initiate proceedings for the withholding of funds under the appropriate sections of the Code of Virginia.

**6 VAC 15-20-130. Inspection method.**

A. Inspections shall be governed by § 53.1-68 of the Code of Virginia.

B. Inspections shall be conducted to inspect for compliance with all life, health and safety standards in the Board of Corrections' Minimum Standards for Local Jails and Lockups (6 VAC 15-40~~-10 et seq.~~).

**6 VAC 15-20-140. Inspection schedule.**

A. All local correctional facilities shall undergo life, health and safety inspections by the ~~Local Facilities~~ Compliance and Accreditation Unit.

B. The ~~Chief of Operations, Local Facilities Unit,~~ Compliance and Accreditation Unit local facilities supervisor shall prepare an annual inspection schedule.

1. The inspection schedule shall not be published outside the Board of Corrections, Department of Corrections and Virginia Department of Health.

2. The inspection schedule shall be prepared in conjunction with the compliance audit schedule.

3. Upon recommendation by the ~~chief of operations~~ Compliance and Accreditation Unit local facilities supervisor, the board may waive the requirement for an inspection in the year in which a local correctional facility undergoes a compliance audit except in which the local correctional facility administrator changes.

C. New local correctional facilities shall be inspected only after the preparatory audit and first year compliance audit have been completed.

D. Local correctional facility inspections shall be postponed or rescheduled only upon approval of the ~~Chief of Operations, Local Facilities Unit~~ Compliance and Accreditation Unit local facilities supervisor.

**6 VAC 15-20-150. Preparation for inspection.**

Inspections shall be conducted by a local facilities ~~Unit~~ manager on the basis of an annual schedule assignment.

1. Larger local correctional facilities may require more than one staff person to perform the inspection. In this event, the manager assigned to the inspection may request assistance of other ~~local facilities staff, Certification Unit,~~ Compliance and Accreditation Unit staff or regional office personnel.

2. The local facilities manager may coordinate the inspection with local health department officials.

**6 VAC 15-20-160. On-site inspection procedures.**

A. The local facilities manager shall announce the intent of the visit and produce official identification if required upon arrival at the local correctional facility.

B. The local correctional facility shall grant access to all documents, staff and areas of the facility necessary to complete the inspection and assess standards compliance.

C. Denial of access to the facility for any reasons other than bonafide security or emergency situations shall result in findings of noncompliance on all standards. In the event of denial of access, the local facilities manager will notify the ~~chief of operations~~ Compliance and Accreditation Unit manager immediately. The inspection may be rescheduled if it is determined that denial of access was warranted.

D. Compliance data shall be gathered through documentation, interview and observation.

E. The local facilities manager assigned to the inspection shall determine compliance in the event more than one staff conduct the inspection.

F. All life, health and safety standards shall be assessed for compliance at the time of the inspection using the inspection form to indicate a yes or no finding. Situations which prevent access to documentation, observation or interview to determine compliance shall result in a finding of noncompliance for the applicable standard.

G. A debriefing with the facility administrator or staff in charge shall be held upon inspection completion. If requested, the local facilities manager may debrief other jail personnel.

**6 VAC 15-20-170. Inspection findings.**

The inspection report shall be provided to the facility upon completion of the inspection ~~and a copy of the report mailed to the regional office within five working days~~.

**6 VAC 15-20-180. Correction of deficiencies.**

A. Facility administrators shall advise the ~~chief of operations~~ Compliance and Accreditation Unit local facilities supervisor in writing of the correction of all cited deficiencies within seven days following the inspection. Adequate documentation to support deficiency corrections shall be provided.

B. The Compliance and Accreditation Unit local facilities manager shall assist facilities in correcting deficiencies where necessary and monitor the submission of written notification of deficiency corrections.

C. The Compliance and Accreditation Unit local facilities manager shall maintain copies of all inspection reports and provide a monthly report to the ~~chief of operations~~ Compliance and Accreditation Unit local facilities supervisor on inspection results. Deficiencies not corrected within 30 days shall be reported as life, health and safety alerts.

**6 VAC 15-20-190. Board action on inspection results.**

A. Inspection results shall be reported by the ~~chief of operations~~ Compliance and Accreditation Unit local facilities supervisor to the board on a monthly basis and deficiencies not corrected will be reported as life, health and safety alerts.

B. The results of all inspections conducted shall be reported to the board.

C. The board shall be notified immediately of all life, health and safety alerts, including denial of access. Upon review of alert deficiencies, the Board of Corrections chairman, or in his absence the vice chairman, may change the certification status of the facility in question.

D. Board actions taken in response to inspection results shall be as described in ~~the section of this chapter relating to certification audits~~ 6 VAC 15-20-190.

**6 VAC 15-20-200. Health inspection schedule.**

A. All local correctional facilities shall undergo inspections by the Virginia Department of Health in accordance with § 53.1-68 of the Code of Virginia.

B. Virginia Department of Health environmental staff, under the delegated power of the State Health Commissioner and the district health director, shall be responsible for scheduling and administrating local correctional facility inspections.

C. The Office of Environmental Health Services of the Virginia Department of Health shall provide the technical and administrative guidance to district and local health departments as necessary or requested. Local health departments may coordinate the inspections with the department's ~~Local Facilities~~ Compliance and Accreditation Unit.

**6 VAC 15-20-210. On-site health inspection procedures.**

A. Virginia Department of Health staff shall announce the intent of the visit and produce official identification if required upon arrival at the facility.

B. The facility shall grant access to all documents, staff and areas of the local correctional facility necessary to complete the inspection.

C. Virginia Department of Health staff shall evaluate jail kitchen facilities in accordance with the ~~Rules and Regulations Governing Restaurants~~ Food Regulations, ~~12 VAC 5-420-10 et seq.~~ 12 VAC 5-421. A food establishment permit shall be issued to facilities ~~which~~ that comply with the ~~Rules and Regulations Governing Restaurants~~ Food Regulations. No permit shall be issued to facilities ~~which~~ that are not in substantial compliance with the regulations.

D. Virginia Department of Health staff shall also inspect all areas of the facility necessary to determine compliance with standards for facility cleanliness and housing areas of local correctional facilities designated in the interagency letter of agreement between the Board of Corrections and the Virginia Department of Health.

E. Compliance data shall be gathered through documentation, interview and observation. Situations ~~which~~ that prevent access to documentation, observation or interview to determine compliance shall result in a finding of noncompliance for the applicable standard.

F. If possible, food service and standards compliance inspections should occur on the same visit to the facility. In those cases where follow-up visits are necessary, those visits may be coordinated with appropriate facility staff.

G. At the conclusion of the inspection, the facility administrator or designee or both shall be briefed on the inspection findings.

**6 VAC 15-20-220. Health inspection findings.**

The inspection report shall be provided to the facility upon completion of the inspection and a copy shall be forwarded to the department's ~~Certification~~ Compliance and Accreditation Unit within 30 days. In a situation where sanitation and environmental conditions could pose a health hazard, the department shall be notified immediately.

**6 VAC 15-20-230. Board action on health inspection results.**

Inspection results which report sanitation and environmental hazards or evidence of noncompliance with standards shall be reported to the board by the ~~Certification~~ Compliance and Accreditation Unit ~~staff~~ on a monthly basis. Board action taken in response to inspection results shall be as described in ~~the section of this chapter~~ 6 VAC 15-20-100 relating to ~~compliance~~ audits. Follow-up relative to standards shall be the responsibility of the board and the department.

VA.R. Doc. No. R01-67; Filed June 18, 2007, 12:03 p.m.

# TITLE 8. EDUCATION

## STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

### Final Regulation

REGISTRAR'S NOTICE: The State Council for Higher Education for Virginia is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 B 4 of the Code of Virginia, which exempts regulations relating to grants of state or federal funds or property.

Title of Regulation: **8 VAC 40-140. Virginia Vocational Incentive Scholarship Program for Shipyard Workers Regulations (adding 8 VAC 40-140-10 through 8 VAC 40-140-90).**

Statutory Authority: § 23-220.01 of the Code of Virginia.

Effective Date: July 1, 2007.

Agency Contact: Linda H. Woodley, Regulatory Coordinator, State Council of Higher Education for Virginia, James Monroe Building, 101 North 14th Street, 9th Floor, Richmond, VA 23219, telephone (804) 371-2938, FAX (804) 786-2027 or email linda.woodley@schev.edu.

Summary:

*The regulation for the implementation and administration of a scholarship program for shipyard workers is created pursuant to § 23-220.01 of the Code of Virginia. The regulation provides definitions, use of funds, application procedures, selection of scholarship recipients, eligibility for initial scholarship, renewability of scholarships, scholarship conditions, scholarship amounts, noncompliance with scholarship agreement, and responsibility of the college.*

**8 VAC 40-140-10. Definitions.**

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

"Apprenticeship program" means a three-year program combining educational instruction and on-the-job training that is established for the purpose of enhancing the education and skills of shipyard workers and that is registered with the Virginia Department of Labor and Industry.

"College" means Tidewater Community College.

"Council" means the State Council of Higher Education for Virginia or its designated staff.

"Eligible course of study" means an Associate in Applied Science degree program or an apprenticeship program registered with the Virginia Department of Labor and Industry.

"Program" means the Virginia Vocational Incentive Scholarship Program for Shipyard Workers.

"Scholar" means a recipient of program funds from the Virginia Vocational Incentive Scholarship Program for Shipyard Workers.

"Scholarship" means a grant from state funds appropriated for the Virginia Vocational Incentive Scholarship Program for Shipyard Workers.

"Shipyard worker" means any person employed full time on a salaried or wage basis whose tenure is not restricted as to temporary or provisional appointment at a ship manufacturing or ship repair company located in the Commonwealth of Virginia.

**8 VAC 40-140-20. Use of funds.**

A. The college shall establish and maintain financial records that accurately reflect all program transactions as they occur. The college shall establish and maintain general ledger control accounts and related subsidiary accounts that identify each program transaction and separate those transactions from all other institutional financial activity.

B. Funds may be paid to the college on behalf of shipyard workers who have been awarded scholarships pursuant to § 23-220.01 of the Code of Virginia and this chapter. Funds also may be used by the college for the implementation and administration of the program. Funds used by the college to implement and administer the program shall not exceed in any given year 5.0% of that year's allocation for the program.

**8 VAC 40-140-30. Application procedures and selection of scholarship recipients.**

To apply for a scholarship under the program, a student must follow the procedures established by the college and approved by the council. Recipients will be selected by the college using a process approved by the council.

**8 VAC 40-140-40. Eligibility criteria for an initial scholarship.**

In order to receive a scholarship, the student must be:

1. A domiciliary resident of Virginia as defined in § 23-7.4 of the Code of Virginia and determined by the college,

2. Employed full time as a shipyard worker, and

3. Enrolled full or part time in an eligible course of study.

**8 VAC 40-140-50. Renewability of scholarships.**

Scholarships may be renewed for up to two academic years provided that the student continues to meet the initial eligibility criteria specified in 8 VAC 40-140-40 and maintains a cumulative grade point average of at least 3.0 on a scale of 4.0 or its equivalent at the completion of each academic year.

**8 VAC 40-140-60. Scholarship conditions.**

To receive initial and renewal scholarships, the student must enter into an agreement with the council through the college under which he agrees to:

1. Continue full-time employment as a shipyard worker until his successful competition of the eligible course of study;

2. Continue pursuing an eligible course of study;

3. Upon successful completion of the eligible course of study, work continuously in Virginia as a shipyard worker for the same number of years that he was the beneficiary of such scholarship;

4. Provide evidence of compliance with subdivision 3 of this section in the form of a statement from the human resources director of the shipyard in which the scholar is working, certifying that the scholar is employed full time as a shipyard worker; and

5. Repay the total amount of funds received, or the appropriate portion thereof, and any accrued interest, if he fails to honor the requirements specified in subdivisions 1, 2, and 3 of this section.

**8 VAC 40-140-70. Scholarship amount.**

A. In no case may a student receive a scholarship under the program that exceeds the cost of full tuition and required fees relating to the eligible course of study.

B. If a scholar withdraws from all courses during a term, the tuition refund policy in effect at the college will determine the portion of the award amount that must be reclaimed by the college.

**8 VAC 40-140-80. Noncompliance with scholarship agreement.**

A. A scholar found to be in noncompliance with the scholarship agreement entered shall:

1. Repay the amount of scholarship funds received, prorated according to the fraction of the work obligation not completed, as determined by the council;

2. Pay a simple, per annum interest charge of 5.0% on the outstanding principal as determined by the council; and

3. Pay all reasonable collection costs as determined by the council.

B. A scholar required to repay his scholarship shall:

1. Enter repayment status on the first day of the first calendar month after:

a. The council has determined that the scholar is no longer enrolled in an eligible course of study, but not before six months has elapsed since the scholar was enrolled in such course of study;

b. The date the scholar informs the council that he does not plan to fulfill the work obligation; or

c. The latest date on which the scholar must have begun working in order to have completed the work obligation within 10 years after completing the postsecondary education for which the scholarship was awarded, as determined by the council.

2. Make monthly payments to the council that cover principal, interest, and any collection costs according to a schedule established by the council that calls for minimum payments of $100 per month and to complete repayment within 10 years after the scholar enters repayment status.

C. The interest charge specified in subdivision A 2 of this section accrues from:

1. The date of the initial scholarship payment if the council has determined that the scholar is no longer enrolled in an eligible course of study or completed an eligible course of study but never became employed as a shipyard worker; or

2. The day after the last day of the scholarship period for which the work obligation has been fulfilled.

D. The council shall capitalize any accrued interest at the time it establishes a scholar's repayment schedule.

E. The council may approve less than $100 minimum monthly payments or forgive partial interest charges due to extenuating circumstances.

F. The council may approve a reduction in interest charges for scholars making consistent on-time monthly payments that meet or exceed the minimum required amount.

G. A scholar is not considered in violation of the repayment schedule established by the council during the time he is:

1. Serving on active duty as a member of the armed services of the United States or serving as a member of VISTA or the Peace Corps for a period not in excess of three years,

2. Accompanying a spouse who is serving on active duty as a member of the armed services of the United States or serving as a member of VISTA or the Peace Corps for a period not in excess of three years,

3. Experiencing health conditions that impede his ability to perform requisite service in a shipyard setting for a period not to exceed three years,

4. Unable to secure employment by reason of the care required by a disabled child, spouse, or parent for a period not in excess of 12 months, or

5. Unable to satisfy the terms of the repayment schedule established by the council and is also seeking and unable to find full-time employment as a shipyard worker in Virginia for a single period not to exceed 27 months.

H. To qualify for any of the exceptions in subsection G of this section, a scholar must notify the council of his claim to the exception and provide supporting documentation as required by the council.

I. During the time a scholar qualifies for any of the exceptions specified in subsection G or this section, he need not make the scholarship repayments and interest does not accrue.

J. The council shall extend the 10-year scholarship repayment period by a period equal to the length of time a scholar meets any of the exceptions in subsection G of this section or if a scholar's inability to complete the scholarship repayments within this 10-year period because of his financial condition has been established to the council’s satisfaction.

K. The council shall cancel a scholar's repayment obligation if it determines that:

1. On the basis of a sworn affidavit of a qualified physician, the scholar is unable to work on a full-time basis because of an impairment that is expected to continue indefinitely or result in death, or

2. On the basis of a death certificate or other evidence conclusive under state law, the scholar has died.

**8 VAC 40-140-90. Responsibility of the college.**

The college shall:

1. Comply with all requests from the council for reports or information necessary to carry out the operation of the program,

2. Retain a copy of each signed promissory note and send the original promissory note to the council, and

3. Notify the council if a scholar fails to meet the terms of the promissory note and enters repayment status.

NOTICE: The form used in administering 8 VAC 40-140, Virginia Vocational Incentive Scholarship Program for Shipyard Workers Regulations, is not being published; however, the name of the form is listed below. The form is available for public inspection at the State Council of Higher Education for Virginia, James Monroe Building, 101 North 14th Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

Virginia Vocational Incentive Scholarship Program for Shipyard Workers Promissory Note (eff. 7/07).

VA.R. Doc. No. R07-273; Filed June 13, 2007, 9:11 a.m.

## TITLE 9. ENVIRONMENT

### VIRGINIA WASTE MANAGEMENT BOARD

### Proposed Regulation

Title of Regulation: **9 VAC 20-80. Solid Waste Management Regulations (amending 9 VAC 20-80-10, 9 VAC 20-80-60, 9 VAC 20-80-250, 9 VAC 20-80-260, 9 VAC 20-80-270, 9 VAC 20-80-280, 9 VAC 20-80-485, 9 VAC 20-80-500, and 9 VAC 20-80-510).**

Statutory Authority: § 10.1-1402 of the Code of Virginia; 42 USC § 6941 et seq.; 40 CFR Part 258.

Public comments: Public comments may be submitted until 5 p.m. on September 7, 2007.

Public Hearing Information:

August 13, 2007 -- 1 p.m. -- Department of Environmental Quality, 629 East Main Street, 1st Floor Conference Room, Richmond, VA

Agency Contact: Allen R. Brockman, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4468, FAX (804) 698-4327, or email arbrockman@deq.virginia.gov.

Basis: 40 CFR Part 258 provides the federal authority for the criteria for municipal solid waste landfills.

The presently proposed amendment deals with the portions of the regulations that are affected by the federal requirements and are subject to the federal program approval. Therefore, the state regulations are broader in scope than the federal regulations. Provisions dealing with the siting of sanitary landfills adjacent to airports currently only apply to public use airports. These siting restrictions will also be extended to the siting of landfills or transfer stations adjacent to military airports as well. Hazards from bird strikes exist for both civilian and military aircraft.

The Virginia Waste Management Act authorizes the Virginia Waste Management Board to supervise and control waste management activities in the Commonwealth and to promulgate regulations necessary to carry out its powers and duties. Article 2 of the Act prohibits the ownership or operation of an open dump, which is defined in § 10.1-1400 to be any: "...site on which solid waste is placed, discharged, deposited, injected, dumped, or spilled so as to create a nuisance or present a threat of a release of harmful substances into environment or present a hazard to human health."

The Act further prohibits any person from operating a facility for the disposal, treatment, or storage of nonhazardous solid waste without a permit from the director of the department (§ 10.1-1408.1 A). The Act requires the permit to contain such conditions or requirements that would prevent a substantial present or potential danger to human health and the environment (§ 10.1-1408.1 E).

Section 10.1-1402 of the Code of Virginia states that the board is authorized to promulgate and enforce regulations, and provide for reasonable variances and exemptions necessary to carry out its powers and duties and the intent of this chapter and the federal acts, except that a description of provisions of any proposed regulation that are more restrictive than applicable federal requirements, together with the reason why the more restrictive provisions are needed, shall be provided to the standing committee of each house of the General Assembly to which matters relating to the content of the regulation are most properly referable.

Purpose: The amended regulation is needed to coordinate waste management practices with the statute amendments, other agencies and other programs, and to address issues and questions that have arisen since the regulations were last modified. The goal is to improve standards, make the regulations clear and enforceable and to protect human health and the environment.

Clarification of closure standards for old unlined landfills is needed to ensure that such landfills end operation in systematic order and in compliance with existing law. As housing development extends to the perimeter of previously remote old or active landfills, plans and early interaction

notice is necessary to protect citizens from methane gas and odors. Replacement of an earlier program at the federal level with an optional new research, development, and demonstration program inspired incorporation of that change into the department's regulations.

Substance: The definition of closure has been clarified to define the endpoint more precisely and the definition of airport has been updated to include military facilities. Closure-related scheduling dates are added to clarify the limitations to enlargement of those municipal solid waste landfills (sanitary landfills) that are subject to prioritization and a schedule for closure pursuant to § 10.1-1413.2 of the Code of Virginia. Several new statutory provisions are incorporated that address certificates from local governments on conformance with regional waste plans needed before units can be permitted. Even permit-by-rule facilities must be analyzed by local governments for conformance with the regional solid waste management plan. A separate statutory provision on the location of landfills in the vicinity of water supplies and wetlands has been incorporated. Action levels will now be required for gas monitoring to give advance notification of elevated methane levels at landfills. A new section addresses odor concerns and odor plans. A new section allows applicants to apply for research, development, and demonstration plan permits subject to standards set forth in accordance with 40 CFR 258.4. Public hearing procedures are streamlined by deleting automatic public hearings for certain permit or amendment issuance process. Other minor changes related to review time limits, consistent safety plan clauses, landfill cover maintenance, and minor wording changes are included.

Issues: Advantages to the public, as residential areas increasingly expand toward preexisting landfills, include improved safety and reduced odor in the vicinity of landfills. At the same time, compliance with the legally mandated closure schedule for old unlined landfills is ensured through improved wording and graphical illustration in the regulation. Hearing procedures are streamlined to improve efficiency of department resources available to hold the hearings. Federal solid waste research, development, and demonstration regulatory standards are opened to the waste industry to ensure that technological advances in Virginia proceed on par with those in neighboring states.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Regulation. The Virginia Waste Management Board (Board) proposes to amend the existing Virginia Solid Waste Management Regulations (9 VAC 20-80). Specifically, the Board proposes to: 1) clarify the closure definition and procedure with particular reference to the closure schedule specified in Code section § 10.1-1413.2; 2) modify the definition of "airport" to include military airfields along with public-use airports; 3) create a new action level of 80% of lower explosive limit (LEL)[1] for methane at the facility boundary for the control of decomposition gases; 4) add a section of "Odor Management" to address odor concerns and odor plans; 5) provide an option for sanitary landfills to apply for Research, Development, and Demonstration Plan permits; 6) streamline public participation requirements by deleting automatic public hearings for certain permit or amendment issuance processes; 7) incorporate citations referencing two statutory provisions, one for the siting of landfills from water supplies and wetlands, one for the requirement of certification that is consistent with local government waste management plans for permit or permit-by-rule applications.

Results of Analysis. There is insufficient data to accurately compare the magnitude of the benefits versus the costs. Detailed analysis of the benefits and costs can be found in the next section.

Estimated Economic Impact. The Board proposes to modify the definition of "closure" to clarify its endpoint. According to the proposed regulations, "closure" means that point in time when a waste unit of a permitted landfill is filled, capped, certified as final covered by a Professional Engineer, inspected, and the closure activities are accepted by the Department of Environmental Quality (DEQ). The proposed regulations includes closure-related scheduling dates to clarify the limitations to enlargement of the sanitary landfills[2] that are subject to prioritization pursuant to § 10.1-1413.2 of the Code of Virginia, and tables of closure dates established in Final Prioritization and Closure Schedule for HB 1205 Disposal Areas (DEQ, September 2001) for the convenience of the regulated community. These proposed changes will provide clarification to the landfill closure procedure and will benefit the regulated community with less confusion.

Besides the clarifications, the proposed regulations require that facilities assigned a closure date in accordance with § 10.1-1413.2 of the Code of Virginia shall designate on a map, plat, diagram or other engineered drawing, areas in which waste will be disposed until the latest cessation of waste acceptance date. Since DEQ has stated that they will accept even the simplest designation, this proposed requirement will likely not create any significant costs to the facilities. The proposed regulations also allow a facility to apply for a permit, and if approved, to construct and operate a new cell that overlays ("piggybacks") over a closed area in accordance with the permit requirements of 9 VAC 20-80-

[1] According to 9 VAC 20-80-10, "lower explosive limit" means the lowest concentration by volume of a mixture of explosive gases in air that will propagate a flame at 25°C and at atmospheric pressure.

[2] According to 9 VAC 20-80-10, "sanitary landfill" means an engineered land burial facility for the disposal of household waste which is so located, designed, constructed and operated to contain and isolate the waste so that it does not pose a substantial present or potential hazard to human health or the environment. A sanitary landfill also may receive other types of solid wastes, such as commercial solid waste, nonhazardous sludge, hazardous waste from conditionally exempt small quantity generators, construction demolition debris, and nonhazardous industrial solid waste.

250. The allowance of "piggyback" landfill units over closed unlined units under a new permit will likely create cost savings for the landfill companies, because the costs relating to permitting and landfilling on a new site, including the expense on the use of the land, will likely be lower than that of constructing a new site on top of a closed unlined site. Also, landfills on "piggyback" units will likely be more acceptable to the public than permitting and operating on a new site and will likely reduce concerns from citizens in the vicinity of the landfill sites. The estimated number of "piggybacks" units is not available according to DEQ.

Another proposed change is to include military airfields in the definition of "airport" along with public-use airports to restrict landfill and transfer station locations around military airports in order to reduce bird hazards[3]. According to 9 VAC 20-80-180 (Open Dump Criteria), a site or practice of disposing of putrescible waste[4] that attracts birds and occurs within 10,000 feet of any airport runway used by turbojet aircraft or within 5,000 feet of any airport runway used by only piston-type aircraft and poses a bird hazard to aircraft. It is not known whether there are any existing landfill sites that are constructed within the required distance limit from the military airports. DEQ clarifies that this proposed change will affect new sites that are subject to permit approval but will not apply to the existing sites that have already been granted permits. Therefore, this proposed change will likely not have any significant economic impact.

The current regulations have established two compliance levels (25% LEL for methane in facility structures and 100% LEL for methane at the facility boundary) for the control of decomposition gas. The concentration of methane gas generated by the facility shall not exceed 25% of the lower explosive limit (LEL) for methane in facility structures (excluding gas control or recovery system components), and the concentration of methane gas migrating from the landfill shall not exceed the lower explosive limit for methane at the facility boundary. When the results of gas monitoring indicate concentrations of methane in excess of the above compliance levels, the operator shall: a) take all immediate steps necessary to protect public health and safety including those required by the contingency plan; b) notify DEQ in writing within five working days of learning that compliance levels have been exceeded, and indicate what has been done or is planned to be done to resolve the problem; c) within 60 days of detection, implement a remediation plan for the methane gas releases and submit it to DEQ for approval and amendment of the facility permit.

To better protect public health and safety, the proposed regulation will include a new "action" level (80% of LEL for methane at facility boundary) and retain the two compliance levels (25% of LEL for methane in facility structures and 100% of LEL for methane at the facility boundary). When the gas monitoring results indicate concentrations of methane in excess of the action levels, 25% of LEL for methane in facility structures (excluding gas control or recovery system components) or 80% of the LEL for methane at the facility boundary, the operator shall: a) take all immediate steps necessary to protect public health and safety including those required by the contingency plan, and b) notify the DEQ in writing within five working days of learning that action levels have been exceeded, and indicate what has been done or is planned to be done to resolve the problem. When the gas monitoring results indicate concentrations of methane in excess of the compliance levels, 25% of the LEL for methane in facility structures (excluding gas control or recovery system components) or the LEL for methane at the facility boundary, the operator shall, within 60 days of detection, implement a remediation plan for the methane gas releases and submit it to the DEQ for amendment of the facility permit. The proposed regulation also clarifies the contents for gas remediation plan (including the establishment of timeframes) and reorganizes the "gas control" section for better clarity. The proposed new "action" level will require the operators to provide advance notification of elevated methane levels to DEQ. According to DEQ, the facilities do not have to do anything beyond what they are currently required to do under the existing regulations except for an early notification to DEQ. Therefore, this proposed change will likely not create any new compliance costs beyond the small amount of time it takes to inform DEQ of the 80% level when reached.

The existing regulations state that the landfills have to control odors without specific provisions for control of odor. The Board proposes to add a new section of "Odor Management" to address concerns raised by citizens across the Commonwealth who live in the vicinity of landfills. The proposed regulations require that the operators of the facilities establish an odor notice and odor management plan when a problem is identified.[5] The plan shall identify a contact at the facility that citizens can notify about odor concerns. Facilities shall perform and document an annual review and update the odor management plan, as necessary, to address ongoing odor management issues. According to DEQ, there is no efficient way to measure the level of odor near the landfill facilities for compliance purposes. Nonetheless, this proposed change will provide the citizens of the Commonwealth with a procedure to address their odor concerns and will establish better

[3] According to 9 VAC 20-80-10, “bird hazard" means an increase in the likelihood of bird/aircraft collisions that may cause damage to the aircraft or injury to its occupants.

[4] According to 9 VAC 20-80-10, “putrescible waste” means solid waste which contains organic material capable of being decomposed by micro-organisms and cause odors.

[5] According to 9 VAC 20-80-280 D, odor management plans developed in accordance with Virginia Air Regulations, 9 VAC 5-40-140, 9 VAC 5- 50-140 or other state air pollution control regulations will suffice for the provisions of this section (D).

communications between DEQ and the facilities for resolution of odor issues.

The proposed regulations add a new section that allows sanitary landfills to apply for Research, Development, and Demonstration (RDD) plan permits subject to standards set forth in accordance with 40 CFR 258.4. On March 22, 2004, the Environmental Protection Agency (EPA) revised the Criteria for Municipal Solid Waste Landfills (MSWLF)[6] to allow states to issue RDD permits for new and existing MSWLF units and lateral expansions. This rule allows directors of approved state programs to provide a variance from certain MSWLF criteria, provided that MSWLF owners/operators demonstrate that compliance with the RDD permit will not increase risk to human health and the environment over compliance with a standard MSWLF permit.

According to the proposed regulations, the RDD plan is optional and may be submitted for new sanitary landfills, existing sanitary landfills, or expansions of existing sanitary landfills. The RDD plan can be used: 1) to add liquids (over/beyond leachate and gas condensate from the same landfill) for accelerated decomposition of the waste mass, 2) to allow run-on water to flow into the landfill waste mass, 3) to allow testing of the construction and infiltration performance of alternative final cover systems and/or, 4) to enhance stabilization of the waste mass. If an entity elects to initiate a RDD plan under the proposed amendment, an annual report shall be prepared that shall include a summary of all monitoring data, testing data and observations of process or effects and shall include recommendations for continuance or termination of the process selected for testing. Additional monitoring and testing information may be required that could include the measurement of leachate head on the liner; landfill temperature at various locations; type, application rate and application method of various wastes including liquid wastes and water that may be placed in the landfill; additional hydraulic studies; landfill settlement rate determinations, etc. The reporting requirements are estimated to cost between $15,000 and $25,000 per year per landfill. At present DEQ estimates that only two to three landfills will be permitted every year under this proposed rule over the next few years. Therefore the total reporting costs are estimated to be between $30,000 and $75,000 per year for the first year, and increase by the similar amount per year for the next three years thereafter. On the other hand, the optional RDD program will promote innovative technologies associated with landfilling of municipal solid waste and may result in more cost-effective methods and eventually cost savings for sanitary landfills. To the extent that a facility will initiate a RDD plan only if the benefit from the RDD program exceeds the cost in the long run, this proposed change will likely create a net long-term benefit.

The proposed regulations will streamline public participation requirements by deleting automatic public hearings for certain permit or amendment issuance processes. Under current regulations, once a draft permit is developed, a public hearing will be scheduled and DEQ will hold the announced public hearing 30 days or more after the notice of public hearing is published in the local newspaper. The Board proposes to modify the section of "Permit Issuance" to reflect that a public hearing is optional under certain circumstances. A public hearing will be held for all new landfills or increases in landfill capacity as required by the existing regulations. However, a public hearing may not be held if there is no significant public interest in the issuance, denial, modification or revocation of the permit in question, or there are no substantial, disputed issues relevant to the issuance, denial modification or revocation of the permit in question. This proposed change will create cost savings for DEQ without significant negative impact on public participation.

The Board proposes to incorporate two statutory amendments to the proposed regulations. One statutory change is related to landfill location that is protective with respect to water supplies and wetlands. Chapter 920 of the 2005 General Assembly Act reduces from five miles to three miles the distance that a landfill can be sited from a surface water or a groundwater supply intake or reservoir. Since this statutory change was effective July 1, 2005 and has been under compliance for more than one and a half years, incorporating it into the proposed regulations will likely not have any significant impact on the regulated community.

The proposed regulations also incorporate a statutory change that requires a certification that is consistent with local government waste management plans for permit or permit-by-rule application. Chapter 62 of the 2006 Act of General Assembly requires that if the application is for a new solid waste management facility permit or for modification of a permit to allow an existing solid waste management facility to expand or increase its capacity, the application shall include certification from the governing body for the locality in which the facility is or will be located that: (i) the proposed new facility or the expansion or increase in capacity of the existing facility is consistent with the applicable local or regional solid waste management plan developed and approved pursuant to § 10.1-1411; or (ii) the local government or solid waste management planning unit has initiated the process to revise the solid waste management plan to include the new or expanded facility. No application for coverage under a permit-by-rule or for modification of coverage under a permit-by-rule shall be complete unless it contains certification from the governing body of the locality in which the facility is to be located that the facility is consistent with the solid waste management plan developed and approved in accordance with § 10.1-1411. This

[6] MSWLF is another name for “sanitary landfills”.

requirement may cause increases in costs and working hours for local government and may slow down the process of permit applications. The solid waste management companies that can not obtain a certification from the host local government may experience reduced business or incur additional costs by applying for permit of another site. On the other hand, the host local government's not granting certifications for permit applications will likely benefit the citizens in the local area given that the denial of certification is based on analysis of the potential human health, environmental, transportation infrastructure, and transportation safety impacts, etc.

Businesses and Entities Affected. DEQ reports that approximately there are 222 landfills[7] in the Commonwealth of Virginia. Among them, 130 landfills are municipal or county government-owned and 92 landfills are private. The RDD plans will especially affect the 193 sanitary landfills, among which 90% are owned by local governments or counties, 0.5% are owned by the federal government and 9.5% are privately owned sanitary landfills.

Localities Particularly Affected. The proposed regulations will affect all localities in the Commonwealth.

Projected Impact on Employment. The proposed RDD plans will create reporting costs to facilities that elect to initiate RDD programs but will likely result in cost savings for these facilities in the long run. The allowance of "piggyback" landfills will likely create cost savings for the landfill companies. These proposed changes will likely increase profits for the facilities being affected and may have a positive impact on the number of people employed by those facilities. Those solid waste management companies that can not obtain certifications from the host local government may experience reduced business or incur additional costs by applying for permit of another site. This will likely have a negative impact on their employment.

Effects on the Use and Value of Private Property. The proposed RDD plans and the allowance of "piggyback" landfills will likely generate cost savings for facilities being affected and may have a positive impact on their asset values. The proposed requirement of certifications from the host local government for permit applications may cause reduced business and increased cost for facilities and may have a negative impact on the value of their assets. The allowance of "piggyback" landfills will likely reduce the negative impact on residential properties in the vicinity of the new landfill sites that would otherwise be constructed and operated. The host local government's not granting certifications for some permit applications, based on analysis of the potential impact on human health and the environment, would likely raise the value of the residential properties in the local area.

Small Businesses: Costs and Other Effects. Small landfills that elect to initiate RDD programs will likely incur cost savings in the long run, although in the short term they may experience reporting cost of $15,000 to $25,000 per year. Those who choose to construct and operate "piggyback" landfills under new permit will likely incur cost savings rather than permitting and constructing a new site. Small businesses that can not obtain certifications from the host local government may experience reduced business or incur additional costs by applying for permit of another site. According to DEQ, 45% of the privately owned landfills are small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. Small businesses will likely benefit from the proposed RDD plans and the allowance of "piggybacks" landfills, as well as the proposed clarifications to the existing regulations. They may be adversely affected by the requirement of certifications in consistency with local government waste management plans for permit applications, which is required by the statutory amendment. There is no alternative method that will generate a lower adverse impact.

Legal Mandate. 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. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007 H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

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

[7] This number may include closed facilities.

Summary:

*The proposed amendments (i) clarify the closure definition and procedure with particular reference to § 10.1-1413.2 of the Code of Virginia landfills; (ii) address plans and actions related to the management of landfill gas and odors; (iii) provide an option for facilities to apply for research, design, and development, and (iv) streamline public participation requirements by deleting automatic public hearings for certain permit or amendment issuance process. Secondly, the proposed amendments broaden the definition of airport to include military airfields and are intended to ensure consistent wording in sections concerning safety plans and permitting timeframes. Finally, the amendments incorporate citations referencing two new statutory provisions for a landfill location that is protective with respect to water supplies and wetlands and certification of permit application consistency with local government waste management plans.*

**9 VAC 20-80-10. Definitions.**

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

"Abandoned facility" means any inactive solid waste management facility that has not met closure and post-closure requirements.

"Active life" means the period of operation beginning with the initial receipt of solid waste and ending at completion of closure activities required by this chapter.

"Active portion" means that part of a facility or unit that has received or is receiving wastes and that has not been closed in accordance with this chapter.

"Agricultural waste" means all solid waste produced from farming operations.

"Airport" means, for the purpose of this chapter, a military airfield or a public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.

"Anaerobic digestion" means the decomposition of organic materials in the absence of oxygen or under low oxygen concentration. Anaerobic conditions occur when gaseous oxygen is depleted during respiration. Anaerobic decomposition is not considered composting.

"Applicant" means any and all persons seeking or holding a permit under this chapter.

"Aquifer" means a geologic formation, group of formations, or a portion of a formation capable of yielding significant quantities of ground water to wells or springs.

"Areas susceptible to mass movement" means those areas of influence (i.e., areas characterized as having an active or substantial possibility of mass movement) where the movement of earth material at, beneath, or adjacent to the solid waste management unit, because of natural or man-induced events, results in the downslope transport of soil and rock material by means of gravitational influence. Areas of mass movement include, but are not limited to, landslides, avalanches, debris slides and flows, soil fluction, block sliding, and rock fall.

"Ash" means the fly ash or bottom ash residual waste material produced from incineration or burning of solid waste or from any fuel combustion.

"Base flood" see "Hundred-year flood."

"Bedrock" means the rock that underlies soil or other unconsolidated, superficial material at a site.

"Benchmark" means a permanent monument constructed of concrete and set in the ground surface below the frostline with identifying information clearly affixed to it. Identifying information will include the designation of the benchmark as well as the elevation and coordinates on the local or Virginia state grid system.

"Beneficial use" means a use which is of benefit as a substitute for natural or commercial products and does not contribute to adverse effects on health or environment.

"Bioremediation" means remediation of contaminated media by the manipulation of biological organisms to enhance the degradation of contaminants.

"Bird hazard" means an increase in the likelihood of bird/aircraft collisions that may cause damage to the aircraft or injury to its occupants.

"Board" means the Virginia Waste Management Board.

"Bottom ash" means ash or slag that has been discharged from the bottom of the combustion unit after combustion.

"By-product material" means a material that is not one of the primary products of a production process and is not solely or separately produced by the production process. By-product does not include a co-product that is produced for the general public's use and is ordinarily used in the form that is produced by the process.

"Captive industrial landfill" means an industrial landfill that is located on property owned or controlled by the generator of the waste disposed of in that landfill.

"Clean wood" means uncontaminated natural or untreated wood. Clean wood includes but is not limited to by-products of harvesting activities conducted for forest management or commercial logging, or mill residues consisting of bark, chips, edgings, sawdust, shavings or slabs. It does not include wood that has been treated, adulterated, or chemically changed in some way; treated with glues, binders, or resins; or painted, stained or coated.

"Closed facility" means a solid waste management facility which has been properly secured in accordance with the requirements of this chapter.

"Closure" means ~~the act of securing a solid waste management facility pursuant to the requirements of this chapter~~ that point in time when a waste unit of a permitted landfill is filled, capped, certified as final covered by a professional engineer, inspected, and the closure activities are accepted by the Department of Environmental Quality (DEQ).

"Coal combustion by-products" means residuals, including fly ash, bottom ash, boiler slag, and flue gas emission control waste produced by coal-fired electrical or steam generating units.

"Combustion unit" means an incinerator, waste heat recovery unit or boiler.

"Commercial chemical product" means a chemical substance which is manufactured or formulated for commercial, agricultural or manufacturing use. This term includes a manufacturing chemical intermediate, off-specification chemical product, which, if it met specification, would have been a chemical product or intermediate. It includes any residues remaining in the container or the inner liner removed from the container that has been used to hold any of the above which have not been removed using the practices commonly employed to remove materials from that type of container and has more than one inch of residue remaining.

"Commercial waste" means all solid waste generated by establishments engaged in business operations other than manufacturing or construction. This category includes, but is not limited to, solid waste resulting from the operation of stores, markets, office buildings, restaurants and shopping centers.

"Community activity" means the normal activities taking place within a local community to include residential, site preparation and construction, government, commercial, institutional, and industrial activities.

"Compliance schedule" means a time schedule for measures to be employed on a solid waste management facility which will ultimately upgrade it to conform to this chapter.

"Composite liner system" means a system designed and constructed to meet the requirements of 9 VAC 20-80-250 B 9.

"Compost" means a stabilized organic product produced by a controlled aerobic decomposition process in such a manner that the product can be handled, stored, and/or applied to the land without adversely affecting public health or the environment. Composted sludge shall be as specified in 12 VAC 5-581-630.

"Composting" means the manipulation of the natural aerobic process of decomposition of organic materials to increase the rate of decomposition.

"Conditionally exempt small quantity generator" means a generator of hazardous waste who has been so defined in 40 CFR 261.5. That section applies to the persons who generate in that calendar month no more than 100 kilograms of hazardous waste or 1 kilogram of acutely hazardous waste.

"Confined composting system" means a composting process that takes place inside an enclosed container.

"Construction/Demolition/Debris landfill" or "CDD landfill" means a land burial facility engineered, constructed and operated to contain and isolate construction waste, demolition waste, debris waste, or combinations of the above solid wastes.

"Construction waste" means solid waste which is produced or generated during construction, remodeling, or repair of pavements, houses, commercial buildings, and other structures. Construction wastes include, but are not limited to lumber, wire, sheetrock, broken brick, shingles, glass, pipes, concrete, paving materials, and metal and plastics if the metal or plastics are a part of the materials of construction or empty containers for such materials. Paints, coatings, solvents, asbestos, any liquid, compressed gases or semi-liquids and garbage are not construction wastes.

"Contaminated soil" means, for the purposes of this chapter, a soil that, as a result of a release or human usage, has absorbed or adsorbed physical, chemical, or radiological substances at concentrations above those consistent with nearby undisturbed soil or natural earth materials.

"Container" means any portable device in which a material is stored, transported, treated, or otherwise handled and includes transport vehicles that are containers themselves (e.g., tank trucks) and containers placed on or in a transport vehicle.

"Containment structure" means a closed vessel such as a tank or cylinder.

"Convenience center" means a collection point for the temporary storage of solid waste provided for individual solid waste generators who choose to transport solid waste generated on their own premises to an established centralized point, rather than directly to a disposal facility. To be classified as a convenience center, the collection point may not receive waste from collection vehicles that have collected waste from more than one real property owner. A convenience center shall be on a system of regularly scheduled collections.

"Cover material" means compactable soil or other approved material which is used to blanket solid waste in a landfill.

"Debris waste" means wastes resulting from land clearing operations. Debris wastes include, but are not limited to stumps, wood, brush, leaves, soil, and road spoils.

"Demolition waste" means that solid waste which is produced by the destruction of structures and their foundations and includes the same materials as construction wastes.

"Department" means the Virginia Department of Environmental Quality.

"Director" means the Director of the Department of Environmental Quality. For purposes of submissions to the director as specified in the Waste Management Act, submissions may be made to the department.

"Discard" means to abandon, dispose of, burn, incinerate, accumulate, store or treat before or instead of being abandoned, disposed of, burned or incinerated.

"Discarded material" means a material which is:

A. Abandoned by being:

1. Disposed of;

2. Burned or incinerated; or

3. Accumulated, stored or treated (but not used, reused, or reclaimed) before or in lieu of being abandoned by being disposed of, burned or incinerated;

B. Recycled used, reused, or reclaimed material as defined in this part; or

C. Considered inherently waste-like as described in 9 VAC 20-80-140 C.

"Discharge of dredged material" means any release of material that is excavated or dredged from the waters of the U.S. or state waters and returned to the waters of the U.S. or state waters.

"Disclosure statement" means a sworn statement or affirmation, in such form as may be required by the director (see DEQ Form DISC-01 and 02 (Disclosure Statement), which includes:

1. The full name, business address, and social security number of all key personnel;

2. The full name and business address of any entity, other than natural person, that collects, transports, treats, stores, or disposes of solid waste or hazardous waste in which any key personnel holds an equity interest of five percent or more;

3. A description of the business experience of all key personnel listed in the disclosure statement;

4. A listing of all permits or licenses required for the collection, transportation, treatment, storage, or disposal of solid waste or hazardous waste issued to or held by any key personnel within the past 10 years;

5. A listing and explanation of any notices of violation, prosecution, administrative orders (whether by consent or otherwise), license or permit suspensions or revocations, or enforcement actions of any sort by any state, federal or local authority, within the past ten years, which are pending or have concluded with a finding of violation or entry of a consent agreement, regarding an allegation of civil or criminal violation of any law, regulation or requirement relating to the collection, transportation, treatment, storage or disposal of solid waste or hazardous waste by any key personnel, and an itemized list of all convictions within ten years of key personnel of any of the following crimes punishable as felonies under the laws of the Commonwealth or the equivalent thereof under the laws of any other jurisdiction: murder; kidnapping; gambling; robbery; bribery; extortion; criminal usury; arson; burglary; theft and related crimes; forgery and fraudulent practices; fraud in the offering, sale, or purchase of securities; alteration of motor vehicle identification numbers; unlawful manufacture, purchase, use or transfer of firearms; unlawful possession or use of destructive devices or explosives; violation of the Drug Control Act, Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1 of the Code of Virginia; racketeering; or violation of antitrust laws;

6. A listing of all agencies outside the Commonwealth which have regulatory responsibility over the applicant or have issued any environmental permit or license to the applicant within the past ten years, in connection with the applicant's collection, transportation, treatment, storage or disposal of solid waste or hazardous waste;

7. Any other information about the applicant and the key personnel that the director may require that reasonably relates to the qualifications and ability of the key personnel or the applicant to lawfully and competently operate a solid waste management facility in Virginia; and

8. The full name and business address of any member of the local governing body or planning commission in which the solid waste management facility is located or proposed to be located, who holds an equity interest in the facility.

"Displacement" means the relative movement of any two sides of a fault measured in any direction.

"Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste into or on any land or water so that such solid waste or any constituent of it may enter the environment or be emitted into the air or discharged into any waters.

"EPA" means the United States Environmental Protection Agency.

"Existing unit" means any permitted solid waste management unit that is receiving or has received solid waste and has not been closed in accordance with the regulations in effect at the time of closure. Waste placement in existing units shall be consistent with past operating practices, the permit, or modified practices to ensure good management.

"Facility" means solid waste management facility unless the context clearly indicates otherwise.

"Facility boundary" means the boundary of the solid waste management facility approved to manage solid waste as defined in Part A of the permit application. For unpermitted solid waste management facilities as defined in 9 VAC 20-80-200, the facility boundary is the boundary of the property where the solid waste is located. For facilities with a permit-by-rule (PBR) the facility boundary is the boundary of the property where the permit-by-rule activity occurs.

"Facility structure" means any building, shed, or utility or drainage line on the facility.

"Fault" means a fracture or a zone of fractures in any material along which strata on one side have been displaced with respect to that on the other side.

"Floodplain" means the lowland and relatively flat areas adjoining inland and coastal waters, including lowlying areas of offshore islands where flooding occurs.

"Fly ash" means ash particulate collected from air pollution attenuation devices on combustion units.

"Food chain crops" means crops grown for human consumption, tobacco, and crops grown for pasture and forage or feed for animals whose products are consumed by humans.

"Fossil fuel combustion products" means coal combustion byproducts as defined in this regulation, coal combustion byproducts generated at facilities with fluidized bed combustion technology, petroleum coke combustion byproducts, byproducts from the combustion of oil, byproducts from the combustion of natural gas, and byproducts from the combustion of mixtures of coal and "other fuels" (i.e., co-burning of coal with "other fuels" where coal is at least 50% of the total fuel). For purposes of this definition, "other fuels" means waste-derived fuel product, auto shredder fluff, wood wastes, coal mill rejects, peat, tall oil, tire-derived fuel, deionizer resins, and used oil.

"Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure as determined by the Paint Filter Liquids Test, Method 9095, U.S. Environmental Protection Agency, Publication SW-846.

"Garbage" means readily putrescible discarded materials composed of animal, vegetable or other organic matter.

"Gas condensate" means the liquid generated as a result of gas control or recovery processes at the solid waste management unit.

"Ground water" means water below the land surface in a zone of saturation.

"Hazardous constituent" means a constituent of solid waste listed in Part V, Table 5.1.

"Hazardous waste" means a "hazardous waste" as described by the Virginia Hazardous Waste Management Regulations (9 VAC 20-60).

"Holocene" means the most recent epoch of the Quaternary period, extending from the end of the Pleistocene Epoch to the present.

"Home use" means the use of compost for growing plants which is produced and used on a privately owned residential site.

"Host agreement" means any lease, contract, agreement or land use permit entered into or issued by the locality in which the landfill is situated that includes terms or conditions governing the operation of the landfill.

"Household hazardous waste" means any waste material derived from households (including single and multiple residences, hotels, motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day-use recreation areas) which, except for the fact that it is derived from a household, would otherwise be classified as a hazardous waste in accordance with 9 VAC 20-60.

"Household waste" means any waste material, including garbage, trash and refuse, derived from households. Households include single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day-use recreation areas. Household wastes do not include sanitary waste in septic tanks (septage) which is regulated by other state agencies.

"Hundred-year flood" means a flood that has a 1.0% or greater chance of recurring in any given year or a flood of magnitude equaled or exceeded on the average only once in a hundred years on the average over a significantly long period.

"Ignitable waste" means: (i) Liquids having a flash point of less than 140°F (60°C) as determined by the methods specified in the Virginia Hazardous Waste Management Regulations (9 VAC 20-60); (ii) nonliquids liable to cause fires through friction, absorption of moisture, spontaneous chemical change or retained heat from manufacturing or liable, when ignited, to burn so vigorously and persistently as to create a hazard; (iii) ignitable compressed gases, oxidizers, or both.

"Incineration" means the controlled combustion of solid waste for disposal.

"Incinerator" means a facility or device designed for the treatment of solid waste by combustion.

"Industrial waste" means any solid waste generated by manufacturing or industrial process that is not a regulated hazardous waste. Such waste may include, but is not limited to, waste resulting from the following manufacturing processes: Electric power generation; fertilizer/agricultural chemicals; food and related products/by-products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.

"Industrial waste landfill" means a solid waste landfill used primarily for the disposal of a specific industrial waste or a waste which is a by-product of a production process.

"Inert waste" means solid waste which is physically, chemically and biologically stable from further degradation and considered to be nonreactive. Inert wastes include rubble, concrete, broken bricks, bricks, and blocks.

"Injection well" means, for the purposes of this chapter, a well or bore hole into which fluids are injected into selected geological horizons.

"Institutional waste" means all solid waste emanating from institutions such as, but not limited to, hospitals, nursing homes, orphanages, and public or private schools. It can include regulated medical waste from health care facilities and research facilities that must be managed as a regulated medical waste.

"Karst terranes" means areas where karst topography, with its characteristic surface and subterranean features, is developed as the result of dissolution of limestone, dolomite, or other soluble rock. Characteristic physiographic features present in karst terranes include, but are not limited to, sinkholes, sinking streams, caves, large springs, and blind valleys.

"Key personnel" means the applicant itself and any person employed by the applicant in a managerial capacity, or empowered to make discretionary decisions, with respect to the solid waste or hazardous waste operations of the applicant in Virginia, but shall not include employees exclusively engaged in the physical or mechanical collection, transportation, treatment, storage, or disposal of solid or hazardous waste and such other employees as the director may designate by regulation. If the applicant has not previously conducted solid waste or hazardous waste operations in Virginia, the term also includes any officer, director, partner of the applicant, or any holder of five percent or more of the equity or debt of the applicant. If any holder of five percent or more of the equity or debt of the applicant or of any key personnel is not a natural person, the term includes all key personnel of that entity, provided that where such entity is a chartered lending institution or a reporting company under the Federal Security and Exchange Act of 1934, the term does not include key personnel of such entity. Provided further that the term means the chief executive officer of any agency of the United States or of any agency or political subdivision of the Commonwealth, and all key personnel of any person, other than a natural person, that operates a landfill or other facility for the disposal, treatment, or storage of nonhazardous solid waste under contract with or for one of those governmental entities.

"Lagoon" means a body of water or surface impoundment designed to manage or treat waste water.

"Land application unit" means an area where solid or liquid wastes are applied onto or incorporated into the soil surface (excluding manure spreading operations) for agricultural purposes or for treatment or disposal.

"Landfill" means a sanitary landfill, an industrial waste landfill, or a construction/demolition/debris landfill.

"Landfill disposal area" means the area within the facility boundary of a landfill in which solid waste is buried or permitted for actual burial.

"Landfill gas" means gas generated as a byproduct of the decomposition of organic materials in a landfill. Landfill gas consists primarily of methane and carbon dioxide.

"Lateral expansion" means a horizontal expansion of the waste management unit boundary.

"Leachate" means a liquid that has passed through or emerged from solid waste and contains soluble, suspended or miscible materials from such waste. Leachate and any material with which it is mixed is solid waste; except that leachate that is pumped from a collection tank for transportation to disposal in an off-site facility is regulated as septage, leachate discharged into a waste water collection system is regulated as industrial waste water and leachate that has contaminated ground water is regulated as contaminated ground water.

"Lead acid battery" means, for the purposes of this chapter, any wet cell battery.

"Lift" means the daily landfill layer of compacted solid waste plus the cover material.

"Liquid waste" means any waste material that is determined to contain "free liquids" as defined by this chapter.

"Lithified earth material" means all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by crystallization of magma or by induration of loose sediments. This term does not include man-made materials,

such as fill, concrete, and asphalt, or unconsolidated earth materials, soil, or regolith lying at or near the earth's surface.

"Litter" means, for purposes of this chapter, any solid waste that is discarded or scattered about a solid waste management facility outside the immediate working area.

"Lower explosive limit" means the lowest concentration by volume of a mixture of explosive gases in air that will propagate a flame at 25°C and at atmospheric pressure.

"Manufacturing or mining by-product" means a material that is not one of the primary products of a particular manufacturing or mining operation, but is a secondary and incidental product of the particular operation and would not be solely and separately manufactured or mined by the particular manufacturing or mining operation. The term does not include an intermediate manufacturing or mining product which results from one of the steps in a manufacturing or mining process and is typically processed through the next process step within a short time.

"Materials recovery facility" means a solid waste management facility for the collection, processing and recovery of material such as metals from solid waste or for the production of a fuel from solid waste. This does not include the production of a waste-derived fuel product.

"Maximum horizontal acceleration in lithified earth material" means the maximum expected horizontal acceleration depicted on a seismic hazard map, with a 90% or greater probability that the acceleration will not be exceeded in 250 years, or the maximum expected horizontal acceleration based on a site-specific seismic risk assessment.

"Monitoring" means all methods, procedures and techniques used to systematically analyze, inspect and collect data on operational parameters of the facility or on the quality of air, ground water, surface water, and soils.

"Monitoring wells" means a well point below the ground surface for the purpose of obtaining periodic water samples from ground water for quantitative and qualitative analysis.

"Mulch" means woody waste consisting of stumps, trees, limbs, branches, bark, leaves and other clean wood waste which has undergone size reduction by grinding, shredding, or chipping, and is distributed to the general public for landscaping purposes or other horticultural uses except composting as defined and regulated under this chapter or the Vegetative Waste Management and Yard Waste Composting Regulations (9 VAC 20-101).

"Municipal solid waste" means that waste which is normally composed of residential, commercial, and institutional solid waste and residues derived from combustion of these wastes.

"New solid waste management facility" means a facility or a portion of a facility that was not included in a previous determination of site suitability (Part A approval).

"Nonsudden events" mean those events continuing for an extended time period or for long term releases of contaminants into the environment which take place over time such as leachate contamination of ground water.

"Nuisance" means an activity which unreasonably interferes with an individual's or the public's comfort, convenience or enjoyment such that it interferes with the rights of others by causing damage, annoyance, or inconvenience.

"Off-site" means any site that does not meet the definition of on-site as defined in this part.

"On-site" means the same or geographically contiguous property, which may be divided by public or private right-of-way, provided the entrance and exit to the facility are controlled by the owner or the operator of the facility. Noncontiguous properties owned by the same person, but connected by a right-of-way which he controls and to which the public does not have access, are also considered on-site property.

"Open burning" means the combustion of solid waste without:

~~A.~~ 1. Control of combustion air to maintain adequate temperature for efficient combustion;

~~B.~~ 2. Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

~~C.~~ 3. Control of the combustion products' emission.

"Open dump" means a site on which any solid waste is placed, discharged, deposited, injected, dumped or spilled so as to present a threat of a release of harmful substances into the environment or present a hazard to human health. Such a site is subject to the Open Dump Criteria in 9 VAC 20-80-180.

"Operating Record" means records required to be maintained in accordance with the facility permit or this part (see 9 VAC 20-80-570).

"Operator" means the person responsible for the overall operation and site management of a solid waste management facility.

"Owner" means the person who owns a solid waste management facility or part of a solid waste management facility.

"Permit" means the written permission of the director to own, operate or construct a solid waste management facility.

"PCB" means any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of substances which contain such substance (see 40 CFR 761.3).

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

"Point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, vessel or other floating craft, from which pollutants are or may be discharged. Return flows from irrigated agriculture are not included.

"Pollutant" means any substance which causes or contributes to, or may cause or contribute to, environmental degradation when discharged into the environment.

"Poor foundation conditions" means those areas where features exist which indicate that a natural or man-induced event may result in inadequate foundation support for the structural components of a solid waste management unit.

"Post-closure" means the requirements placed upon solid waste disposal facilities after closure to ensure environmental and public health safety for a specified number of years after closure.

"Private solid waste disposal facility" means any solid waste disposal facility including, without limitations, all solid waste disposal facilities other than facilities owned or operated by a local government, combination of local governments or public service authority.

"Processing" means preparation, treatment, or conversion of waste by a series of actions, changes, or functions that bring about a desired end result.

"Progressive cover" means cover material placed over the working face of a solid waste disposal facility advancing over the deposited waste as new wastes are added keeping the exposed area to a minimum.

"Public land" means any land, used for any purpose, that is leased or owned by a governmental entity.

"Putrescible waste" means solid waste which contains organic material capable of being decomposed by micro-organisms and cause odors.

"Qualified ground water scientist" means a scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering and has sufficient training and experience in ground water hydrology and related fields as may be demonstrated by state registration, professional certifications, or completion of accredited university programs that enable that individual to make sound professional judgements regarding ground water monitoring, contaminant fate and transport, and corrective action.

"RCRA" means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 USC § 6901 et seq.), the Hazardous and Solid Waste Amendments of 1984, and any other applicable amendments to these laws.

"RDF (Refuse Derived Fuel)" means solid waste that is processed to be used as fuel to produce energy.

"Reclaimed material" means a material that is processed or reprocessed to recover a usable product or is regenerated to a usable form.

"Refuse" means all solid waste products having the character of solids rather than liquids and which are composed wholly or partially of materials such as garbage, trash, rubbish, litter, residues from clean up of spills or contamination, or other discarded materials.

"Registered professional engineer" means an engineer licensed to practice engineering in the Commonwealth as defined by the rules and regulations set forth by the Board of Architects, Professional Engineers, Land Surveyors, and Landscape Architects (18 VAC 10-20).

"Regulated hazardous waste" means a solid waste that is a hazardous waste, as defined in the Virginia Hazardous Waste Management Regulations (9 VAC 20-60), that is not excluded from those regulations as a hazardous waste.

"Regulated medical waste" means solid wastes so defined by the Regulated Medical Waste Management Regulations (9 VAC 20-120) as promulgated by the Virginia Waste Management Board.

"Release" means, for the purpose of this chapter, any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injection, escaping, leaching, dumping, or disposing into the environment solid wastes or hazardous constituents of solid wastes (including the abandonment or discarding of barrels, containers, and other closed receptacles containing solid waste). This definition does not include: any release which results in exposure to persons solely within a workplace; release of source, by-product or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954 (68 Stat. 923); and the normal application of fertilizer. For the purpose of this chapter, release also means substantial threat of release.

"Remediation waste" means all solid waste, including all media (ground water, surface water, soils and sediments) and debris, that are managed for the purpose of remediating a site under Part IV (9 VAC 20-80-170 et seq.) or Part V (9 VAC 20-80-240 et seq.) of this chapter or under the Voluntary Remediation Regulations (9 VAC 20-160). For a given facility, remediation wastes may originate only from within the boundary of that facility, and may include wastes managed as a result of remediation beyond the boundary of the facility. Hazardous wastes as defined in 9 VAC 20-60, as well as "new" or "as generated" wastes, are excluded from this definition.

"Remediation waste management unit" or "RWMU" means an area within a facility that is designated by the director for the purpose of implementing remedial activities required under Part IV or V of this chapter or under the Voluntary Remediation Regulations (9 VAC 20-160). An RWMU shall only be used for the management of remediation wastes pursuant to implementing such remedial activities at the facility.

"Residential waste" means household waste.

"Resource recovery system" means a solid waste management system which provides for collection, separation, use, reuse, or reclamation of solid wastes, recovery of energy and disposal of non-recoverable waste residues.

"Rubbish" means combustible or slowly putrescible discarded materials which include but are not limited to trees, wood, leaves, trimmings from shrubs or trees, printed matter, plastic and paper products, grass, rags and other combustible or slowly putrescible materials not included under the term "garbage."

"Runoff" means any rainwater, leachate, or other liquid that drains over land from any part of a solid waste management facility.

"Runon" means any rainwater, wastewater, leachate, or other liquid that drains over land onto any part of the solid waste management facility.

"Salvage" means the authorized, controlled removal of waste materials from a solid waste management facility.

"Sanitary landfill" means an engineered land burial facility for the disposal of household waste which is so located, designed, constructed and operated to contain and isolate the waste so that it does not pose a substantial present or potential hazard to human health or the environment. A sanitary landfill also may receive other types of solid wastes, such as commercial solid waste, nonhazardous sludge, hazardous waste from conditionally exempt small quantity generators, construction demolition debris, and nonhazardous industrial solid waste.

"Saturated zone" means that part of the earth's crust in which all voids are filled with water.

"Scavenging" means the unauthorized or uncontrolled removal of waste materials from a solid waste management facility.

"Scrap metal" means bits and pieces of metal parts such as bars, rods, wire, empty containers, or metal pieces that may be combined together with bolts or soldering which are discarded material and can be used, reused, or reclaimed.

"Secondary containment" means an enclosure into which a container or tank is placed for the purpose of preventing discharge of wastes to the environment.

"Seismic impact zone" means an area with a 10% or greater probability that the maximum horizontal acceleration in lithified earth material, expressed as a percentage of the earth's gravitational pull (g), will exceed 0.10g in 250 years.

"Semiannual" means an interval corresponding to approximately 180 days. For the purposes of scheduling monitoring activities, sampling within 30 days of the 180-day interval will be considered semiannual.

"Site" means all land and structures, other appurtenances, and improvements on them used for treating, storing, and disposing of solid waste. This term includes adjacent land within the facility boundary used for the utility systems such as repair, storage, shipping or processing areas, or other areas incident to the management of solid waste.

(Note: This term includes all sites whether they are planned and managed facilities or are open dumps.)

"Sludge" means any solid, semi-solid or liquid waste generated from a municipal, commercial or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of treated effluent from a wastewater treatment plant.

"Small landfill" means a landfill that disposed of 100 tons/day or less of solid waste during a representative period prior to October 9, 1993, and did not dispose of more than an average of 100 tons/day of solid waste each month between October 9, 1993, and April 9, 1994.

"Solid waste" means any of those materials defined as 'solid waste' in Part III (9 VAC 20-80-140 et seq.) of this chapter.

"Solid waste boundary" means the outermost perimeter of the solid waste (vertical projection on a horizontal plane) as it would exist at completion of the disposal activity within the facility boundary.

"Solid waste disposal area" means the area within the facility boundary of a landfill facility in which solid waste is buried.

"Solid waste disposal facility" means a solid waste management facility at which solid waste will remain after closure.

"Solid waste management facility ("SWMF")" means a site used for planned treating, storing, or disposing of solid waste. A facility may consist of several treatment, storage, or disposal units.

"Source separation" means separation of recyclable materials by the waste generator of materials that are collected for use, reuse or reclamation.

"Special wastes" mean solid wastes that are difficult to handle, require special precautions because of hazardous properties or the nature of the waste creates waste management problems in normal operations. (See Part VIII (9 VAC 20-80-630 et seq.) of this chapter.)

"Speculatively accumulated material" means any material that is accumulated before being used, reused, or reclaimed or in anticipation of potential use, reuse, or reclamation. Materials are not being accumulated speculatively when they can be used, reused or reclaimed, have a feasible means of use, reuse, or reclamation available and 75% of the materials accumulated are being removed from the facility annually.

"Stabilized compost" means a compost that has passed the stability criteria outlined in 9 VAC 20-80-330 D 2 a.

"State solid waste management plan ("State Plan" or "Plan")" means the plan of the Virginia Waste Management Board that sets forth solid waste management goals and objectives and describes planning and regulatory concepts to be employed by the Commonwealth.

"State waters" means all water, on the surface and under the ground, wholly or partially within, or bordering the Commonwealth, or within its jurisdiction.

"Storage" means the holding of waste, at the end of which the waste is treated, disposed, or stored elsewhere.

"Structural components of a solid waste disposal unit" means liners, leachate collection systems, final covers, run-on/run-off systems, and any other component used in the construction and operation of the solid waste disposal facility that is necessary for protection of human health and the environment.

"Structural fill" means an engineered fill with a projected beneficial end use, constructed using soil or coal combustion by-products spread and compacted with proper equipment and covered with a vegetated soil cap.

"Sudden event" means a one time, single event such as a sudden collapse or a sudden, quick release of contaminants to the environment. An example would be the sudden loss of leachate from an impoundment into a surface stream caused by failure of a containment structure.

"Surface impoundment or impoundment" means a facility or part of a facility that is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), that is designed to hold an accumulation of liquid wastes or wastes containing free liquids and that is not an injection well.

"SW-846" means Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, EPA Publication SW-846, Second Edition, 1982 as amended by Update I (April, 1984), and Update II (April, 1985) and the third edition, November, 1986, as amended.

"Tank" means a stationary device, designed to contain an accumulation of liquid or semi-liquid components of solid waste that is constructed primarily of non-earthen materials that provide structural support.

"TEF" or "Toxicity Equivalency Factor" means a factor developed to account for different toxicities of structural isomers of polychlorinated dibenzodioxins and dibenzofurans and to relate them to the toxicity of 2,3,7,8-tetrachloro dibenzo-p-dioxin.

"Terminal" means the location of transportation facilities such as classification yards, docks, airports, management offices, storage sheds, and freight or passenger stations, where solid waste that is being transported may be loaded, unloaded, transferred, or temporarily stored.

"Thermal treatment" means the treatment of solid waste in a device which uses elevated temperature as the primary means to change the chemical, physical, or biological character, or composition of the solid waste.

"Tire chip" means a material processed from waste tires that is a nominal two square inches in size, and ranges from 1/4 inches to 4 inches in any dimension. Tire chips contain no wire protruding more than 1/4 inch.

"Tire shred" means a material processed from waste tires that is a nominal 40 square inches in size, and ranges from 4 inches to 10 inches in any dimension.

"Transfer station" means any solid waste storage or collection facility at which solid waste is transferred from collection vehicles to haulage vehicles for transportation to a central solid waste management facility for disposal, incineration or resource recovery.

"Trash" means combustible and noncombustible discarded materials and is used interchangeably with the term rubbish.

"Treatment" means, for the purpose of this chapter, any method, technique or process, including but not limited to incineration, designed to change the physical, chemical or biological character or composition of any waste to render it more stable, safer for transport, or more amenable to use, reuse, reclamation or recovery.

"Unadulterated wood" means wood that is not painted, nor treated with chemicals such as preservatives nor mixed with other wastes.

"Underground source of drinking water" means an aquifer or its portion:

A. Which contains water suitable for human consumption; or

B. In which the ground water contains less than 10,000 mg/liter total dissolved solids.

"Unit" means a discrete area of land used for the management of solid waste.

"Unstable area" means a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all of the landfill structural components responsible for preventing releases from a landfill. Unstable

areas can include poor foundation conditions, areas susceptible to mass movements, and Karst terranes.

"Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as, lower aquifers that are hydraulically interconnected with this aquifer within the facility boundary.

"Used or reused material" means a material which is either:

A. Employed as an ingredient (including use as an intermediate) in a process to make a product, excepting those materials possessing distinct components that are recovered as separate end products; or

B. Employed in a particular function or application as an effective substitute for a commercial product or natural resources.

"Vector" means a living animal, insect or other arthropod which transmits an infectious disease from one organism to another.

"Vegetative waste" means decomposable materials generated by yard and lawn care or land clearing activities and includes, but is not limited to, leaves, grass trimmings, woody wastes such as shrub and tree prunings, bark, limbs, roots, and stumps. For more detail see 9 VAC 20-101.

"Vertical design capacity" means the maximum design elevation specified in the facility's permit or if none is specified in the permit, the maximum elevation based on a 3:1 slope from the waste management unit boundary.

"VPDES ("Virginia Pollutant Discharge Elimination System")" means the Virginia system for the issuance of permits pursuant to the Permit Regulation (9 VAC 25-31), the State Water Control Law, and § 402 of the Clean Water Act (33 USC § 1251 et seq.).

"Washout" means carrying away of solid waste by waters of the base flood.

"Waste derived fuel product" means a solid waste or combination of solid wastes that have been treated (altered physically, chemically, or biologically) to produce a fuel product with a minimum heating value of 5,000 BTU/lb. Solid wastes used to produce a waste derived fuel product must have a heating value, or act as binders, and may not be added to the fuel for the purpose of disposal. Waste ingredients may not be listed or characteristic hazardous wastes. The fuel product must be stable at ambient temperature, and not degraded by exposure to the elements. This material may not be "Refuse Derived Fuel (RDF)" as defined in 9 VAC 5-40-890.

"Waste management unit boundary" means the vertical surface located at the boundary line of the unit. This vertical surface extends down into the uppermost aquifer.

"Waste needing special handling (special waste)" means any solid waste which requires extra or unusual management when introduced into a solid waste management facility to insure protection of human health or the environment.

"Waste pile" means any non-containerized accumulation of nonflowing, solid waste that is used for treatment or storage.

"Waste tire" means a tire that has been discarded because it is no longer suitable for its original intended purpose because of wear, damage or defect. (See 9 VAC 20-150 for other definitions dealing with the waste tire program.)

"Wastewaters" are, for the purpose of this chapter, wastes that contain less than 1.0% by weight total organic carbon (TOC) and less than 1.0% by weight total suspended solids (TSS).

"Water pollution" means such alteration of the physical, chemical, or biological properties of any state water as will or is likely to create a nuisance or render such waters:

A. Harmful or detrimental or injurious to the public health, safety, or welfare, or to the health of animals, fish, or aquatic life or plants;

B. Unsuitable, with reasonable treatment, for use as present or possible future sources of public water supply; or

C. Unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that:

1. An alteration of the physical, chemical, or biological properties of state waters or a discharge or deposit of sewage, industrial wastes, or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which in combination with such alteration or discharge or deposit to state waters by other persons is sufficient to cause pollution;

2. The discharge of untreated sewage by any person into state waters; and

3. The contribution to the degradation of water quality standards duly established by the State Water Control Board;

are "pollution" for the terms and purposes of this chapter.

"Water table" means the upper surface of the zone of saturation in ground waters in which the hydrostatic pressure is equal to the atmospheric pressure.

"Waters of the United States or waters of the U.S." means:

A. All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

B. All interstate waters, including interstate "wetlands";

C. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mud flats, sand flats,

"wetlands," sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including:

1. Any such waters which are or could be used by interstate or foreign travelers for recreational or other purposes;

2. Any such waters from which fish or shellfish are or could be taken and sold in interstate or foreign commerce;

3. Any such waters which are used or could be used for industrial purposes by industries in interstate commerce;

4. All impoundments of waters otherwise defined as waters of the United States under this definition;

5. Tributaries of waters identified in subdivisions 1 through 4 of this definition;

6. The territorial sea; and

7. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in subdivisions 1 through 6 of this definition.

"Wetlands" mean those areas that are defined by the federal regulations under 33 CFR Part 328.

"White goods" means any stoves, washers, hot water heaters, and other large appliances.

"Working face" means that area within a landfill which is actively receiving solid waste for compaction and cover.

"Yard waste" means decomposable waste materials generated by yard and lawn care and includes leaves, grass trimmings, brush, wood chips, and shrub and tree trimmings. Yard waste shall not include roots or stumps that exceed six inches in diameter.

**9 VAC 20-80-60. Applicability of chapter.**

A. This chapter applies to all persons who manage or dispose of solid wastes as defined in Part III (9 VAC 20-80-140 et seq.) of this chapter.

B. All facilities that were permitted prior to March 15, 1993, and upon which solid waste has been disposed of prior to October 9, 1993, may continue to receive solid waste until they have reached their vertical design capacity or until the closure date established pursuant to § 10.1-1413.2 of the Code of Virginia, in Tables 2.1 and 2.2, provided:

~~Note: Municipal solid waste landfills (sanitary landfills) are subject to prioritization and a schedule for closure pursuant to s 10.1-1413.2 of the Code of Virginia.~~

1. The facility is in compliance with the requirements for liners and leachate control in effect at the time of permit issuance.

2. On or before October 9, 1993, the owner or operator of the solid waste management facility has submitted to the director:

a. An acknowledgment that the owner or operator is familiar with state and federal law and regulations pertaining to solid waste management facilities operating after October 9, 1993, including post-closure care, corrective action and financial responsibility requirements;

b. A statement signed by a registered professional engineer that he has reviewed the regulations established by the department for solid waste management facilities, including the open dump criteria contained therein, that he has inspected the facility and examined the monitoring data compiled for the facility in accordance with applicable regulations and that, on the basis of his inspection and review, he has concluded:

(1) That the facility is not an open dump;

(2) That the facility does not pose a substantial present or potential hazard to human health and the environment; and

(3) That the leachate or residues from the facility do not pose a threat of contamination or pollution of the air, surface water or ground water in a manner constituting an open dump or resulting in a substantial present or potential hazard to human health or the environment; and

c. A statement signed by the owner or operator:

(1) That the facility complies with applicable financial assurance regulations; and

(2) Estimating when the facility will reach its vertical design capacity.

3. Enlargement or closure of facilities.

a. The facility may not be enlarged prematurely to avoid compliance with this chapter when such enlargement is not consistent with past operating practices, the permit or modified operating practices to ensure good management.

b. The facility shall not dispose of solid waste in any portion of a disposal area that has received final cover or has not received waste for a period of one year, in accordance with 9 VAC 20-80-250 E. The facility shall notify the department in writing within 30 days when an area has received final cover or has not received waste for a one-year period, in accordance with 9 VAC 20-80-250 E.

c. A facility may apply for a permit, and if approved, can construct and operate a new cell that overlays

("piggybacks") over a closed area in accordance with the permit requirements of 9 VAC 20-80-250.

d. The facilities subject to the restrictions in 9 VAC 20-80-60 B are listed in Tables 2.1 and 2.2. The closure dates have already been established in: Final Prioritization and Closure Schedule for HB 1205 Disposal Areas (DEQ, September 2001). The publication of these tables is for the convenience of the regulated community and does not change established dates. Any facility including, but not limited to, those listed in Table 2.2, must cease operation if that facility meets any of the open dump criteria listed in 9 VAC 20-80-180.

e. Those facilities assigned a closure date in accordance with § 10.1-1413.2 of the Code of Virginia shall designate on a map, plat, diagram or other engineered drawing, areas in which waste will be disposed until the latest cessation of waste acceptance date as listed in Table 2.2 is achieved. This map or plat shall be placed in the operating record and a copy shall be submitted to the department for its records.

TABLE 2.1

House Bill (HB) 1205 Landfills in Postclosure Care

| Solid Waste Permit Number | Site Name | Location | Department Regional Office[1] | Date Postclosure Care Commenced |
|---|---|---|---|---|
| 21 | Jolivue Landfill | Augusta County | VRO | 12/16/05 |
| 62 | Rockingham County Sanitary Landfill | Rockingham County | VRO | 06/24/05 |
| 125 | Ivy Sanitary Landfill | Albemarle County | VRO | 08/06/04 |
| 314 | Hanover County – 301 Solid Waste Facility | Hanover County | PRO | 01/12/04 |
| 397 | Montgomery Regional Solid Waste Authority Sanitary Landfill | Montgomery County | WCRO | 04/22/02 |
| 469 | Shenandoah County Sanitary Landfill | Shenandoah County | VRO | 01/07/05 |
| 589[3] (formerly #74) | R-Board Sanitary Landfill | Stafford County | NVRO | 08/29/02 |

TABLE 2.2

Final Prioritization and Closure Schedule for House Bill (HB) 1205 Disposal Areas

| Solid Waste Permit Number and Site Name | Location | Department Regional Office[1] | Latest Cessation of Waste Acceptance Date[2] |
|---|---|---|---|
| 429 - Fluvanna County Sanitary Landfill | Fluvanna County | VRO | 12/31/07 |
| 92 - Halifax County Sanitary Landfill[3] | Halifax County | SCRO | 12/31/2007 |
| 49 - Martinsville Landfill | City of Martinsville | WCRO | 12/31/2007 |
| 14 - Mecklenburg County Landfill | Mecklenburg County | SCRO | 12/31/2007 |
| 228 - Petersburg City Landfill[3] | City of Petersburg | PRO | 12/31/2007 |
| 31 - South Boston Sanitary Landfill | Town of South Boston | SCRO | 12/31/2007 |
| 204 - Waynesboro City Landfill | City of Waynesboro | VRO | 12/31/2007 |
| 91 - Accomack County Landfill – Bobtown South | Accomack County | TRO | 12/31/2012 |
| 580 - Big Bethel Landfill | City of Hampton | TRO | 12/31/2012 |
| 182 - Caroline County Landfill | Caroline County | NVRO | 12/31/2012 |
| 149 - Fauquier County Landfill | Fauquier County | NVRO | 12/31/2012 |
| 405 - Greensville County Landfill | Greensville County | PRO | 12/31/2012 |

| | | | |
|---|---|---|---|
| 29 - Independent Hill Landfill[3] | Prince William County | NVRO | 12/31/2012 |
| 1 - Loudoun County Sanitary Landfill | Loudoun County | NVRO | 12/31/2012 |
| 194 - Louisa County Sanitary Landfill | Louisa County | NVRO | 12/31/2012 |
| 227 - Lunenburg County Sanitary Landfill | Lunenburg County | SCRO | 12/31/2012 |
| 507 - Northampton County Landfill | Northampton County | TRO | 12/31/2012 |
| 90 - Orange County Landfill | Orange County | NVRO | 12/31/2012 |
| 75 - Rockbridge County Sanitary Landfill | Rockbridge County | VRO | 12/31/2012 |
| 23 - Scott County Landfill | Scott County | SWRO | 12/31/2012 |
| 587 - Shoosmith Sanitary Landfill[3] | Chesterfield County | PRO | 12/31/2012 |
| 417 - Southeastern Public Service Authority Landfill | City of Suffolk | TRO | 12/31/2012 |
| 461 - Accomack County Landfill #2 | Accomack County | TRO | 12/31/2020 |
| 86 - Appomattox County Sanitary Landfill | Appomattox County | SCRO | 12/31/2020 |
| 582 - Botetourt County Landfill[3] | Botetourt County | WCRO | 12/31/2020 |
| 498 - Bristol City Landfill | City of Bristol | SWRO | 12/31/2020 |
| 72 - Franklin County Landfill | Franklin County | WCRO | 12/31/2020 |
| 398 - Virginia Beach Landfill #2 – Mount Trashmore II[3] | City of Virginia Beach | TRO | 12/31/2020 |

[1.] Department of Environmental Quality Regional Offices:

| | |
|---|---|
| NVRO | Northern Virginia Regional Office |
| PRO | Piedmont Regional Office |
| SCRO | South Central Regional Office |
| SWRO | Southwest Regional Office |
| TRO | Tidewater Regional Office |
| VRO | Valley Regional Office |
| WCRO | West Central Regional Office |

[2.] This date means the latest date that the disposal area must cease accepting waste.

[3.] A portion of these facilities operated under HB 1205 and another portion currently is compliant with Subtitle D requirements.

C. Facilities are authorized to expand laterally beyond the waste boundaries existing on October 9, 1993, as follows:

1. Existing captive industrial landfills.

a. Existing nonhazardous industrial waste facilities that are located on property owned or controlled by the generator of the waste disposed of in the facility shall comply with all the provisions of this chapter except as shown in subdivision 1 of this subsection.

b. Facility owners or operators shall not be required to amend their facility permit in order to expand a captive industrial landfill beyond the waste boundaries existing on October 9, 1993. Liners and leachate collection systems constructed beyond the waste boundaries existing on October 9, 1993 shall be constructed in accordance with the requirements in effect at the time of permit issuance.

c. Owners or operators of facilities which are authorized under subdivision 1 of this subsection to accept waste for disposal beyond the waste boundaries existing on October 9, 1993, shall ensure that such expanded disposal areas maintain setback distances applicable to such facilities in 9 VAC 20-80-270 A.

d. Facilities authorized for expansion in accordance with subdivision 1 of this subsection are limited to expansion to the limits of the permitted disposal area existing on October 9, 1993, or the facility boundary existing on October 9, 1993, if no discrete disposal area is defined in the facility permit.

2. Other existing industrial waste landfills.

a. Existing nonhazardous industrial waste facilities that are not located on property owned or controlled by the generator of the waste disposed of in the facility shall comply with all the provisions of this chapter except as shown in subdivision 2 of this subsection.

b. Facility owners or operators shall not be required to amend their facility permit in order to expand an industrial landfill beyond the waste boundaries existing on October 9, 1993. Liners and leachate collection systems constructed beyond the waste boundaries existing on October 9, 1993, shall be constructed in accordance with the requirements of 9 VAC 20-80-270 B.

c. Prior to the expansion of any such facility, the owner or operator submits to the department a written notice of the proposed expansion at least 60 days prior to commencement of construction. The notice shall include recent ground water monitoring data sufficient to determine that the facility does not pose a threat of contamination of ground water in a manner constituting an open dump or creating a substantial present or potential hazard to human health or the environment (see

9 VAC 20-80-180 B 4). The director shall evaluate the data included with the notification and may advise the owner or operator of any additional requirements that may be necessary to ensure compliance with applicable laws and prevent a substantial present or potential hazard to health or the environment.

d. Owners or operators of facilities which are authorized under subdivision 2 of this subsection to accept waste for disposal beyond the waste boundaries existing on October 9, 1993, shall ensure that such expanded disposal areas maintain setback distances applicable to such facilities in 9 VAC 20-80-270 A.

e. Facilities authorized for expansion in accordance with this subsection are limited to expansion to the limits of the permitted disposal area existing on October 9, 1993, or the facility boundary existing on October 9, 1993, if no discrete disposal area is defined in the facility permit.

3. Existing construction/demolition/debris landfills.

a. Existing facilities that accept only construction/demolition/debris waste shall comply with all the provisions of this chapter except as shown in subdivision 3 of this subsection.

b. Facility owners or operators shall not be required to amend their facility permit in order to expand a construction/demolition/debris landfill beyond the waste boundaries existing on October 9, 1993. Liners and leachate collection systems constructed beyond the waste boundaries existing on October 9, 1993, shall be constructed in accordance with the requirements of 9 VAC 20-80-260 B.

c. Prior to the expansion of any such facility, the owner or operator submits to the department a written notice of the proposed expansion at least sixty days prior to commencement of construction. The notice shall include recent ground water monitoring data sufficient to determine that the facility does not pose a threat of contamination of ground water in a manner constituting an open dump or creating a substantial present or potential hazard to human health or the environment (see 9 VAC 20-80-180 B 4). The director shall evaluate the data included with the notification and may advise the owner or operator of any additional requirements that may be necessary to ensure compliance with applicable laws and prevent a substantial present or potential hazard to health or the environment.

d. Owners or operators of facilities which are authorized under this subdivision 3 to accept waste for disposal beyond the active portion of the landfill existing on October 9, 1993, shall ensure that such expanded disposal areas maintain setback distances applicable to such facilities in 9 VAC 20-80-260 A and B.

e. Facilities, or portions thereof, which have reached their vertical design capacity shall be closed in compliance with 9 VAC 20-80-260 E.

f. Facilities authorized for expansion in accordance with subdivision 2 c of this subsection are limited to expansion to the permitted disposal area existing on October 9, 1993, or the facility boundary existing on October 9, 1993, if no discrete disposal area is defined in the facility permit.

4. Facilities or units undergoing expansion in accordance with the partial exemptions created by subdivision 1 b, 2 b, or 3 b of this subsection may not receive hazardous wastes generated by the exempt small quantity generators as defined by the Virginia Hazardous Waste Management Regulations (9 VAC 20-60), wastes containing free liquids for disposal on the expanded portions of the facility. Other wastes that require special handling in accordance with the requirements of Part VIII (9 VAC 20-80-630 et seq.) of this chapter or which contain hazardous constituents which would pose a risk to health or environment, may only be accepted with specific approval by the director.

5. Nothing in subdivisions 1 b, 2 b, and 3 b of this subsection shall alter any requirement for ground water monitoring, financial responsibility, operator certification, closure, post-closure care, operation, maintenance or corrective action imposed under this chapter, or impair the powers of the director to revoke or amend a permit pursuant to § 10.1-1409 of the Virginia Waste Management Act or Part VII (9 VAC 20-80-480 et seq.) of this chapter.

D. An owner or operator of a previously unpermitted facility that managed materials previously exempt from this chapter shall submit a complete application for a solid waste management facility permit or a permit amendment in accordance with Part VII of this chapter within six months after these materials have been defined or identified as solid wastes. If the director finds that the application is complete, the owner or operator may continue to manage the newly defined or identified waste until a permit or permit amendment decision has been rendered or until a date two years after the change in definition whichever occurs sooner, provided however, that in so doing he shall not operate or maintain an open dump, a hazard, or a nuisance.

The owner or operator of an existing solid waste management facility shall comply with this regulation beginning September 24, 2003. Where necessary conflicts exist between the existing facility permit and the new requirements of the regulations, the regulations shall supersede the permit except where the standards in the permit are more stringent than the regulation. Language in an existing permit shall not act as a shield to compliance with the regulation, unless a variance to the regulations has been approved by the director in accordance with the provisions of Part IX (9 VAC 20-80-730 et seq.) of this chapter. Existing facility permits will not be

required to be updated to eliminate requirements conflicting with the regulation, except at the request of the director or if a permit is amended for another reason. However, all sanitary landfills and incinerators that accept waste from jurisdictions outside of Virginia must submit the materials required under 9 VAC 20-80-113 D by March 22, 2004.

E. Conditional exemptions. The following solid waste management practices are exempt from this chapter provided no open dump, hazard, or public nuisance is created:

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

2. Composting of household waste generated at a single-family residence at the site of generation.

3. Composting activities performed for educational purposes as long as no more than five tons of materials are on site at any time. Greater quantities will be allowed with suitable justification presented to the department. For quantities greater than five tons approval from the director will be required prior to composting.

4. Management of wastes regulated by the State Board of Health, the State Water Control Board, or any other state agency with such authority.

5. On-site management of soil contaminated with petroleum products required as part of an ongoing corrective action by the department under Article 9 (§ 62.1-44.34:8 et seq.) or Article 11 (§ 62.1-44.34:14 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia. Management of the contaminated soils away from the site of generation is subject to this chapter unless specifically provided for in the approved corrective action plan.

6. Management of solid waste in appropriate containers at the site of its generation, provided that:

a. Putrescible waste is not stored more than seven days between time of collection and time of removal for disposal; and

b. All nonputrescible wastes that are on a system of regularly scheduled collection for disposal with collections occurring at intervals of less than 90 days.

7. Landfilling of solid waste which includes only rocks, brick, block, dirt, broken concrete and road pavement and which contains no paper, yard, or wood wastes.

8. On-site management of solid wastes generated by the wastewater treatment facilities provided such management is subject to a regulation promulgated by the State Water Control Board.

9. Placing of stumps and other land clearing debris from agricultural or forestal activities on site of the clearing where no debris is accepted from off-site. This does not include the burial of these materials.

10. Placing of solid wastes including large tires from mining equipment from mineral mining activities on a mineral mining site in compliance with a permit issued by the Department of Mines, Minerals and Energy where no such waste is accepted from off-site and does not contain any municipal solid wastes or other special wastes. Placement of such solid wastes shall be accomplished in an environmentally sound manner.

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

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

a. The wastes are managed in the following manner:

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

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

(3) Combustion and fire are prevented.

(4) They do not become putrescent.

b. Any facility storing waste materials under the provisions of this section obtains a storm water discharge permit if they are considered a significant source under the provisions of 9 VAC 25-31-120 A 1 e.

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

d. Siting provisions.

(1) All waste materials are stored at the site of the industrial activity that produces them.

(2) A 50-foot fire break is maintained between the wastepile and any structure or treeline.

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

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

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

e. If the industrial activities at the site cease, any waste stored at the site must be properly disposed in a permitted

solid waste management facility within 90 days. The director can approve longer time frames with appropriate justification. Justification must be provided in writing no more than 30 days after ceasing industrial activity at the site.

f. Waste piles that do not meet these provisions are required to obtain a permit in accordance with the provisions in 9 VAC 20-80-480 and meet all of the requirements in 9 VAC 20-80-400. Facilities that do not comply with the provisions of this subdivision and fail to obtain a permit are subject to the provisions of 9 VAC 20-80-90 for unpermitted facilities.

F. This chapter is not applicable to units or facilities closed in accordance with regulations or permits in effect prior to December 21, 1988, unless releases, as defined in Part I (9 VAC 20-80-10 et seq.) of this chapter, from such closed facilities cause the site to be classified as an open dump, a hazard or a nuisance under § 10.1-1402(21) of the Code of Virginia, or a site where improper waste management has occurred under § 10.1-1402(19) of the Code of Virginia.

**9 VAC 20-80-250. Sanitary landfill.**

The provisions of this section shall apply to the siting, design, construction, operation, monitoring, and closure of a sanitary landfill.

A. Siting.

1. Airport safety.

a. Owners or operators of all sanitary landfills that are located within 10,000 feet of any airport runway end used by turbojet aircraft or within 5,000 feet of any airport runway end used by only piston-type aircraft shall demonstrate that the units are designed and operated so that the facility does not pose a bird hazard to aircraft.

b. Owners or operators proposing to site new sanitary landfill and lateral expansions of an existing facility within a five mile radius of any airport runway end used by turbojet or piston-type aircraft shall notify the affected airport and the Federal Aviation Administration (FAA). Owners and operators should also be aware that effective April 5, 2000, 49 USC § 44718 (d), restricts the establishment of landfills within six miles of public airports under certain conditions. Provisions for exemptions from this law also exist.

c. The owner or operator of an existing facility shall submit the demonstration in subdivision 1 a of this subsection to the director by October 9, 1993.

2. Floodplains. Owners or operators of all sanitary landfills located in 100-year floodplains shall demonstrate that the facility will not restrict the flow of the 100-year flood, reduce the temporary water storage capacity of the floodplain, or result in washout of solid waste so as to pose a hazard to human health and the environment. The owner or operator of an existing facility shall submit the demonstration to the director by October 9, 1993. No new sanitary landfill after July 1, 1999 shall be constructed in a 100-year flood plain.

3. Unstable areas.

a. Owners or operators of all sanitary landfills located in an unstable area shall demonstrate that engineering measures have been incorporated into the facility's design to ensure that the integrity of the structural components of the facility will not be disrupted. He shall consider the following factors, at a minimum, when determining whether an area is unstable:

(1) On-site or local soil conditions that may result in differential settling and subsequent failure of structural components;

(2) On-site or local geologic or geomorphologic features that may result in sudden or non-sudden events and subsequent failure of structural components; and

(3) On-site or local man-made features or events (both surface and subsurface) that may result in sudden or non-sudden events and subsequent failure of structural components.

b. The owner or operator of an existing facility shall submit the demonstration to the director by October 9, 1993.

4. Wetlands.

a. After July 1, 1999, new sanitary landfills and lateral expansions of existing facilities, except those impacting less than 1.25 acres of nontidal wetlands, shall not be constructed in any tidal wetland or nontidal wetland contiguous to any surface water body.

b. Construction allowed under the provisions of s 10.1-1408.5 will be allowed only with appropriate approvals under the provisions of 9 VAC 25-210. In addition, the following additional demonstrations must be made to the director:

(1) Where applicable under § 404 of the Clean Water Act or § 62.1-44.15:5 of the Virginia wetlands laws, the presumption that a practicable alternative to the proposed landfill is available that does not involve wetlands is clearly rebutted;

(2) The construction and operation of the facility will not:

(a) Cause or contribute to violations of any applicable water quality standard;

(b) Violate any applicable toxic effluent standard or prohibition under § 307 of the Clean Water Act;

(c) Jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of a critical habitat, protected under the Endangered Species Act of 1973; and

(d) Violate any requirement under the Marine Protection, Research, and Sanctuaries Act of 1972 for the protection of a marine sanctuary;

(3) The facility will not cause or contribute to significant degradation of wetlands. The owner or operator shall demonstrate the integrity of the facility and its ability to protect ecological resources by addressing the following factors:

(a) Erosion, stability, and migration potential of native wetland soils, muds and deposits used to support the facility;

(b) Erosion, stability, and migration potential of dredged and fill materials used to support the facility;

(c) The volume and chemical nature of the waste managed in the facility;

(d) Impacts on fish, wildlife, and other aquatic resources and their habitat from release of the solid waste;

(e) The potential effects of catastrophic release of waste to the wetland and the resulting impacts on the environment; and

(f) Any additional factors, as necessary, to demonstrate that ecological resources in the wetland are sufficiently protected.

(4) To the extent required under § 404 of the Clean Water Act or applicable Virginia wetlands laws, steps have been taken to attempt to achieve no net loss of wetlands (as defined by acreage and function) by first avoiding impacts to wetlands to the maximum extent practicable as required by subdivision 4 b (1) of this subsection, then minimizing unavoidable impacts to the maximum extent practicable, and finally offsetting remaining unavoidable wetland impacts through all appropriate and practicable compensatory mitigation actions (e.g., restoration of existing degraded wetlands or creation of man-made wetlands); and

(5) Sufficient other information is available to enable the department to make a reasonable determination with respect to these demonstrations.

5. Fault areas. New sanitary landfills and lateral expansions of existing facilities shall not be located within 200 feet of a fault that has had displacement in Holocene time unless the owner or operator demonstrates to the director that an alternative setback distance of less than 200 feet will prevent damage to the structural integrity of the facility and will be protective of human health and the environment.

6. Seismic impact zones. New sanitary landfills and lateral expansions of existing facilities shall not be located in seismic impact zones, unless the owner or operator demonstrates to the director that all containment structures, including liners, leachate collection systems, and surface water control systems, are designed to resist the maximum horizontal acceleration in lithified earth material for the site.

7. No sanitary landfill disposal unit or leachate storage unit shall extend closer than:

a. 100 feet of any regularly flowing surface water body or river;

b. 50 feet from the facility boundary;

c. 500 feet of any well, spring or other ground water source of drinking water in existence at the time of application;

d. One thousand feet from the nearest edge of the right-of-way of any interstate or primary highway or 500 feet from the nearest edge of the right-of-way of any other highway or city street except the following:

(1) Units which are screened by natural objects, plantings, fences, or other appropriate means so as to minimize the visibility from the main-traveled way of the highway or city street, or otherwise removed from sight;

(2) Units which are located in areas which are zoned for industrial use under authority of state law or in unzoned industrial areas as determined by the Commonwealth Transportation Board;

(3) Units which are not visible from the main-traveled way of the highway or city street.

NOTE: This requirement is based on § 33.1-348 of the Code of Virginia. The regulatory responsibility for this standard rests with the Virginia Department of Transportation.

e. 200 feet from the active filling areas to any residence, school, hospital, nursing home or recreational park area in existence at the time of application.

NOTE: All distances are to be measured in the horizontal plane.

8. No new facility shall be located in areas where ground water monitoring cannot be conducted in accordance with subsection D of this section unless this requirement is suspended by the director pursuant to subdivision 1 c of this subsection.

9. No new sanitary landfill shall be constructed:

a. Within five miles upgradient of any existing surface or ground water public water supply intake or reservoir except as allowed under the provisions of § 10.1-1408.4 B 3 of the Code of Virginia;

b. In any area vulnerable to flooding resulting from dam failures;

c. Over a sinkhole or less than 100 feet over a solution cavern associated with karst topography;

d. In any park or recreational area, wildlife management area or area designated by the federal or state agency as the critical habitat of any endangered species; or

e. Over an active fault.

10. Certain site characteristics may also prevent approval or require substantial limitations on the site use or require incorporation of sound engineering controls. Examples include but are not limited to:

a. Excessive slopes (greater than 33%);

b. Lack of daily cover materials;

c. Springs, seeps, or other ground water intrusion into the site;

d. The presence of gas, water, sewage, or electrical or other transmission lines under the site; or

e. The prior existence on the site of an open dump, unpermitted landfill, lagoon, or similar unit, even if such a unit is closed, will be considered a defect in the site unless the proposed unit can be isolated from the defect by the nature of the unit design and the ground water for the proposed unit can be effectively monitored.

11. Specific site conditions may be considered in approving an exemption of a site from the siting restrictions of subdivision 10 of this subsection.

12. Facilities unable to furnish the demonstration required under subdivision 1 c, 2, or 3 b of this subsection shall close in accordance with the requirements of subsection E of this section and initiate post-closure care as required by subsection F of this section by October 9, 1996.

13. The deadline for closure required by subdivision 12 of this subsection may be extended by the director up to two years if the owner or operator demonstrates that:

a. There is no alternate disposal capacity; and

b. There is no immediate threat to human health and the environment.

B. Design/construction. The following design and construction requirements apply to all sanitary landfills:

1. All facilities shall be surrounded by a means of controlling vehicular access and preventing illegal disposal. All access will be limited by gates, and such gates shall be securable and equipped with locks.

2. Access roads extending from the public road to the entrance of a facility or site and any public access area shall be all-weather, and shall be provided with a base capable of withstanding anticipated heavy vehicle loads.

3. Each solid waste disposal facility should be provided with an adequately lighted and heated shelter where operating personnel can exercise site control and have access to essential sanitation facilities. Lighting, heat and sanitation facilities may be provided by portable equipment as necessary.

4. Aesthetics shall be considered in the design of a facility or site. Use of artificial or natural screens shall be incorporated into the design for site screening and noise attenuation to less than 80 dBA at the facility boundary. The design should reflect those requirements, if any, that are determined from the long-range plan for the future use of the site.

5. All sanitary landfills shall be equipped with permanent or mobile telephone or radio communications.

6. All facilities shall be designed to provide and maintain:

a. A run-on control system to prevent flow onto the active portion of the landfill during the peak discharge from a 25-year storm;

b. A run-off control system from the active portion of the landfill to collect and control at least the water volume resulting from a 24-hour, 25-year storm. Run-off from the active portion of the landfill unit shall be handled in a manner that will not cause the discharge of:

(1) Pollutants into waters of the United States, including wetlands, that violates any requirements of the Clean Water Act, including, but-not limited to, the Virginia Pollutant Discharge Elimination system (VPDES) requirements; and

(2) Cause the discharge of a nonpoint source of pollution to waters of the United States, including wetlands, that violates any requirement of an area-wide or state-wide water quality management plan that has been approved under ~~section~~ § 208 or 319 of the Clean Water Act, as amended.

c. Drainage structures to prevent ponding and erosion, and to minimize infiltration of water into solid waste cells.

7. A ground water monitoring system shall be installed at all sanitary landfills in accordance with 9 VAC 20-80-300.

8. Each site design shall include a gas management system to control decomposition gases generated within a sanitary landfill in accordance with 9 VAC 20-80-280.

9. All sanitary landfills shall be underlain by a composite liner system as follows:

a. Base preparation to protect the liner by preventing liner failure through subsidence or structural failure of the liner system.

b. A lower liner consisting of at least a two-foot layer of compacted soil with a hydraulic conductivity of no more than $1x10^{-7}$ cm/sec.

c. An upper component consisting of a minimum 30-mil flexible membrane liner (FML). If high density polyethylene (HDPE) is used as an FML, it shall be at least 60-mil thick. The FML component shall be:

(1) Installed in direct and uniform contact with the compacted soil liner;

(2) Placed in accordance with an approved construction quality control/quality assurance program submitted with the design plans; and

(3) Placed with a minimum of two percent slope for leachate drainage.

10. The applicant may submit a petition in accordance with 9 VAC 20-80-780 to allow for an alternate design of the liner system.

11. The design shall provide for leachate management which shall include its collection, treatment, storage, and disposal. Leachate control and monitoring systems are subject to the requirements in 9 VAC 20-80-290.

12. Landfill site designs shall provide sufficient area to allow for management of leachate. Leachate from a solid waste disposal facility shall not be permitted to drain or discharge into surface waters except when authorized under a VPDES permit issued by the State Water Control Board or otherwise approved by that agency.

13. Compacted lifts of deposited waste shall be designed for a height compatible with daily waste volumes keeping work face areas to a minimum and allowing for a daily compacted cover. Lift height is not recommended to exceed 10 feet for maximum compaction.

14. Final contours of the finished landfill shall be specified. Design of final contours shall consider subsequent site uses, existing natural contours, surface water management requirements, and the nature of the surrounding area. The final elevation of the landfill shall be limited by the structural capacity of the liner and leachate collection and removal system and by stability of foundation and slopes. The final contour shall not cause structural damage or collapse of the leachate collection system.

15. Finished side slopes shall be stable and be configured to adequately control erosion and runoff. Slopes of 33% will be allowed provided that adequate runoff controls are established. Steeper slopes may be considered if supported by necessary stability calculations and appropriate erosion and runoff control features. All finished slopes and runoff management facilities shall be supported by necessary calculations and included in the design manual. The top slope shall be at least two percent after allowance for settlement to prevent ponding of water.

16. Two survey bench marks shall be established and maintained on the landfill site, and their location identified or recorded on drawings and maps of the facility.

17. Each sanitary landfill shall be constructed in accordance with approved plans, which shall not be subsequently modified without approval by the department.

18. Construction quality assurance program.

a. General.

(1) A construction quality assurance (CQA) program is required for all landfill units. The program shall ensure that the constructed unit meets or exceeds all design criteria and specifications in the permit. The program shall be developed and implemented under the direction of a CQA officer who is a registered professional engineer.

(2) The CQA program shall address the following physical components, where applicable:

(a) Foundations;

(b) Low-hydraulic conductivity soil liners;

(c) Synthetic membrane liners;

(d) Leachate collection and removal systems;

(e) Gas management components; and

(f) Final cover systems.

b. Written CQA plan. The owner or operator shall develop and implement a written CQA plan. The plan shall identify steps that will be used to monitor and document the quality of materials and the condition and manner of their installation. The CQA plan shall include:

(1) Identification of applicable units, and a description of how they will be constructed.

(2) Identification of key personnel in the development and implementation of the CQA plan, and CQA officer qualifications.

(3) A description of inspection and sampling activities for all unit components identified in subdivision 18 a (2) of this subsection including observations and tests that will be used before, during, and after construction to ensure that the construction materials and the installed unit components meet the design specifications. The description shall cover: sampling

size and locations; frequency of testing; data evaluation procedures; acceptance and rejection criteria for construction materials; plans for implementing corrective measures; and data or other information to be recorded.

c. Contents of program. The CQA program shall include observations, inspections, tests, and measurements sufficient to ensure:

(1) Structural stability and integrity of all components of the unit identified in subdivision 18 a (2) of this subsection;

(2) Proper construction of all components of the liners, leachate collection and removal system, gas management system, and final cover system, according to permit specifications and good engineering practices, and proper installation of all components (e.g., pipes) according to design specifications;

(3) Conformity of all materials used with design and other material specifications.

(4) The permeability of the liner soil. Soil liner construction will be demonstrated on a test pad where permeability will be confirmed using an in situ testing method.

d. Certification. Waste shall not be received in a landfill unit until the owner or operator has submitted to the department by certified mail or hand delivery a certification signed by the CQA officer that the approved CQA plan has been successfully carried out and that the unit meets the requirements of this section. Documentation supporting the CQA officer's certification shall be submitted to the department upon request. An additional engineer's certification is required under the provisions of 9 VAC 20-80-550 A 1.

C. Operation.

1. No hazardous wastes as defined by the Virginia Hazardous Waste Management Regulations (9 VAC 20-60) other wastes listed in 9 VAC 20-80-250 C 17, PCB waste or regulated medical waste shall be accepted at the landfill except as specifically authorized by the facility permit or by the director. The owner or operator shall implement an inspection program to be conducted by landfill personnel to detect and prevent disposal of such wastes. In addition to implementing the requirements of the control program for unauthorized waste in 9 VAC 20-80-113, the program shall include, at a minimum:

a. The procedures for the routine monitoring and observation of incoming waste at the working face of the landfill;

b. The procedures for random inspections of incoming loads to detect whether incoming loads contain regulated hazardous wastes, PCB wastes, regulated medical waste, or other unauthorized solid waste and ensure that such wastes are not accepted at the facility. The owner or operator shall inspect a minimum of 1.0% of the incoming loads of waste. In addition, if the facility receives waste generated outside of Virginia and the regulatory structure in that jurisdiction allows for the disposal or incineration of wastes as municipal solid waste that Virginia's laws and regulations prohibit or restrict, the facility shall inspect a minimum of 10% of the incoming loads of waste from that jurisdiction. All facilities receiving waste generated outside of Virginia shall submit an evaluation consistent with 9 VAC 20-80-113 D;

c. Records of all inspections, to include at a minimum time and date of the inspection, the personnel involved, the hauler, the type of waste observed, the identity of the generator of the waste if it can be determined, the location of the facility where the waste was handled prior to being sent to the landfill and the results of the inspection. All records associated with unauthorized waste monitoring and incidents shall be retained on-site for a minimum of three years and shall be available for inspection by the department;

d. Training of facility personnel to recognize and manage regulated hazardous waste, PCB wastes, regulated medical waste, and other unauthorized solid wastes;

e. Notification of the department if a regulated hazardous waste, PCB waste, regulated medical waste or other unauthorized waste is discovered at the facility. This notification will be made orally as soon as possible, but no later than 24 hours after the occurrence and shall be followed within 10 days by a written report that includes a description of the event, the cause of the event, the time and date of the event and the actions taken to respond to the event; and

f. All regulated medical waste, PCB waste or other unauthorized solid waste that are detected at a facility shall be isolated from the incoming waste and properly contained until arrangements can be made for proper transportation for treatment or disposal at an approved facility.

2. Compaction and cover requirements.

a. Unless provided otherwise in the permit, solid waste shall be spread into two-foot layers or less and compacted at the working face, which shall be confined to the smallest area practicable.

b. Lift heights shall be sized in accordance with daily waste volumes. Lift height is not recommended to exceed 10 feet.

c. Daily cover consisting of six inches of compacted soil or other approved material shall be placed upon and maintained on all exposed solid waste prior to the end of each operating day, or at more frequent intervals if necessary, to control disease vectors, fires, odors, blowing litter, and scavenging. Alternate materials of an alternate thickness may be approved by the director if the owner or operator demonstrates that the alternate material and thickness control disease vectors, fires, odors, blowing litter, and scavenging without presenting a threat to human health and the environment. At least three days of acceptable cover soil or approved material at the average usage rate should be maintained at the landfill or readily available at all times.

d. Intermediate cover of at least six inches of additional compacted soil shall be applied and maintained whenever an additional lift of refuse is not to be applied within 30 days. Further, all areas with intermediate cover exposed shall be inspected as needed, but not less than weekly. Additional cover material shall be placed on all cracked, eroded, and uneven areas as required to maintain the integrity of the intermediate cover system.

e. Final cover construction will be initiated and maintained in accordance with the requirements of subdivision E 1 b of this section when the following pertain:

(1) An additional lift of solid waste is not to be applied within one year.

(2) Any area of a landfill attains final elevation and within 90 days after such elevation is reached. The director may approve alternate timeframes if they are specified in the facility's closure plan.

(3) An entire landfill's permit is terminated for any reason, and within 90 days of such denial or termination.

f. Vegetative cover with proper support layers shall be established and maintained on all exposed final cover material within four months after placement, or as specified by the department when seasonal conditions do not permit. Mowing will be conducted a minimum of twice a year or at a frequency suitable for the species of vegetative cover as specified in the facility permit.

g. Areas where waste has been disposed that have not received waste within 30 days will not have slopes exceeding the final cover slopes specified in the permit or 33%, whichever is least.

3. Access to a solid waste disposal facility shall be permitted only when an attendant is on duty and only during daylight hours, unless otherwise specified in the facility permit.

4. Disease vectors shall be controlled using techniques appropriate for the protection of human health and the environment.

5. Safety hazards to operating personnel shall be controlled through an active safety program consistent with the requirements of 29 CFR Part 1910.

6. Adequate numbers and types of properly maintained equipment shall be available to a facility for operation. Provision shall be made for substitute equipment to be available within 24 hours should the former become inoperable or unavailable. Operators with training appropriate to the tasks they are expected to perform and in sufficient numbers for the complexity of the site shall be on the site whenever it is in operation. Equipment and operators provided will not be satisfactory unless they ensure that the site is managed with a high degree of safety and effectiveness.

7. Owners or operators shall implement a gas management plan in accordance with 9 VAC 20-80-280 that will ensure that:

a. The concentration of methane gas generated by the facility does not exceed 25 percent of the lower explosive limit for methane in facility structures (excluding gas control or recovery system components); and

b. The concentration of methane gas does not exceed the lower explosive limit for methane at the facility boundary.

8. Burning waste.

a. Owners or operators shall ensure that the units do not violate any applicable requirements developed by the State Air Pollution Control Board or promulgated by the EPA administrator pursuant to § 110 of the Clean Air Act, as amended (42 USC §§ 7401 to 7671q).

b. Open burning of solid waste, except for infrequent burning of agricultural wastes, silvicultural wastes, landclearing debris, diseased trees, or debris from emergency cleanup operations is prohibited. There shall be no open burning permitted on areas where solid waste has been disposed or is being used for active disposal.

9. The owner or operator shall be responsible for extinguishing any fires that may occur at the facility. A fire control plan will be developed which outlines the response of facility personnel to fires. The fire control plan will be provided as an attachment to the emergency contingency plan required under the provisions of 9 VAC 20-80-520 C 2 k. The fire control plan will be available for review upon request by the public.

10. Solid waste shall not be deposited in, nor shall it be permitted to enter any surface waters or ground waters.

11. Owners or operators shall maintain the run-on/runoff control systems designed and constructed in accordance with subdivision B 6 of this section.

12. Sanitary landfills shall not:

a. Cause a discharge of pollutants into waters of the United States, including wetlands, that violates any requirements of the Clean Water Act (33 USC § 1251 et seq.), including, but not limited to, the Virginia Pollutant Discharge Elimination System (VPDES) requirements and Virginia Water Quality Standards (9 VAC 25-260).

b. Cause the discharge of a nonpoint source of pollution to waters of the United States, including wetlands, that violates any requirement of an area-wide or state-wide water quality management plan that has been approved under § 208 or 319 of the Clean Water Act (33 USC § 1251 et seq.), as amended or violates any requirement of the Virginia Water Quality Standards (9 VAC 25-260).

13. Housekeeping.

a. Litter and blowing paper shall be confined to refuse holding and operating areas by fencing or other suitable control means.

b. Dust and odors shall be controlled so they do not constitute nuisances or hazards.

c. Salvaging may be permitted by a solid waste disposal facility operator, but shall be controlled within a designated salvage area to preclude interference with operation of the facility and to avoid the creation of hazards or nuisances.

d. Fugitive dust and mud deposits on main off-site roads and access roads shall be minimized at all times to limit nuisances.

e. Internal roads in the landfill shall be maintained to be passable in all weather by ordinary vehicles. All operation areas and units shall be accessible; gravel or other finish materials are usually required to accomplish this. Provisions shall be made to prevent tracking of mud onto public roads by vehicles leaving the site.

f. The open working face of a landfill shall be kept as small as practicable, determined by the tipping demand for unloading.

g. A sanitary landfill which is located within 10,000 feet of any airport runway used for turbojet aircraft or 5,000 feet of any airport runway used by only piston type aircraft, shall operate in such a manner that the facility does not increase or pose additional bird hazards to aircraft.

h. All facility appurtenances listed in subsection B of this section shall be properly maintained. These appurtenances include, but are not limited to, access controls, shelters, communications equipment, run-on and run-off controls, gas and ground water systems, liner systems, leachate collection control systems and the landfill cap.

14. Ground water monitoring program meeting the requirements of subsection D of this section shall be implemented.

15. A corrective action program meeting the requirements of 9 VAC 20-80-310 is required whenever the ground water protection standard is exceeded.

16. Sanitary landfills may receive the following types of solid wastes subject to specific limitations in the permit:

a. Agricultural waste.

b. Ashes and air pollution control residues that are not classified as hazardous waste. Incinerator and air pollution control residues should be incorporated into the working face and covered at such intervals as necessary to prevent them from becoming airborne.

c. Commercial waste.

d. Compost.

e. Construction waste.

f. Debris waste.

g. Demolition waste.

h. Discarded material.

i. Garbage.

j. Household waste.

k. Industrial waste meeting all criteria contained herein.

l. Inert waste.

m. Institutional waste except regulated medical waste as specified in the Regulated Medical Waste Management Regulations (9 VAC 20-120).

n. Municipal solid waste.

o. Putrescible waste. Occasional animal carcasses may be disposed of within a sanitary landfill. Large numbers (over 20 cy) of animal carcasses may be received with prior notification of the department. When large numbers of carcasses are received, they shall be placed in a separate area within the disposal unit and provided with a cover of compacted soil or other suitable material.

p. Refuse.

q. Residential waste.

r. Rubbish.

s. Scrap metal.

t. Sludges. Water treatment plant sludges containing no free liquid and stabilized, digested or heat treated wastewater treatment plant sludges containing no free liquid may be placed on the working face along with municipal solid wastes and covered with soil or municipal solid wastes. The quantities accepted should be determined by operational conditions encountered at the working face. For existing facilities without an adequate leachate collection system, only a limited quantity of sludge may be accepted. A maximum ratio of one ton of sludge per five tons of solid waste per day will be considered. Generation of leachate will be a basis for restriction of sludge disposal at such existing facilities.

u. Trash.

v. White goods. Provided that all white goods are free of chlorofluorocarbons and PCBs prior to placement on the working face.

w. Nonregulated hazardous wastes and treated wastes rendered nonhazardous by specific approval only.

x. Special wastes as approved by the director.

y. Waste oil that has been adequately adsorbed in the course of a site cleanup.

z. Vegetative waste.

aa. Yard waste.

17. Sanitary landfills may not receive the following wastes:

a. Free liquids.

(1) Bulk or noncontainerized liquid waste, unless:

(a) The waste is household waste; or

(b) The waste is leachate or gas condensate derived from that landfill and the facility is designed with a composite liner and leachate collection system as described in subdivision B 9 of this section and 9 VAC 20-80-290 B; or

(2) Containers holding liquid waste, unless:

(a) The container is a small container similar in size to that normally found in household waste;

(b) The container is designed to hold liquids for use other than storage; or

(c) The waste is household waste.

b. Regulated hazardous wastes.

c. Solid wastes, residues, or soils containing more than 1.0 ppb (parts per billion) TEF (dioxins).

d. Solid wastes, residues, or soils containing 50.0 ppm (parts per million) or more of PCB's except as allowed under the provisions of 9 VAC 20-80-650.

e. Unstabilized sewage sludge as defined by the Department of Health or sludges that have not been dewatered.

f. Pesticide containers that have not been triple rinsed and crushed.

g. Drums that are not empty, properly cleaned and opened.

h. Contaminated soil unless approved by the director in accordance with the requirements of 9 VAC 20-80-630 or 9 VAC 20-80-700.

18. Reasonable records to include date, quantity by weight or volume, and origin shall be maintained on solid waste received and processed to fulfill the requirements of the Solid Waste Information and Assessment Program, the Control Program for Unauthorized Waste. Such information shall be made available to the department for examination or use when requested.

D. Ground water monitoring. Ground water monitoring program shall be instituted at all sanitary landfills in accordance with the requirements contained in 9 VAC 20-80-300.

E. Closure.

1. Closure criteria. All sanitary landfills shall be closed in accordance with the procedures set forth as follows:

a. The owner or operator shall close his facility in a manner that minimizes the need for further maintenance, and controls, minimizes or eliminates, to the extent necessary to protect human health and the environment, the post-closure escape of uncontrolled leachate, surface runoff, or waste decomposition products to the ground water, surface water, decomposition gas migration, or to the atmosphere.

b. Final cover system. Owner or operator of all sanitary landfills shall install a final cover system that is designed to achieve the performance requirements of subdivision 1 a of this subsection.

(1) The final cover system shall be designed and constructed to:

(a) Have an 18-inch infiltration layer with a hydraulic conductivity less than or equal to the hydraulic conductivity of any bottom liner system or natural subsoils present, or a hydraulic conductivity no greater than $1x10^{-5}$ cm/sec, whichever is less; and

(b) Minimize infiltration through the closed disposal unit by the use of an infiltration layer that is constructed of earthen material; and

(c) Minimize erosion of the final cover by the use of an erosion layer that contains a minimum of 6 inches of earthen material that is capable of sustaining native plant growth, and provide for protection of the infiltration layer from the effects of erosion, frost, and wind.

(2) Finished side slopes shall be stable and be configured to adequately control erosion and runoff. Slopes of 33% will be allowed provided that adequate runoff controls are established. Steeper slopes may be considered if supported by necessary stability calculations and appropriate erosion and runoff control features. All finished slopes and runoff management facilities shall be supported by necessary calculations and included in the design manual. To prevent ponding of water, the top slope shall be at least two percent after allowance for settlement.

2. The director may approve an alternate final cover design that includes:

a. An infiltration layer that achieves an equivalent reduction in infiltration as the infiltration layer specified in subdivision 1 b (1) (a) of this subsection; and

b. An erosion layer that provides equivalent protection from wind and water erosion as the erosion layer specified in subdivision 1 b (1) (c) of this subsection.

3. Closure plan and amendment of plan.

a. The owner or operator of a solid waste disposal facility shall have a written closure plan. This plan shall identify the steps necessary to completely close the facility at the point of the permit period when the operation will be the most extensive and at the end of its intended life. The closure plan shall include, at least:

(1) A description of those measures to be taken and procedures to be employed to comply with this subsection.

(2) An estimate of the largest area ever requiring a final cover as required at any time during the active life;

(3) An estimate of the maximum inventory of wastes ever on-site over the active life of the landfill facility; and

(4) A schedule for final closure which shall include, at a minimum, the anticipated date when wastes will no longer be received, the date when completion of final closure is anticipated, and intervening milestone dates which will allow tracking of the progress of closure.

b. The owner or operator may amend his closure plan at any time during the active life of the facility. The owner or operator shall so amend his plan any time changes in operating plans or facility design affects the closure plan. The amended closure plan shall be placed in the operating record.

c. The owner or operator shall notify the department whenever an amended closure plan has been prepared and placed in the operating record.

d. At least 180 days prior to beginning closure of each solid waste disposal unit, the owner or operator shall notify the department of the intent to close.

e. If the owner or operator intends to use an alternate final cover design, he shall submit a proposed design meeting the requirements of subdivision 2 of this subsection to the department at least 180 days before the date he expects to begin closure. The director will approve or disapprove the plan within 90 days of receipt.

f. Closure plans, and amended closure plans not previously approved by the director shall be submitted to the department at least 180 days before the date the owner or operator expects to begin construction activities related to closure. The director will approve or disapprove the plan within 90 days of receipt.

4. Time allowed for closure.

a. The owner or operator shall begin closure activities of each unit no later than 30 days after the date on which the unit receives the known final receipt of wastes or, if the unit has remaining capacity and there is a reasonable likelihood that the unit will receive additional wastes, no later than one year after the most recent receipt of wastes. Extensions beyond the one-year deadline for beginning closure may be granted by the director if the owner or operator demonstrates that the unit has the capacity to receive additional wastes and the owner or operator has taken and will continue to take all steps necessary to prevent threats to human health and the environment from the unclosed unit.

b. The owner or operator shall complete closure activities of each unit within six months following the beginning of closure. The director may approve a longer closure period if the owner or operator can demonstrate that the required or planned closure activities will, of necessity, take longer than six months to complete; and that the owner or operator has taken all steps to eliminate any significant threat to human health and the environment from the unclosed but inactive unit.

5. Closure implementation.

a. The owner or operator shall close each unit with a final cover as specified in subdivision 1 b of this subsection, grade the fill area to prevent ponding, and provide a suitable vegetative cover. Vegetation shall be deemed properly established when there are no large areas void of vegetation and it is sufficient to control erosion.

b. Following construction of the final cover system for each unit, the owner or operator shall submit to the department a certification, signed by a registered professional engineer verifying that closure has been completed in accordance with the requirements of this part. This certification shall include the results of the CQA/QC requirements under subdivision B 18 a (2) (e) of this section.

c. The owner or operator shall properly bait the site for rodent and vector control before final closure is initiated.

d. Following the closure of all units the owner or operator shall:

(1) Post one sign at the entrance of the facility notifying all persons of the closing, and providing a notice prohibiting further receipt of waste materials. Further, suitable barriers shall be installed at former accesses to prevent new waste from being deposited.

(2) Within 90 days, submit to the local land recording authority a survey plat prepared by a professional land surveyor registered by the Commonwealth or a person qualified in accordance with Title 54.1 of the Code of Virginia indicating the location and dimensions of landfill disposal areas. Monitoring well locations should be included and identified by the number on the survey plat. The plat filed with the local land recording authority shall contain a note, prominently displayed, which states the owner's or operator's future obligation to restrict disturbance of the site as specified.

(3) Record a notation on the deed to the facility property, or on some other instrument which is normally examined during title searches, notifying any potential purchaser of the property that the land has been used to manage solid waste and its use is restricted under subdivision F 4 c of this section. A copy of the deed notation as recorded shall be filed with the department.

(4) Submit to the department a certification, signed by a registered professional engineer, verifying that closure has been completed in accordance with the requirements of subdivision 5 d (1) through 5 d (3) of this section and the facility closure plan.

6. Inspection. The department shall inspect all solid waste management units at the time of closure to confirm that the closing is complete and adequate. It shall notify the owner of a closed facility, in writing, if the closure is satisfactory, and shall require any construction or such other steps necessary to bring unsatisfactory sites into compliance with these regulations. Notification by the department that the closure is satisfactory does not relieve the operator of responsibility for corrective action to prevent or abate problems caused by the facility.

7. Post-closure period. The post-closure care period begins on the date of the certification signed by a registered professional engineer as required in subdivision 5 d (4) of this subsection. Unless a facility completes all provisions of subdivision 5 of this subsection, the department will not consider the facility closed, and the beginning of the post-closure care period will be postponed until all provisions have been completed. If the department's inspection required by subdivision 6 of this subsection reveals that the facility has not been properly closed in accordance with this part, post closure will begin on the date that the department acknowledges proper closure has been completed.

F. Post-closure care requirements.

1. Following closure of all disposal units, the owner or operator shall conduct post-closure care of the facility. Post-closure care shall consist of at least the following:

a. Maintaining the integrity and effectiveness of any final cover, including making repairs to the cover as necessary to correct the effects of settlement, subsidence, erosion, or other events, and preventing run-on and run-off from eroding or otherwise damaging the final cover;

b. Maintaining and operating the leachate collection system in accordance with the requirements in 9 VAC 20-80-290 and 9 VAC 20-80-300. The director may allow the owner or operator to stop managing leachate if the owner or operator demonstrates that leachate no longer poses a threat to human health and the environment;

c. Monitoring the ground water in accordance with the requirements of subsection D of this section and maintaining the ground water monitoring system, if applicable; and

d. Maintaining and operating the gas monitoring system in accordance with the requirements of 9 VAC 20-80-280.

2. The post-closure care shall be conducted:

a. For 10 years in case of facilities that ceased to accept wastes before October 9, 1993; or

b. For 30 years in case of facilities that received wastes on or after October 9, 1993; or

c. As provided in subdivision 3 of this subsection.

3. The length of the post-closure care period may be:

a. Decreased by the director if the owner or operator demonstrates that the reduced period is sufficient to protect human health and the environment and this demonstration is approved by the director; or

b. Increased by the director if the director determines that the lengthened period is necessary to complete the

corrective measures or to protect human health and the environment. If the post-closure period is increased, the owner or operator shall submit a revised post-closure plan for review and approval, and continue post-closure monitoring and maintenance in accordance with the approved plan.

4. The owner or operator shall prepare a written post-closure plan that includes, at a minimum, the following information:

a. A description of the monitoring and maintenance activities required in subdivision 1 of this subsection for each disposal unit, and the frequency at which these activities will be performed;

b. Name, address, and telephone number of the person or office to contact about the facility during the post-closure period; and

c. A description of the planned uses of the property during the post-closure period. Post-closure use of the property shall not disturb the integrity of the final cover, liners, or any other components of the containment system, or the function of the monitoring systems unless necessary to comply with the requirements of this chapter. The director may approve any other disturbance if the owner or operator demonstrates that disturbance of the final cover, liner or other component of the containment system, including any removal of waste, will not increase the potential threat to human health or the environment.

5. The owner or operator shall submit a post-closure care plan for review and approval by the director whenever a post-closure care plan has been prepared or amended. Those post-closure care plans that have been placed in a facility's operating record must be reviewed and approved by the director prior to implementation.

6. Following completion of the post-closure care period for each disposal unit, the owner or operator shall submit to the department a certificate, signed by a registered professional engineer, verifying that post-closure care has been completed in accordance with the post-closure plan. The certificate shall be accompanied by an evaluation, prepared by a professional engineer licensed in the Commonwealth and signed by the owner or operator, assessing and evaluating the landfill's potential for harm to human health and the environment in the event that post-closure monitoring and maintenance are discontinued.

**9 VAC 20-80-260. Construction/demolition/debris (CDD) landfills.**

Construction/demolition/debris landfills may only receive demolition waste, construction waste, debris waste, land clearing debris, split tires, and white goods. No other wastes are authorized for the CDD landfill. Chloroflourocarbons and PCBs must be removed from white goods prior to placement on the working face.

A. Siting. The following criteria apply to all CDD landfills:

1. CDD landfills shall not be sited or constructed in areas subject to base floods unless it can be shown that the facility can be protected from inundation or washout and that the flow of water is not restricted.

2. CDD landfills shall not be sited in geologically unstable areas where inadequate foundation support for the structural components of the landfill exists. Factors to be considered when determining unstable areas shall include:

a. Soil conditions that may result in differential settling and subsequent failure of containment structures;

b. Geologic or geomorphologic features that may result in sudden or non-sudden events and subsequent failure of containment structures;

c. Man-made features or events (both surface and subsurface) that may result in sudden or non-sudden events and subsequent failure of containment structures;

d. Presence of sink holes within the disposal area.

3. Acceptable CDD landfill sites shall allow for adequate area and terrain for management of leachate if generated.

4. CDD landfill disposal area shall not be closer than 200 feet to any residence, school, hospital, nursing home or recreational park area.

5. CDD disposal or leachate storage unit may not be located closer than:

a. 100 feet of any regularly flowing surface water body or river;

b. 200 feet of any well, spring or other ground water source of drinking water; or

c. One thousand feet from the nearest edge of the right-of-way of any interstate or primary highway or 500 feet from the nearest edge of the right-of-way of any other highway or city street, except the following:

(1) Units which are screened by natural objects, plantings, fences, or other appropriate means so as to minimize the visibility from the main-traveled way of the highway or city street, or otherwise removed from sight;

(2) Units which are located in areas which are zoned for industrial use under authority of state law or in unzoned industrial areas as determined by the Commonwealth Transportation Board; or

(3) Units which are not visible from the main-traveled way of the highway or city street.

NOTE: This requirement is based on § 33.1-348 of the Code of Virginia, which should be consulted for detail. The regulatory responsibility for this standard rests with the Virginia Department of Transportation.

6. Wetlands. New CDD landfills and lateral expansions of existing facilities shall not be located in wetlands, unless the owner or operator can make the following demonstrations to the director:

a. Where applicable under § 404 of the Clean Water Act or applicable Virginia wetlands laws, the presumption is clearly rebutted that a practicable alternative to the proposed landfill exists that does not involve wetlands;

b. The construction and operation of the facility will not:

(1) Cause or contribute to violations of any applicable water quality standard;

(2) Violate any applicable toxic effluent standard or prohibition under § 307 of the Clean Water Act;

(3) Jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of a critical habitat, protected under the Endangered Species Act of 1973 (87 Stat. 884); and

(4) Violate any requirement under the Marine Protection, Research, and Sanctuaries Act of 1972 (86 Stat. 1052) for the protection of a marine sanctuary;

c. The facility will not cause or contribute to significant degradation of wetlands. The owner or operator shall demonstrate the integrity of the facility and its ability to protect ecological resources by addressing the following factors:

(1) Erosion, stability, and migration potential of native wetland soils, muds and deposits used to support the facility;

(2) Erosion, stability, and migration potential of dredged and fill materials used to support the facility;

(3) The volume and chemical nature of the waste managed in the facility;

(4) Impacts on fish, wildlife, and other aquatic resources and their habitat from release of the solid waste;

(5) The potential effects of catastrophic release of waste to the wetland and the resulting impacts on the environment; and

(6) Any additional factors, as necessary, to demonstrate that ecological resources in the wetland are sufficiently protected;

d. To the extent required under § 404 of the Clean Water Act or applicable Virginia wetlands laws, steps have been taken to attempt to achieve no net loss of wetlands (as defined by acreage and function) by first avoiding impacts to wetlands to the maximum extent practicable as required by subdivision 6 a of this subsection, then minimizing unavoidable impacts to the maximum extent practicable, and finally offsetting remaining unavoidable wetland impacts through all appropriate and practicable compensatory mitigation actions (e.g., restoration of existing degraded wetlands or creation of man-made wetlands);

e. Furnish a copy of final determinations on subdivision 6 a through d of this subsection, obtained from the U.S. Army Corps of Engineers pertaining to federal jurisdictional wetlands; and

f. Sufficient other information to enable the department to make a reasonable determination with respect to these demonstrations.

7. No new facility shall be located in areas where ground water monitoring cannot be conducted in accordance with subsection D of this section. Factors to be considered in determining whether or not a site can be monitored shall include:

a. Ability to characterize the direction of ground water flow within the uppermost aquifer;

b. Ability to characterize and define any releases from the landfill so as to determine what corrective actions are necessary;

c. Ability to perform corrective action as necessary; and

d. Ability to install a double liner system with a leachate collection system above the top liner and a monitoring collection system between the two liners.

8. The following site characteristics may also prevent approval or require substantial limitations on the site use or require incorporation of sound engineering controls:

a. Excessive slopes (greater than 33%);

b. Lack of readily available cover materials on site, or lack of a firm commitment for adequate cover material from a borrow site;

c. Springs, seeps, or other ground water intrusion into the site;

d. The presence of gas, water, sewage, or electrical or other transmission lines under the site; or

e. The prior existence on the site of an open dump, unpermitted landfill, lagoon, or similar unit, even if such a unit is closed, will be considered a defect in the site unless the proposed unit can be isolated from the defect by the nature of the unit design and the ground water for the proposed unit can be effectively monitored.

9. In strip mine pits, all coal seams and coal outcrops shall be isolated from solid waste materials by a minimum of five feet of natural or compacted soils with a hydraulic conductivity equal to or less than 1x10-7 cm/sec.

10. Specific site conditions may be considered in approving an exemption of a site from the siting restrictions of subdivisions 7 and 8 of this subsection.

B. Design/construction.

1. All CDD landfill facilities shall be surrounded on all sides by natural barriers, fencing, or an equivalent means of controlling vehicular access. All access will be limited to gates, and such gates shall be securable and equipped with locks.

2. Access roads extending from the public road to the entrance of a facility or site shall be all weather, and shall be provided with a base capable of withstanding anticipated heavy vehicle loads.

3. CDD landfill facilities should be provided with an adequately lighted and heated shelter where operating personnel have access to essential sanitation facilities. Lighting, sanitation facilities and heat may be provided by portable equipment as necessary.

4. Aesthetics shall be considered in the design of a facility or site. Use of artificial or natural screens shall be incorporated into the design for site screening and noise attenuation. The design should reflect those requirements, if any, that are determined from the long-range plan for the future use of the site.

5. All CDD landfill facilities shall be equipped with permanent or mobile telephone or radio communications.

6. All CDD landfills shall be designed to divert surface water runoff from a 25-year, 24-hour storm away from disposal areas. The design shall provide that any surface water runoff is managed so that erosion is well controlled and environmental damage is prevented.

7. Each CDD landfill facility shall be constructed in accordance with approved plans, which shall not be subsequently modified without approval by the department.

8. A leachate collection system and removal system and leachate monitoring program shall be required as detailed in 9 VAC 20-80-290. Surface impoundments or other leachate storage structures shall be so constructed that discharge to ground water will not occur. Leachate derived from the CDD landfill may be recirculated provided the CDD disposal unit is designed with a composite liner as required by 9 VAC 20-80-250 B 9 and a leachate collection system as required by 9 VAC 20-80-290.

9. A decomposition gas venting system or gas monitoring program is required unless the owner or operator can demonstrate to the department that gas formation is not a problem at the permitted landfill. A venting system will be essential at any time the concentration of methane generated exceeds 25% of the lower explosive limit within any structure or at the facility boundary. When required, the control of the decomposition gases shall be carried out in accordance with 9 VAC 20-80-280.

10. Final contours of the finished landfill shall be specified. Design of final contours shall consider subsequent site uses, existing natural contours, surface water management requirements, and the nature of the surrounding area. The final elevation of the landfill shall be limited by the structural capacity of the liner and leachate collection and removal system. The final contour shall not cause structural damage or collapse of the leachate collection system. Two survey bench marks shall be established and maintained on the landfill site, and their locations identified or recorded on drawings and maps of the facility.

11. A ground water monitoring system shall be installed at all new and existing CDD landfills in accordance with the requirements of 9 VAC 20-80-300.

12. Finished side slopes shall be stable and be configured to adequately control erosion and runoff. Slopes of 33% will be allowed provided that adequate runoff controls are established. Steeper slopes may be considered if supported by necessary stability calculations and appropriate erosion and runoff control features. All finished slopes and runoff management facilities shall be supported by necessary calculations and included in the design manual.

13. Solid waste disposal shall be at least 50 feet from the facility boundary.

14. All CDD landfills shall be underlain by a liner system as follows:

a. Compacted clay:

(1) A liner consisting of at least one-foot layer of compacted soil with a hydraulic conductivity of no more than $1x10^{-7}$ cm/sec.

(2) The liner shall be placed with a minimum of 2.0% slope for leachate drainage.

(3) The liner shall be covered with a minimum one-foot thick drainage layer composed of material having a hydraulic conductivity of $1x10^{-3}$ cm/sec or greater (lab tested).

b. Synthetic liners:

(1) Synthetic liner consisting of a minimum 30-mil thick flexible membrane. If high density polyethylene is used, it shall be at least 60-mil thick. Synthetic liners shall be proven to be compatible with the solid waste and its leachate.

(2) The liner shall be placed in accordance with an approved construction quality control/quality assurance program submitted with the design plans.

(3) The base under the liner shall be a smooth rock-free base or otherwise prepared to prevent causing liner failure.

(4) The liner shall be placed with a minimum of 2.0% slope for leachate drainage.

(5) The liner shall be covered with a 12-inch thick drainage layer and a 6-inch thick protective layer, placed above the drainage layer, both materials having a hydraulic conductivity of 1x10-3 cm/sec or greater (lab tested).

c. Other liners:

(1) Other augmented compacted clays or soils may be used as a liner provided the thickness is equivalent and the hydraulic conductivity will be equal to or less than that for compacted clay alone.

(2) The effectiveness of the proposed augmented soil liner shall be documented by using appropriate laboratory tests.

(3) Shall be placed with a minimum of 2.0% slope for leachate drainage.

d. In-place soil:

(1) Where the landfill will be separated from the ground water by low hydraulic conductivity soil as indicated by appropriate laboratory tests, which is natural and undisturbed, and provides equal or better performance in protecting ground water from leachate contamination, a liner can be developed by manipulation of the soil to form a liner with equivalent thickness and hydraulic conductivity equal to or less than that of the clay liner.

(2) Shall be prepared with a minimum of 2.0% slope for leachate drainage.

e. Double liners required or used in lieu of ground water monitoring shall include:

(1) Base preparation to protect the liner.

(2) A bottom or secondary liner which is soil, synthetic or augmented soil as indicated in subdivisions 14 a, b, and c of this subsection.

(3) A witness or monitoring zone placed above the bottom or secondary liner consisting of a minimum of 12-inch thick drainage layer composed of material with a hydraulic conductivity of 1x10-3cm/sec or greater with a network or perforated pipe, or an equivalent design.

(4) The primary liner as indicated in subdivision 14 a, b, and c of this subsection.

(5) The primary liner shall be covered with a minimum 12-inch thick drainage layer for leachate removal and a 6-inch thick protective layer placed above the drainage layer both materials having a hydraulic conductivity of 1x10-3 cm/sec or greater (lab tested).

15. If five-foot separation from seasonal high ground water can be demonstrated, a separate area may be established to receive only stumps, brush, leaves and land clearing debris. Such an area may be constructed without a liner or a leachate collection system, but may not receive any other solid waste.

16. A fire break of 50 feet shall be designed around the disposal area and all tree lines.

17. Construction quality assurance program.

a. General.

(1) A construction quality assurance (CQA) program is required for all landfill units. The program shall ensure that the constructed unit meets or exceeds all design criteria and specifications in the permit. The program shall be developed and implemented under the direction of a CQA officer who is a registered professional engineer.

(2) The CQA program shall address the following physical components, where applicable:

(a) Foundations;

(b) Low-hydraulic conductivity soil liners;

(c) Synthetic membrane liners;

(d) Leachate collection and removal systems; and

(e) Final cover systems.

b. Written CQA plan. The owner or operator shall develop and implement a written CQA plan. The plan shall identify steps that will be used to monitor and document the quality of materials and the condition and manner of their installation. The CQA plan shall include:

(1) Identification of applicable units, and a description of how they will be constructed.

(2) Identification of key personnel in the development and implementation of the CQA plan, and CQA officer qualifications.

(3) A description of inspection and sampling activities for all unit components identified in subdivision 17 a (2) of this subsection including observations and tests that will be used before, during, and after construction to ensure that the construction materials and the installed unit components meet the design

specifications. The description shall cover: sampling size and locations; frequency of testing; data evaluation procedures; acceptance and rejection criteria for construction materials; plans for implementing corrective measures; and data or other information to be recorded.

c. Contents of program. The CQA program shall include observations, inspections, tests, and measurements sufficient to ensure:

(1) Structural stability and integrity of all components of the unit identified in subdivision 17 a (2) of this subsection;

(2) Proper construction of all components of the liners, leachate collection and removal system, gas management system if required under subdivision 9 of this subsection and final cover system, according to permit specifications and good engineering practices, and proper installation of all components (e.g. pipes) according to design specifications;

(3) Conformity of all materials used with design and other material specifications; and

(4) The permeability of the liner soil. Soil liner construction will be demonstrated on a test pad where permeability will be confirmed using an in situ testing method.

d. Certification. Waste shall not be received in a landfill unit until the owner or operator has submitted to the department by certified mail or hand delivery a certification signed by the CQA officer that the approved CQA plan has been successfully carried out and that the unit meets the requirements of this section. Documentation supporting the CQA officer's certification shall be submitted to the department upon request. An additional certification is required under the provisions of 9 VAC 20-80-550 A 1.

C. Operation.

1. Access to a facility shall be permitted only when an attendant is on duty and only during daylight hours, unless otherwise specified in the permit for the facility.

2. Litter shall be confined to refuse holding and operating areas by fencing or other suitable means.

3. Dust, odors, and vectors shall be effectively controlled so they do not constitute nuisances or hazards.

4. Safety hazards to operating personnel shall be ~~prevented~~ controlled through an active safety program consistent with the requirements of 29 CFR Part 1910.

5. Adequate numbers and types of properly maintained equipment shall be available to a facility for the performance of operation. Provision shall be made for substitute equipment to be available within 24 hours should the former become inoperable or unavailable.

6. Open burning shall be prohibited.

7. Solid waste shall not be deposited in, nor shall it be permitted to enter any surface waters or ground waters.

8. Salvaging may be permitted by a solid waste disposal facility operator, but shall be controlled within a designated salvage area to preclude interference with operation of the facility and to avoid the creation of hazards or nuisances.

9. Reasonable records shall be maintained on the amount of solid waste received and processed to include date, quantity by weight or volume, and origin. Such information shall be made available to the department for examination or use when requested.

10. Fire breaks shall be installed in layers periodically as established in the facility permit. Such fire breaks shall consist of borrow materials deemed suitable as intermediate cover, and shall be placed on the top, side slopes, and working faces of the fill to a depth of at least one foot. The requirements for fire breaks may be waived, however, if the waste materials are non-combustible. The owner or operator shall be responsible for extinguishing any fires that may occur at the facility. A fire control plan will be developed that outlines the response of facility personnel to fires. The fire control plan will be provided as an attachment to the emergency contingency plan required under the provisions of 9 VAC 20-80-520 C 2 k. The fire control plan will be available for review upon request by the public.

11. Compaction and cover requirements.

a. Waste materials shall be compacted in shallow layers during the placement of disposal lifts to minimize differential settlement.

b. Compacted soil cover shall be applied as needed for safety and aesthetic purposes. A minimum one-foot thick progressive cover shall be maintained weekly such that the top of the lift is fully covered at the end of the work week. A fire break as specified in subdivision 10 of this subsection will be installed on the top, side slopes, and on the work face as weekly progressive cover or as required in the facility permit. The open working face of a landfill shall be kept as small as practicable, determined by the tipping demand for unloading.

c. When waste deposits have reached final elevations, or disposal activities are interrupted for 15 days or more, waste deposits shall receive a one-foot thick intermediate cover unless soil has already been applied in accordance with subdivision 11 b of this subsection and be graded to prevent ponding and to accelerate surface run-off.

d. Final cover construction will be initiated in accordance with the requirements of subdivision E 1 b of this section upon the completion of disposal operations or when the following pertain:

(1) When operations are suspended for six months or more.

(2) Within 90 days of any area of the landfill reaching final elevation final cover construction will be initiated in that area. The director may approve alternate timeframes if they are specified in the facility's closure plan.

(3) If, for any reason, the permit is terminated, cover construction will be initiated within 90 days of termination.

e. Vegetative cover with proper support layers shall be established and maintained on all exposed final cover material within four months after placement, or as otherwise specified by the department when seasonal conditions do not otherwise permit.

12. A ground water monitoring program meeting the requirements of subsection D of this section shall be implemented.

13. Corrective Action Program. A corrective action program meeting the requirements of 9 VAC 20-80-310 is required whenever the ground water protection standard is exceeded.

14. Leachate from a solid waste disposal facility shall not be permitted to drain or discharge into surface waters except when authorized under a VPDES permit issued pursuant to the State Water Control Board Regulation (9 VAC 25-31).

15. All items designed in accordance with the requirements of subsection B of this section shall be properly maintained.

D. Ground water monitoring program. A ground water monitoring program shall be instituted at all CDD landfills in accordance with the requirements contained in 9 VAC 20-80-300.

E. Closure.

1. Closure criteria. All CDD landfills shall be closed in accordance with the procedures set forth in this subdivision.

a. The owner or operator shall close his facility in a manner that minimizes the need for further maintenance, and controls, minimizes or eliminates the post-closure escape of uncontrolled leachate, surface runoff, decomposition gas migration, or waste decomposition products to the ground water, surface water, or to the atmosphere.

b. Final cover system. Except as specified in subdivision 1 c of this subsection, owner or operator of CDD landfills shall install a final cover system that is designed to achieve the performance requirements of subdivision 1 a of this subsection.

(1) The final cover system shall be designed and constructed to:

(a) Have a hydraulic conductivity less than or equal to the hydraulic conductivity of any bottom liner system or natural subsoils present, or a hydraulic conductivity no greater than $1x10^{-5}$ cm/sec, whichever is less; and

(b) Minimize infiltration through the closed disposal unit by the use of an infiltration layer that contains a minimum 18 inches of earthen material; and

(c) Minimize erosion of the final cover by the use of an erosion layer that contains a minimum of six inches of earthen material that is capable of sustaining native plant growth, and provide for protection of the infiltration layer from the effects of erosion, frost, and wind.

(2) Finished side slopes shall be stable and be configured to adequately control erosion and runoff. Slopes of 33% will be allowed provided that adequate runoff controls are established. Steeper slopes may be considered if supported by necessary stability calculations and appropriate erosion and runoff control features. All finished slopes and runoff management facilities shall be supported by necessary calculations and included in the design manual. To prevent ponding of water, the top slope shall be at least two percent after allowance for settlement.

(3) The director may approve an alternate final cover design that includes:

(a) An infiltration layer that achieves an equivalent reduction in infiltration as the infiltration layer specified in subdivisions b (1) (a) and b (1) (b) of this subsection; and

(b) An erosion layer that provides equivalent protection from wind and water erosion as the erosion layer specified in subdivision 1 b (1) (c) of this subsection.

c. Owners or operators of units used for the disposal of wastes consisting only of stumps, wood, brush, and leaves from landclearing operations may apply two feet of compacted soil as final cover material in lieu of the final cover system specified in subdivision 1 (b) (1) of this subsection. The provisions of this section shall not be applicable to any facility with respect to which the director has made a finding that continued operation of

the facility constitutes a threat to the public health or the environment.

2. Closure plan and amendment of plan.

a. The owner or operator of a solid waste disposal facility shall have a written closure plan. This plan shall identify the steps necessary to completely close the facility at the time when the operation will be the most extensive and at the end of its intended life. The closure plan shall include, at least:

(1) A description of those measures to be taken and procedures to be employed to comply with this subsection;

(2) An estimate of the largest area ever requiring a final cover as required at any time during the active life;

(3) An estimate of the maximum inventory of wastes ever on-site over the active life of the landfill facility; and

(4) A schedule for final closure shall also be provided which shall include, as a minimum, the anticipated date when wastes will no longer be received, the date when completion of final closure is anticipated, and intervening milestone dates which will allow tracking of the progress of closure.

b. The owner or operator may amend his closure plan at any time during the active life of the facility. The owner or operator shall so amend his plan any time changes in operating plans or facility design affects the closure plan.

c. The owner or operator shall notify the department whenever an amended closure plan has been prepared and placed in the operating record.

d. Prior to beginning closure of each solid waste disposal unit, the owner or operator shall notify the department of the intent to close.

e. If the owner or operator intends to use an alternate final cover design, he shall submit a proposed design meeting the requirements of subdivision 1 b (3) of this subsection to the department at least 180 days before the date he expects to begin closure. The director will approve or disapprove the plan within 90 days of receipt.

f. Closure plans, and amended closure plans not previously approved by the director shall be submitted to the department at least 180 days before the date the owner or operator expects to begin closure. The director will approve or disapprove the plan within 90 days of receipt.

3. Time allowed for closure.

a. The owner or operator shall begin closure activities of each unit no later than 30 days after the date on which the unit receives the known final receipt of wastes or, if the unit has remaining capacity and there is a reasonable likelihood that the unit will receive additional wastes, no later than one year after the most recent receipt of wastes. Extensions beyond the one-year deadline for beginning closure may be granted by the director if the owner or operator demonstrates that the unit has the capacity to receive additional wastes and the owner or operator has taken and will continue to take all steps necessary to prevent threats to human health and the environment from the unclosed unit.

b. The owner or operator shall complete closure activities in accordance with the closure plan within six months after receiving the final volume of wastes. The director may approve a longer closure period if the owner or operator can demonstrate that the required or planned closure activities will, of necessity, take longer than six months to complete; and that the owner or operator has taken all steps to eliminate any significant threat to human health and the environment from the unclosed but inactive facility.

4. Closure implementation.

a. The owner or operator shall close each unit with a final cover as specified in subdivision 1 b of this subsection, grade the fill area to prevent ponding, and provide a suitable vegetative cover. Vegetation shall be deemed properly established when there are no large areas void of vegetation and it is sufficient to control erosion.

b. Following construction of the final cover system for each unit, the owner or operator shall submit to the department a certification, signed by a registered professional engineer verifying that closure has been completed in accordance with the closure plan requirements of this part. This certification shall include the results of the CQA/QC requirements under subdivision B 17 a (2) (e) of this section.

c. Following the closure of all units the owner or operator shall:

(1) Post one sign at the entrance of the facility notifying all persons of the closing, and the prohibition against further receipt of waste materials. Further, suitable barriers shall be installed at former accesses to prevent new waste from being deposited.

(2) Within 90 days after closure is completed, the owner or operator of a landfill shall submit to the local land recording authority a survey plat prepared by a professional land surveyor registered by the Commonwealth indicating the location and dimensions of landfill disposal areas. Monitoring well locations should be included and identified by the number on the survey plat. The plat filed with the local land recording authority shall contain a note which states the owner's

or operator's future obligation to restrict disturbance of the site as specified.

(3) The owner of the property on which a disposal facility is located shall record a notation on the deed to the facility property, or on some other instrument which is normally examined during title search, notifying any potential purchaser of the property that the land has been used to manage solid waste. A copy of the deed notation as recorded shall be filed with the department.

(4) Submit to the department a certification, signed by a registered professional engineer, verifying that closure has been completed in accordance with the requirements of subdivision 4 d (1) through 4 d (3) of this subsection and the facility closure plan.

5. Inspection. The department shall inspect all solid waste management units at the time of closure to confirm that the closing is complete and adequate. It shall notify the owner of a closed facility, in writing, if the closure is satisfactory, and shall require any construction or such other steps necessary to bring unsatisfactory sites into compliance with this chapter. Notification by the department that the closure is satisfactory does not relieve the operator of responsibility for corrective action to prevent or abate problems caused by the facility.

6. Post-closure period. The post-closure care period begins on the date of the certification signed by a registered professional engineer as required in subdivision 4 c (4) of this subsection. Unless a facility completes all provisions of subdivision 4 of this subsection the department will not consider the facility closed, and the beginning of the post-closure care period will be postponed until all provisions have been completed. If the department's inspection required by subdivision 5 of this subsection reveals that the facility has not been properly closed in accordance with this part, post closure will begin on the date that the department acknowledges proper closure has been completed.

F. Post-closure care requirements

1. Following closure of all disposal units, the owner or operator shall conduct post-closure care of the facility. Except as provided under subdivision 2 of this subsection, post-closure care shall be conducted for 10 years after the date of completing closure or for as long as leachate is generated, whichever is later, and shall consist of at least the following:

a. Maintaining the integrity and effectiveness of any final cover, including making repairs to the cover as necessary to correct the effects of settlement, subsidence, erosion, or other events, and preventing run-on and run-off from eroding or otherwise damaging the final cover;

b. Maintaining and operating the leachate collection system in accordance with the requirements in 9 VAC 20-80-290 and 9 VAC 20-80-300, if applicable. The director may allow the owner or operator to stop managing leachate if the owner or operator demonstrates that leachate no longer poses a threat to human health and the environment;

c. Monitoring the ground water in accordance with the requirements of subsection D of this section and maintaining the ground water monitoring system, if applicable; and

d. If applicable, maintaining and operating the gas monitoring system in accordance with the requirements of 9 VAC 20-80-280.

2. The length of the post-closure care period may be:

a. Decreased by the director if the owner or operator demonstrates that the reduced period is sufficient to protect human health and the environment and this demonstration is approved by the director; or

b. Increased by the director if the director determines that the lengthened period is necessary to complete the corrective measures or to protect human health and the environment. If the post-closure period is increased, the owner or operator shall submit a revised post-closure plan for review and approval, and continue post-closure monitoring and maintenance in accordance with the approved plan.

3. The owner or operator shall prepare a written post-closure plan that includes, at a minimum, the following information:

a. A description of the monitoring and maintenance activities required in subdivision 1 of this subsection for each disposal unit, and the frequency at which these activities will be performed;

b. Name, address, and telephone number of the person or office to contact about the facility during the post-closure period; and

c. A description of the planned uses of the property during the post-closure period. Post-closure use of the property shall not disturb the integrity of the final cover, liners, or any other components of the containment system, or the function of the monitoring systems unless necessary to comply with the requirements of this chapter. The director may approve any other disturbance if the owner or operator demonstrates that disturbance of the final cover, liner or other component of the containment system, including any removal of waste, will not increase the potential threat to human health or the environment.

4. The owner or operator shall submit a post-closure care plan for review and approval by the director whenever a post-closure care plan has been prepared or amended. Those post-closure care plans that have been placed in a facility's operating record must be reviewed and approved by the director prior to implementation.

5. Following completion of the post-closure care period for each disposal unit, the owner or operator shall submit to the department a certificate, signed by a registered professional engineer, verifying that post-closure care has been completed in accordance with the post-closure plan. The certificate shall be accompanied by an evaluation, prepared by a professional engineer licensed in the Commonwealth and signed by the owner or operator, assessing and evaluating the landfill's potential for harm to human health and the environment in the event that post-closure monitoring and maintenance are discontinued.

**9 VAC 20-80-270. Industrial waste disposal facilities.**

Facilities intended primarily for the disposal of nonhazardous industrial waste shall be subject to design and operational requirements dependent on the volume and the physical, chemical, and biological nature of the waste. Household wastes may not be disposed of in industrial waste disposal facilities. Additional requirements, to include added ground water and decomposition gas monitoring, may be imposed by the director depending on the volume and the nature of the waste involved as necessary to protect health or the environment.

A. Siting.

1. Landfills shall not be sited or constructed in areas subject to base floods unless it can be shown that the facility can be protected from inundation or washout and that flow of water is not restricted.

2. Landfills shall not be sited in geologically unstable areas where inadequate foundation support for the structural components of the landfill exists. Factors to be considered when determining unstable areas shall include:

a. Soil conditions that may result in differential settling and subsequent failure of containment structures;

b. Geologic or geomorphologic features that may result in sudden or nonsudden events and subsequent failure of containment structures;

c. Man-made features or events (both surface and subsurface) that may result in sudden or nonsudden events and subsequent failure of containment structures;

3. Acceptable landfill sites shall have sufficient area and terrain to allow for management of leachate.

4. No new industrial waste landfill disposal or leachate storage unit or expansion of existing units shall extend closer than:

a. 100 feet of any regularly flowing surface water body or river;

b. 500 feet of any well, spring or other ground water source of drinking water;

c. One thousand feet from the nearest edge of the right-of-way of any interstate or primary highway or 500 feet from the nearest edge of the right-of-way of any other highway or city street, except the following:

(1) Units which are screened by natural objects, plantings, fences, or other appropriate means so as to minimize the visibility from the main-traveled way of the highway or city street, or otherwise removed from sight;

(2) Units which are located in areas which are zoned for industrial use under authority of state law or in unzoned industrial areas as determined by the Commonwealth Transportation Board;

(3) Units which are not visible from the main-traveled way of the highway or city street;

NOTE: This requirement is based on § 33.1-348 of the Code of Virginia, which should be consulted for detail. The regulatory responsibility for this standard rests with the Virginia Department of Transportation.

d. 200 feet from the active filling areas to any residence, school or recreational park area; or

e. 50 feet from the active filling areas to the facility boundary.

5. Wetlands. New industrial landfills and lateral expansions of existing facilities shall not be located in wetlands, unless the owner or operator can make the following demonstrations:

a. Where applicable under § 404 of the Clean Water Act or applicable Virginia wetlands laws, the presumption is clearly rebutted that a practicable alternative to the proposed landfill exists that does not involve wetlands;

b. The construction and operation of the facility will not:

(1) Cause or contribute to violations of any applicable water quality standard;

(2) Violate any applicable toxic effluent standard or prohibition under § 307 of the Clean Water Act;

(3) Jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of a critical habitat, protected under the Endangered Species Act of 1973; and

(4) Violate any requirement under the Marine Protection, Research, and Sanctuaries Act of 1972 for the protection of a marine sanctuary;

c. The facility will not cause or contribute to significant degradation of wetlands. The owner or operator shall demonstrate the integrity of the facility and its ability to protect ecological resources by addressing the following factors:

(1) Erosion, stability, and migration potential of native wetland soils, muds and deposits used to support the facility;

(2) Erosion, stability, and migration potential of dredged and fill materials used to support the facility;

(3) The volume and chemical nature of the waste managed in the facility;

(4) Impacts on fish, wildlife, and other aquatic resources and their habitat from release of the solid waste;

(5) The potential effects of catastrophic release of waste to the wetland and the resulting impacts on the environment; and

(6) Any additional factors, as necessary, to demonstrate that ecological resources in the wetland are sufficiently protected;

d. To the extent required under § 404 of the Clean Water Act or applicable Virginia wetlands laws, steps have been taken to attempt to achieve no net loss of wetlands (as defined by acreage and function) by first avoiding impacts to wetlands to the maximum extent practicable as required by 9 VAC 20-80-250 A 4, then minimizing unavoidable impacts to the maximum extent practicable, and finally offsetting remaining unavoidable wetland impacts through all appropriate and practicable compensatory mitigation actions (e.g., restoration of existing degraded wetlands or creation of man-made wetlands); and

e. Sufficient information is available to make a reasonable determination with respect to these demonstrations.

6. No new facility shall be located in areas where ground water monitoring cannot be conducted in accordance with subsection D of this section. Factors to be considered in determining whether or not a site can be monitored shall include:

a. Ability to characterize the direction of ground water flow within the uppermost aquifer;

b. Ability to characterize and define any releases from the landfill so as to determine what corrective actions are necessary;

c. Ability to perform corrective action as necessary; and

d. Ability to install a double liner system with a leachate collection system above the top liner and a monitoring collection system between the two liners.

7. The following site characteristics may also prevent approval or require substantial limitations on the site use or require incorporation of sound engineering controls:

a. Excessive slopes (greater than 33%) over more than half the site area;

b. Lack of readily available cover materials or lack of a firm commitment for adequate cover material from a borrow site;

c. Springs, seeps, or other ground water intrusion into the site;

d. The presence of gas, water, sewage, or electrical or other transmission lines under the site; or

e. The prior existence on the site of a dump, unpermitted landfill, lagoon, or similar unit, even if such unit is closed, will be considered a defect in the site unless the proposed unit can be isolated from the defect by the nature of the unit design and the ground water under the proposed unit can be effectively monitored.

8. Specific site conditions may be considered in approving an exemption of a site from the siting restrictions of subdivision 5 and 6 of this subsection.

B. Design/construction. The following design and construction requirements apply to all industrial waste landfills:

1. All facilities shall be surrounded on all sides by natural barriers, fencing, or an equivalent means of controlling public access and preventing illegal disposal. Except where the solid waste disposal facility is on site of the industrial facility where access is limited, all access will be limited to gates, and such gates shall be securable and equipped with locks.

2. Access roads to the entrance of a solid waste disposal facility or site and to the disposal area shall be passable in all weather conditions, and shall be provided with a base capable of withstanding anticipated heavy vehicle loads.

3. Each off-site solid waste disposal facility should be provided with an adequately lighted and heated shelter where operating personnel can exercise site control and have access to essential sanitation facilities. Lighting, heat and sanitation facilities may be provided by portable equipment as necessary.

4. Aesthetics shall be considered in the design of a solid waste disposal facility. Use of artificial or natural screens shall be incorporated into the design for site screening and noise attenuation. The design should reflect those

requirements, if any, that are determined from the long-range plan for the future use of the site.

5. All landfills should be equipped with permanent or mobile telephone or radio communications except where other on-site resources are available.

6. All facilities shall be designed to divert surface water runoff from a 25-year, 24-hour storm away from disposal areas. The design shall provide that any surface water runoff is managed so that erosion is well controlled and environmental damage is prevented.

7. The design shall provide for leachate management which shall include its collection, treatment, storage, and disposal and a leachate monitoring program in accordance with 9 VAC 20-80-290.

8. Each landfill shall be constructed in accordance with approved plans, which shall not be subsequently modified without approval by the department.

9. Two survey bench marks shall be established and maintained on the landfill site, and its location identified or recorded on drawings and maps of the facility.

10. Compacted lifts of deposited waste shall be of a height that is compatible with the amount received daily and the specific industrial waste being managed keeping work face to a minimum.

11. Acceptable landfill sites shall have sufficient area and terrain to allow for management of leachate.

12. A ground water monitoring system shall be installed at all new and existing industrial landfills in accordance with the requirements of 9 VAC 20-80-300.

13. Drainage structures shall be installed and continuously maintained to prevent ponding and erosion, and to minimize infiltration of water into solid waste cells.

14. All landfills shall be underlain by a liner system as follows:

a. Compacted soil:

(1) A liner consisting of at least one-foot layer of compacted soil with a hydraulic conductivity of no more than $1x10^{-7}$ cm/sec.

(2) The liner shall be placed with a minimum of 2.0% slope for leachate drainage.

(3) The liner shall be covered with a minimum one-foot thick drainage layer composed of material having a hydraulic conductivity of $1x10^{-3}$ cm/sec or greater (lab tested).

b. Synthetic liners:

(1) Synthetic liner consisting of a minimum 30-mil thick flexible membrane. If high density polyethylene is used, it shall be at least 60-mil thick. Synthetic liners shall be proven to be compatible with the solid waste and its leachate.

(2) The liner shall be placed in accordance with an approved construction quality control/quality assurance program submitted with the design plans.

(3) The base under the liner shall be a smooth rock-free base or otherwise prepared to prevent causing liner failure.

(4) The liner shall be placed with a minimum of 2.0% slope for leachate drainage.

(5) The liner shall be covered with a 12-inch thick drainage layer for leachate removal and a six-inch thick protective layer placed above the drainage layer, both composed of materials with a hydraulic conductivity of 1x10-3 cm/sec or greater (lab tested).

c. Other liners:

(1) Other augmented compacted clays or soils may be used as a liner provided the thickness is equivalent and the hydraulic conductivity will be equal to or less than that for compacted clay alone.

(2) The effectiveness of the proposed augmented soil liner shall be documented by using appropriate laboratory tests.

(3) The liner shall be placed with a minimum of 2.0% slope for leachate drainage.

d. In-place soil:

(1) Where the landfill will be separated from the ground water by low hydraulic conductivity soil as indicated by appropriate laboratory tests, which is natural and undisturbed, and provides equal or better performance in protecting ground water from leachate contamination, a liner can be developed by manipulation of the soil to form a liner with equivalent thickness and hydraulic conductivity equal to or less than that of the clay liner.

(2) The liner shall be prepared with a minimum of 2.0% slope for leachate drainage.

e. Double liners required or used in lieu of ground water monitoring shall include:

(1) Base preparation to protect the liner.

(2) A bottom or secondary liner which is soil, synthetic or augmented soil as indicated in subdivision 14 a, b, c, or d of this subsection.

(3) A witness or monitoring zone placed above the bottom or secondary liner consisting of a 12-inch thick drainage layer composed of material with a hydraulic conductivity of 1x10-3 cm/sec or greater (lab tested)

with a network of perforated pipe, or an equivalent design.

(4) The primary liner as indicated in subdivision 14 a, b, or c of this subsection.

(5) The primary liner will be covered with a minimum 12-inch thick drainage layer and a six-inch thick protective layer, placed above the drainage layer, both composed of materials having a hydraulic conductivity of 1x10-3 cm/sec or greater (lab tested).

15. The leachate collection system shall be placed above the top liner in accordance with the requirements of 9 VAC 20-80-290. Surface impoundments or other leachate storage structures shall be so constructed that discharge to ground water will not occur. Leachate derived from the industrial waste landfill may be recirculated provided the disposal unit is designed with a composite liner as required by 9 VAC 20-80-250 B 9 and a leachate collection system as required by 9 VAC 20-80-290.

16. Final contours of the finished landfill shall be specified. Design of final contours shall consider subsequent site uses, existing natural contours, surface water management requirements, and the nature of the surrounding area.

17. Finished side slopes shall be stable and be configured to adequately control erosion and runoff. Slopes of 33% will be allowed provided that adequate runoff controls are established. Steeper slopes may be considered if supported by necessary stability calculations and appropriate erosion and runoff control features. All finished slopes and runoff management facilities shall be supported by necessary calculations and included in the design manual. The top slope shall be at least 2.0% to prevent ponding of water.

18. Each design shall include a gas management plan developed to control decomposition gases, unless the owner or operator can demonstrate that the chemical composition of wastes disposed clearly shows that no gases will be generated. The plan shall address the requirements of 9 VAC 20-80-280.

19. Construction quality assurance program.

a. General.

(1) A construction quality assurance (CQA) program is required for all landfill units. The program shall ensure that the constructed unit meets or exceeds all design criteria and specifications in the permit. The program shall be developed and implemented under the direction of a CQA officer who is a registered professional engineer.

(2) The CQA program shall address the following physical components, where applicable:

(a) Foundations;

(b) Low-hydraulic conductivity soil liners;

(c) Synthetic membrane liners;

(d) Leachate collection and removal systems; and

(e) Final cover systems.

b. Written CQA plan. The owner or operator shall develop and implement a written CQA plan. The plan shall identify steps that will be used to monitor and document the quality of materials and the condition and manner of their installation. The CQA plan shall include:

(1) Identification of applicable units, and a description of how they will be constructed.

(2) Identification of key personnel in the development and implementation of the CQA plan, and CQA officer qualifications.

(3) A description of inspection and sampling activities for all unit components identified in subdivision 19 a (2) of this subsection including observations and tests that will be used before, during, and after construction to ensure that the construction materials and the installed unit components meet the design specifications. The description shall cover: sampling size and locations; frequency of testing; data evaluation procedures; acceptance and rejection criteria for construction materials; plans for implementing corrective measures; and data or other information to be recorded.

c. Contents of program. The CQA program shall include observations, inspections, tests, and measurements sufficient to ensure:

(1) Structural stability and integrity of all components of the unit identified in subdivision 19 a (2) of this subsection;

(2) Proper construction of all components of the liners, leachate collection and removal system, gas management system if required under subdivision 18 of this subsection and final cover system, according to permit specifications and good engineering practices, and proper installation of all components (e.g., pipes) according to design specifications;

(3) Conformity of all materials used with design and other material specifications;

(4) The permeability of the soil liner. Soil liner construction will be demonstrated on a test pad where permeability will be confirmed using an in situ testing method.

d. Certification. Waste shall not be received in a landfill unit until the owner or operator has submitted to the department by certified mail or hand delivery a certification signed by the CQA officer that the approved

CQA plan has been successfully carried out and that the unit meets the requirements of this section. Documentation supporting the CQA officer's certification shall be submitted to the department upon request. An additional certification is required under the provisions of 9 VAC 20-80-550 A 1

C. Operation.

1. Access to an off-site solid waste disposal facility shall be permitted only when an attendant is on duty and during times specified in the permit for the facility. An on-site solid waste disposal facility may operate during the normal hours of the industrial facility it directly supports.

2. Dust, odors, and vectors shall be effectively controlled so they do not constitute nuisances or hazards.

3. Safety hazards to operating personnel shall be ~~prevented~~ controlled through an active safety program consistent with the requirements of 29 CFR Part 1910.

4. Adequate numbers and types of properly maintained equipment shall be available to a facility for the performance of operation. Provision shall be made for substitute equipment to be available within 24 hours should the former become inoperable or unavailable.

5. Open burning shall be prohibited except pursuant to the appropriate conditional exemptions among those listed in 9 VAC 20-80-180 B 7 b. The means shall be provided on a facility to promptly extinguish any non-permitted open burning and to provide adequate fire protection for the solid waste disposal facility as a whole. There shall be no open burning permitted on areas where solid waste has been disposed or is being used for active disposal.

6. Solid waste shall not be deposited in, nor shall it be permitted to enter any surface waters or ground waters.

7. Records of waste received from off-site sources shall be maintained on the amount of solid waste received and processed, type of waste, and source of waste. Such information shall be made available to the department on request.

8. The ground water monitoring program shall be implemented in accordance with subsection D of this section.

9. Corrective action program. A corrective action program in accordance with 9 VAC 20-80-310 is required whenever the ground water protection levels are exceeded.

10. Fugitive dust and mud deposits on main site and access roads shall be controlled at all times to minimize nuisances.

11. Incinerator and air pollution control residues containing no free liquids should be incorporated into the working face and covered at such intervals as necessary to minimize them from becoming airborne.

12. Compaction and cover requirements.

a. Unless provided otherwise in the permit, solid waste shall be spread and compacted at the working face, which shall be confined to the smallest area practicable.

b. Lift heights shall be sized according to the volume of waste received daily and the nature of the industrial waste. A lift height is not required for materials such as fly ash that are not compactable.

c. Where it is appropriate for the specific waste, daily cover consisting of six inches of compacted earth or other suitable material shall be placed upon all exposed solid waste prior to the end of each operating day. For wastes such as fly ash and bottom ash from burning of fossil fuels, periodic cover to minimize exposure to precipitation and control dust or dust control measures such as surface wetting or crusting agents shall be applied.

d. Intermediate cover of at least one foot of compacted soil shall be applied whenever an additional lift of refuse is not to be applied within 30 days unless the owner or operator demonstrates to the satisfaction of the director that an alternate cover material or an alternate schedule will be protective of public health and the environment. In the case of facilities where coal combustion by-products are removed for beneficial use, intermediate cover must be applied in any area where ash has not been placed or removed for 30 days or more. Further, all areas with intermediate cover exposed shall be inspected as needed but not less than weekly and additional cover material shall be placed on all cracked, eroded, and uneven areas as required to maintain the integrity of the intermediate cover system.

e. Final cover construction will be initiated in accordance with the requirements of subsection E of this section shall be applied when the following pertain:

(1) When an additional lift of solid waste is not to be applied within two years.

(2) When any area of a landfill attains final elevation and within 90 days after such elevation is reached. The director may approve a longer period in case of inclement weather. The director may approve alternate timeframes if they are specified in the facility's closure plan.

(3) When a landfill's permit is terminated within 90 days of such denial or termination.

13. Vegetative cover with proper support layers shall be established and maintained on all exposed final cover material within four months after placement, or as otherwise specified by the department when seasonal conditions do not otherwise permit.

14. No hazardous wastes as defined by the Virginia Hazardous Waste Management Regulations shall be accepted at the landfill.

15. The open working face of a landfill shall be kept as small as possible.

16. At least three days of acceptable cover soil or approved material at the average usage rate shall be maintained at the fill at all times at facilities where daily cover is required unless an off-site supply is readily available on a daily basis.

17. Equipment of appropriate size and numbers shall be on site at all times. Operators with training appropriate to the tasks they are expected to perform and in sufficient numbers for the complexity of the site shall be on the site whenever it is in operation. Equipment and operators provided will not be satisfactory unless they ensure that the site is managed with a high degree of safety and effectiveness.

18. Internal roads in the landfill shall be maintained to be passable in all weather by ordinary vehicles. All operation areas and units shall be accessible; gravel or other finish materials are usually required to accomplish this. Provisions shall be made to prevent tracking of mud onto public roads by vehicles leaving the site.

19. Leachate from a solid waste disposal facility shall not be permitted to drain or discharge into surface waters except when authorized under a VPDES Permit issued pursuant to the State Water Control Board Regulation (9 VAC 25-31).

D. Ground water monitoring program. Ground water monitoring program shall be instituted at all industrial waste landfills in accordance with the requirements contained in 9 VAC 20-80-300.

E. Closure.

1. Closure criteria. All industrial waste landfills shall be closed in accordance with the procedures set forth as follows:

a. The owner or operator shall close his facility in a manner that minimizes the need for further maintenance, and controls the post-closure escape of uncontrolled leachate, surface runoff, or waste decomposition products to the ground water, surface water, or to the atmosphere.

b. Owner or operator of all industrial landfills shall install a final cover system that is designed to achieve the performance requirements of subdivision 1 a of this subsection.

(1) The final cover system shall be designed and constructed to:

(a) Have a hydraulic conductivity less than or equal to the hydraulic conductivity of any bottom liner system or natural subsoils present, or a hydraulic conductivity no greater than $1x10^{-5}$ cm/sec, whichever is less; and

(b) Minimize infiltration through the closed disposal unit by the use of an infiltration layer that contains a minimum 18 inches of earthen material; and

(c) Minimize erosion of the final cover by the use of an erosion layer that contains a minimum of six inches of earthen material that is capable of sustaining native plant growth, and provide for protection of the infiltration layer from the effects of erosion, frost, and wind.

(2) Finished side slopes shall be stable and be configured to adequately control erosion and runoff. Slopes of 33% will be allowed provided that adequate runoff controls are established. Steeper slopes may be considered if supported by necessary stability calculations and appropriate erosion and runoff control features. All finished slopes and runoff management facilities shall be supported by necessary calculations and included in the design manual.

(3) The director may approve an alternate final cover design that includes:

(a) An infiltration layer that achieves an equivalent reduction in infiltration as the infiltration layer specified in subdivisions 1 b (1) (a) and (b) of this subsection; and

(b) An erosion layer that provides equivalent protection from wind and water erosion as the erosion layer specified in subdivision 1 b (1) (c) of this subsection.

2. Closure plan and amendment of plan.

a. The owner or operator of a solid waste disposal facility shall have a written closure plan. This plan shall identify the steps necessary to completely close the facility at the time when the operation will be the most extensive and at the end of its intended life. The closure plan shall include, at least:

(1) A description of those measures and procedures to be employed to comply with this subsection;

(2) An estimate of the largest area ever requiring a final cover as required at any time during the active life;

(3) An estimate of the maximum inventory of wastes ever on-site over the active life of the landfill facility; and

(4) A schedule for final closure shall also be provided which shall include, as a minimum, the anticipated date when wastes will no longer be received, the date when completion of final closure is anticipated, and intervening milestone dates which will allow tracking of the progress of closure.

b. The owner or operator may amend his closure plan at any time during the active life of the facility. The owner or operator shall so amend his plan any time changes in operating plans or facility design affect the closure plan. The amended closure plan shall be placed in the operating record.

c. The owner or operator shall notify the department whenever an amended closure plan has been prepared and placed in the operating record.

d. Prior to beginning closure of each solid waste disposal unit, the owner or operator shall notify the department of the intent to close.

e. If the owner or operator intends to use an alternate final cover design, he shall submit a proposed design meeting the requirements of subdivision 1 b (3) of this subsection to the department at least 180 days before the date he expects to begin closure. The director will approve or disapprove the plan within 90 days of receipt.

f. Closure plans, and amended closure plans not previously approved by the director shall be submitted to the department at least 180 days before the date the owner or operator expects to begin closure. The director will approve or disapprove the plan within 90 days of receipt.

3. Time allowed for closure.

a. The owner or operator shall begin closure activities of each unit no later than 30 days after the date on which the unit receives the known final receipt of wastes or, if the unit has remaining capacity and there is a reasonable likelihood that the unit will receive additional wastes, no later than one year after the most recent receipt of wastes. Extensions beyond the one-year deadline for beginning closure may be granted by the director if the owner or operator demonstrates that the unit has the capacity to receive additional wastes and the owner or operator has taken and will continue to take all steps necessary to prevent threats to human health and the environment from the unclosed unit.

b. The owner or operator shall complete closure activities in accordance with the closure plan and within six months after receiving the final volume of wastes. The director may approve a longer closure period if the owner or operator can demonstrate that the required or planned closure activities will, of necessity, take longer than six months to complete; and that he has taken all steps to eliminate any significant threat to human health and the environment from the unclosed but inactive facility.

4. Closure implementation.

a. The owner or operator shall close each unit with a final cover as specified in subdivision 1 b of this subsection, grade the fill area to prevent ponding, and provide a suitable vegetative cover. Vegetation shall be deemed properly established when there are no large areas void of vegetation and it is sufficient to control erosion.

b. Following construction of the final cover system for each unit, the owner or operator shall submit to the department a certification, signed by a registered professional engineer verifying that closure has been completed in accordance with the closure plan requirements of this part. This certification shall include the results of the CQA/QC requirements under subdivision B 19 a (2) (e) of this section.

c. Following the closure of all units the owner or operator shall:

(1) Post one sign at the entrance of the facility notifying all persons of the closing, and providing a notice prohibiting further receipt of waste materials. Further, suitable barriers shall be installed at former accesses to prevent new waste from being deposited.

(2) Within 90 days after closure is completed, submit to the local land recording authority a survey plat indicating the location and dimensions of landfill disposal areas prepared by a professional land surveyor registered by the Commonwealth. Monitoring well locations should be included and identified by the number on the survey plat. The plat filed with the local land recording authority shall contain a note, prominently displayed, which states the owner's or operator's future obligation to restrict disturbance of the site as specified.

(3) The owner of the property on which a solid waste disposal facility is located shall record a notation on the deed to the facility property, or on some other instrument which is normally examined during title search, notifying any potential purchaser of the property that the land has been used to manage solid waste. A copy of the deed notation as recorded shall be filed with the department.

(4) Submit to the department a certification, signed by a registered professional engineer, verifying that closure has been completed in accordance with the requirements of subdivision 4 c (1) through (3) of this subsection and the facility closure plan.

5. Inspection. The department shall inspect all solid waste management units at the time of closure to confirm that the closing is complete and adequate. It shall notify the owner

of a closed facility, in writing, if the closure is satisfactory, and shall require any construction or such other steps necessary to bring unsatisfactory sites into compliance with these regulations. Notification by the department that the closure is satisfactory does not relieve the operator of responsibility for corrective action to prevent or abate problems caused by the facility.

6. Post-closure period. The post-closure care period begins on the date of the certification signed by a registered professional engineer as required in subdivision 4 c (4) of this subsection. Unless a facility completes all provisions of subdivision 4 of this subsection, the department will not consider the facility closed, and the beginning of the post-closure care period will be postponed until all provisions have been completed. If the department's inspection required by subdivision 5 of this subsection reveals that the facility has not been properly closed in accordance with this part, post-closure will begin on the date that the department acknowledges proper closure has been completed.

F. Post-closure care requirements.

1. Following closure of all disposal units, the owner or operator shall conduct post-closure care of the facility. Except as provided under subdivision 2 of this subsection, post-closure care shall be conducted for 10 years after the date of closure or for as long as leachate is generated, whichever is later, and shall consist of at least the following:

a. Maintaining the integrity and effectiveness of any final cover, including making repairs to the cover as necessary to correct the effects of settlement, subsidence, erosion, or other events, and preventing run-on and run-off from eroding or otherwise damaging the final cover;

b. Maintaining and operating the leachate collection system in accordance with the requirements in 9 VAC 20-80-290 and 9 VAC 20-80-300. The director may allow the owner or operator to stop managing leachate if the owner or operator demonstrates that leachate no longer poses a threat to human health and the environment;

c. Monitoring the ground water in accordance with the requirements of subsection D of this section and maintaining the ground water monitoring system; and

d. If applicable, maintaining and operating the gas monitoring system in accordance with the requirements of 9 VAC 20-80-280.

2. The length of the post-closure care period may be:

a. Decreased by the director if the owner or operator demonstrates that the reduced period is sufficient to protect human health and the environment and this demonstration is approved by the director; or

b. Increased by the director if the director determines that the lengthened period is necessary to complete the corrective measures or to protect human health and the environment. If the post-closure period is increased, the owner or operator shall submit a revised post-closure plan for review and approval, and continue post-closure monitoring and maintenance in accordance with the approved plan.

3. The owner or operator shall prepare a written post-closure plan that includes, at a minimum, the following information:

a. A description of the monitoring and maintenance activities required in subdivision 1 of this subsection for each disposal unit, and the frequency at which these activities will be performed;

b. Name, address, and telephone number of the person or office to contact about the facility during the post-closure period; and

c. A description of the planned uses of the property during the post-closure period. Post-closure use of the property shall not disturb the integrity of the final cover, liners, or any other components of the containment system, or the function of the monitoring systems unless necessary to comply with the requirements of this chapter. The director may approve any other disturbance if the owner or operator demonstrates that disturbance of the final cover, liner or other component of the containment system, including any removal of waste, will not increase the potential threat to human health or the environment.

4. The owner or operator shall submit a post-closure care plan for review and approval by the director whenever a post-closure care plan has been prepared or amended. Those post-closure care plans that have been placed in a facility's operating record must be reviewed and approved by the director prior to implementation.

5. Following completion of the post-closure care period for each disposal unit, the owner or operator shall submit to the department a certificate, signed by a registered professional engineer, verifying that post-closure care has been completed in accordance with the post-closure plan. The certificate shall be accompanied by an evaluation, prepared by a professional engineer licensed in the Commonwealth and signed by the owner or operator, assessing and evaluating the landfill's potential for harm to human health and the environment in the event that post-closure monitoring and maintenance are discontinued.

**9 VAC 20-80-280. Control of decomposition gases.**

Owners or operators of solid waste disposal facilities shall develop a gas management plan in accordance with this section. Venting and control of decomposition gases shall be

implemented for all sanitary landfills under 9 VAC 20-80-250 B and other landfills where required under ~~9 VAC 20-80-250 B 8,~~ 9 VAC 20-80-260 B 9~~,~~ or 9 VAC 20-80-270 B 18 to protect the facility cap, and to prevent migration into structures or beyond the facility boundary. The contents of the plan shall also reflect the requirements contained in 40 CFR 60.33c and 40 CFR 60.750 (Standards of performance for new and guidelines for control of existing municipal solid waste landfills) and 9 VAC 5-40-5800, as appropriate.

A. General requirements.

1. To provide for the protection of public health and safety, and the environment, the operator shall ensure that decomposition gases generated at a facility are controlled during the periods of operation, closure and post-closure care, in accordance with the following requirements:

a. The concentration of methane gas generated by the facility shall not exceed 25% of the lower explosive limit (LEL) for methane in facility structures (excluding gas control or recovery system components); and

b. The concentration of methane gas migrating from the landfill shall not exceed the lower explosive limit for methane at the facility boundary.

2. The program implemented pursuant to subsections B through E of this section shall continue throughout the active life of the facility and the closure and post-closure care periods or until the operator receives written authorization ~~to discontinue~~ by the department to discontinue. Authorization to cease gas monitoring and control shall be based on a demonstration by the operator that there is no potential for gas migration beyond the facility boundary or into facility structures.

3. Gas monitoring and control systems shall be modified, during the closure and post-closure maintenance period, to reflect changing on-site and adjacent land uses. Post closure land use at the site shall not interfere with the function of gas monitoring and control systems.

4. The operator may request a reduction of monitoring or control activities based upon the results of collected monitoring data ~~collected~~. The request for reduction of monitoring or control activities shall be submitted in writing to the department.

B. ~~Monitoring. To ensure that the conditions of this section are met,~~ Gas monitoring. Subject to the preconditions in 9 VAC 20-80-250 B, 9 VAC 20-80-260 B 9, and 9 VAC 20-80-270 B 18, the operator shall implement a gas monitoring program at the facility in accordance with the following requirements:

1. The gas monitoring network shall be designed to ensure detection of the presence of decomposition gas migrating beyond the landfill facility boundary and into facility structures.

2. The monitoring network shall be designed to account for the following specific site characteristics, and potential migration pathways or barriers, including, but not limited to:

a. Local soil and rock conditions;

b. Hydrogeological and hydraulic conditions surrounding the facility;

c. Locations of buildings and structures relative to the waste deposit area;

d. Adjacent land use, and inhabitable structures within 1000 feet of the landfill facility boundary;

e. Man-made pathways, such as underground construction; and

f. The nature and age of waste and its potential to generate decomposition gas.

3. Owners or operators of certain large sanitary landfills and landfills located in non-attainment areas may be required to perform additional monitoring as provided in 40 CFR 60.33c, 40 CFR 60.750, and 9 VAC 5-40-5800.

~~C. Monitoring frequency.~~

~~1. As a minimum, quarterly monitoring is required.~~

~~2. More frequent monitoring may be required by the department at those locations where results of monitoring indicate that decomposition gas migration is occurring or is accumulating in structures to detect migrating gas and ensure compliance with subsection A of this section.~~

4. At a minimum, the gas monitoring frequency shall be quarterly. The department may require more frequent monitoring at locations where monitoring results indicate gas migration or gas accumulation in devices or structures designed to detect migrating gas.

C. Gas remediation.

1. When the gas monitoring results indicate concentrations of methane in excess of the action levels, 25% of the lower explosive limit (LEL) for methane in facility structures (excluding gas control or recovery system components) or 80% of the LEL for methane at the facility boundary, the operator shall:

a. Take all immediate steps necessary to protect public health and safety including those required by the contingency plan.

b. Notify the department in writing within five working days of learning that action levels have been exceeded, and indicate what has been done or is planned to be done to resolve the problem.

2. When the gas monitoring results indicate concentrations of methane in excess of the compliance levels, 25% of the

LEL for methane in facility structures (excluding gas control or recovery system components) or the LEL for methane at the facility boundary, the operator shall, within 60 days of detection, implement a remediation plan for the methane gas releases and submit it to the department for amendment of the facility permit. The plan shall describe the nature and extent of the problem and the proposed remedy. The plan shall include an implementation schedule specifying timeframes for implementing corrective actions, an evaluation of the effectiveness of such corrective actions, and milestones for proceeding in implementation of additional corrective actions, if necessary to reestablish compliance.

3. A gas remediation system shall:

a. Prevent methane accumulation in onsite structures.

b. Reduce methane concentrations at monitored property boundaries to below compliance levels in the timeframes specified in the gas remediation plan.

c. Provide for the collection and treatment and/or disposal of decomposition gas condensate produced at the surface. Condensate generated from gas control systems may be recirculated into the landfill provided the facility complies with the liner and leachate control systems requirements of this part. Condensate collected in condensate traps and drained by gravity into the waste mass will not be considered recirculation.

4. Extensive systems to control emissions of nonmethane organic compounds may be required under the Clean Air Act (40 CFR 60.33c and 40 CFR 60.750) and 9 VAC 5-40-5800. Facilities that are required to construct and operate systems designed to comply with those regulations will be considered to be in compliance with the requirements of subdivisions 3 a and b of this subsection, unless monitoring data continues to indicate an exceedance of compliance levels. Gas control systems also may be subject to the Virginia Operating Permit Program (9 VAC 5-80-40) or other state air pollution control regulations.

5. The facility shall notify the department of an initial exceedance of the compliance level or unusual condition that may endanger human health and the environment, in accordance with 9 VAC 20-80-570 C 3, such as when an active gas remediation system is no longer operating in such a manner as to maintain compliance with this section.

D. Odor management.

1. When an odor nuisance or hazard is created under normal operating conditions and upon notification from the department, the permittee shall within 90 days develop and implement an odor management plan to address odors that may impact citizens beyond the internal property boundaries. The permittee shall place the plan in the operating record and a copy shall be submitted to the department for its records. Odor management plans developed in accordance with Virginia Air Regulations (9 VAC 5-40-140), 9 VAC 5-50-140 or other state air pollution control regulations will suffice for the provisions of this subsection.

2. The plan shall identify a contact at the facility that citizens can notify about odor concerns.

3. Facilities shall perform and document an annual review and update the odor management plan, as necessary, to address ongoing odor management issues.

~~D.~~ E. Recordkeeping. The owner or operator shall keep the records of the results of gas monitoring and any gas remediation issues throughout the active life of the facility and the post-closure care period. The ~~monitoring~~ records shall include:

1. The concentrations of the methane as measured at each probe and within each on-site structure;

2. The documentation of date, time, barometric pressure, atmospheric temperatures, general weather conditions, and probe pressures;

3. The names of sampling personnel, apparatus utilized, and a brief description of the methods used;

4. A numbering system to correlate monitoring results to a corresponding probe location.

5. Monitoring and design records for any gas remediation or control system.

~~E. Control.~~

~~1. When the results of gas monitoring indicate concentrations of methane in excess of the compliance levels required by subdivision A 1 of this subsection, the operator shall:~~

~~a. Take all immediate steps necessary to protect public health and safety including those required by the contingency plan.~~

~~b. Notify the department in writing within five working days of learning that compliance levels have been exceeded, and indicate what has been done or is planned to be done to resolve the problem.~~

~~c. Within 60 days of detection, implement a remediation plan for the methane gas releases and submit it to the department for approval and amendment of the facility permit. The plan shall describe the nature and extent of the problem and the proposed remedy.~~

~~2. A gas control system shall be designed to:~~

~~a. Prevent methane accumulation in on-site structures.~~

~~b. Reduce methane concentrations at monitored property boundaries to below compliance levels in the timeframes specified in the gas remediation plan.~~

~~c. Provide for the collection and treatment and/or disposal of decomposition gas condensate produced at the surface. Condensate generated from gas control systems may be recirculated into the landfill provided the facility complies with the liner and leachate control systems requirements of this part. Condensate collected in condensate traps and drained by gravity into the waste mass will not be considered recirculation.~~

~~3. Extensive systems to control emissions of non-methane organic compounds may be required under the Clean Air Act (40 CFR 60.33c and 40 CFR 60.750) and 9 VAC 5-40-5800. Facilities that are required to construct and operate systems designed to comply with those regulations will be considered to be in compliance with the requirements of subdivisions 2 a and b of this subsection. Gas control systems also may be subject to the Virginia Operating Permit Program 9 VAC 5-80-40 or other state air pollution control regulations.~~

**9 VAC 20-80-485. Permits-by-rule and other special permits.**

A. Permits by rule. Unless the owner or operator of the following facilities chooses to apply for and receive a full permit, he shall be deemed to have a solid waste management facility permit notwithstanding any other provisions of Part VII (9 VAC 20-80-480 et seq.) of this chapter, except 9 VAC 20-80-500 B 2 and B 3, if the conditions listed are met:

1. Transfer stations. The owner or operator of a transfer station, if he:

a. Notifies the director of his intent to operate such a facility and provides to the department documentation required under 9 VAC 20-80-500 B;

b. Provides the director with a certification that the facility meets the siting standards of 9 VAC 20-80-340 B;

c. Furnishes to the director a certificate signed by a registered professional engineer that the facility has been designed and constructed in accordance with the standards of 9 VAC 20-80-340 C;

d. Submits to the director an operational plan describing how the standards of 9 VAC 20-80-340 D will be met;

e. Submits to the director a closure plan describing how the standards of 9 VAC 20-80-340 E will be met; and

f. Submits to the director the proof of financial responsibility if required by the Financial Assurance Regulations for Solid Waste Disposal, Transfer, and Treatment Facilities (9 VAC 20-70); and

g. Submits to the director the results of the public participation effort conducted in accordance with the requirements contained in subdivision 6 of this subsection.

2. Materials recovery facilities. The owner or operator of a materials recovery facility, if the owner or operator:

a. Notifies the director of his intent to operate such a facility and provides the department with documentation required under 9 VAC 20-80-500 B;

b. Provides the director with a certification that the facility meets the siting standards of 9 VAC 20-80-360 B, as applicable;

c. Furnishes to the director a certificate signed by a registered professional engineer that the facility has been designed and constructed in accordance with the standards of 9 VAC 20-80-360 C, as applicable;

d. Submits to the director an operational plan describing how the standards of 9 VAC 20-80-360 D, as applicable, will be met;

e. Submits to the director a closure plan describing how the standards of 9 VAC 20-80-360 E, as applicable, will be met;

f. Submits to the director the proof of financial responsibility if required by the Financial Assurance Regulations for Solid Waste Disposal, Transfer, and Treatment Facilities (9 VAC 20-70);

g. Submits to the director the results of the public participation effort conducted in accordance with the requirements contained in subdivision 6 of this subsection; and

h. In addition to the above, in the case of facilities engaged in reclamation of petroleum-contaminated materials, submits to the director:

(1) A copy of the facility permit issued in accordance with the regulations promulgated by the of Air Pollution Control Board when applicable; and

(2) A description how the requirements of 9 VAC 20-80-700 will be met.

Existing soil reclamation facilities which became operational prior to March 15, 1993, on the basis of written approval from the director, are considered to be operating under a permit-by-rule.

3. Energy recovery, thermal treatment, or incineration facility. The owner or operator of an energy recovery, thermal treatment, or incineration facility, if he:

a. Notifies the director of his intent to operate such a facility and provides to the department documentation required under 9 VAC 20-80-500 B;

b. Provides the director with a certification that the facility meets the siting standards of 9 VAC 20-80-370 B, as applicable;

c. Furnishes to the director a certificate signed by a registered professional engineer that the facility has been designed and constructed in accordance with the standards of 9 VAC 20-80-370 C, as applicable;

d. Submits to the director an operational plan describing how the standards of 9 VAC 20-80-370 D, as applicable, will be met;

e. Submits to the director a closure plan describing how the standards of 9 VAC 20-80-370 E, as applicable, will be met;

f. Submits to the director the proof of financial responsibility if required by the Financial Assurance Regulations for Solid Waste Disposal, Transfer, and Treatment Facilities (9 VAC 20-70); and

g. Furnishes to the director a copy of the facility permit issued in accordance with the regulations promulgated by the Air Pollution Control Board.

In addition to the above, in the case of thermal treatment facilities engaged in reclamation of petroleum-contaminated materials, submits to the director a description of how the requirements of 9 VAC 20-80-700 will be met.

4. Composting facilities. The owner or operator of all Type A or Type B facilities that receive no more than 700 tons per quarter of compostable materials, if he:

a. Notifies the director of his intent to operate such a facility and provides to the department documentation required under 9 VAC 20-80-500 B;

b. Provides the director with the description of the type of facility and the classification of materials that will be composted as classified under 9 VAC 20-80-330 A 4;

c. Provides the director with a certification that the facility meets the siting standards of 9 VAC 20-80-330 B;

d. Furnishes to the director a certificate signed by a registered professional engineer that the facility has been designed and constructed in accordance with the standards of 9 VAC 20-80-330 C;

e. Submits to the director an operational plan describing how the standards of 9 VAC 20-80-330 D will be met;

f. Submits to the director a closure plan describing how the standards of 9 VAC 20-80-330 E will be met;

g. Submits to the director the proof of financial responsibility if required by the Financial Assurance Regulations for Solid Waste Disposal, Transfer, and Treatment Facilities (9 VAC 20-70); and

h. Submits to the director the results of the public participation effort conducted in accordance with the requirements contained in subdivision 6 of this subsection.

5. Waste piles. The owner or operator of a waste pile, if the owner or operator:

a. Notifies the director of his intent to operate such a facility and provides the department with documentation required under 9 VAC 20-80-500 B;

b. Provides the director with a certification that the facility meets the siting standards of 9 VAC 20-80-400 B, as applicable;

c. Furnishes to the director a certificate signed by a registered professional engineer that the facility has been designed and constructed in accordance with the standards of 9 VAC 20-80-400 C, as applicable;

d. Submits to the director an operational plan, including a contingency plan, describing how the standards of 9 VAC 20-80-400 D, as applicable, will be met;

e. Submits to the director a closure plan describing how the standards of 9 VAC 20-80-400 E, as applicable, will be met;

f. Submits to the director the proof of financial responsibility if required by the Financial Assurance Regulations for Solid Waste Facilities (9 VAC 20-70);

g. Submits to the director the results of the public participation effort conducted in accordance with the requirements contained in subdivision 6 of this subsection; and

h. Submits to the director a copy of the facility's VPDES permit if applicable.

6. Public participation.

a. Before the initiation of any construction at the facility under subdivision 1, 2, 3, or 4 of this subsection, the owner or operator shall publish a notice once a week for two consecutive weeks in a major local newspaper of general circulation informing the public that he intends to construct and operate a facility eligible for a permit-by-rule. The notice shall include:

(1) A brief description of the proposed facility and its location;

(2) A statement that the purpose of the public participation is to acquaint the public with the technical aspects of the facility and how the standards and the requirements of this chapter will be met, to identify issues of concern, to facilitate communication

and to establish a dialogue between the permittee and persons who may be affected by the facility;

(3) Announcement of a 30-day comment period, in accordance with subdivision 6 d of this subsection, and the name, telephone number, and address of the owner's or operator's representative who can be contacted by the interested persons to answer questions or where comments shall be sent;

(4) Announcement of the date, time, and place for a public meeting held in accordance with subdivision 6 c of this subsection; and

(5) Location where copies of the documentation to be submitted to the department in support of the permit-by-rule notification and any supporting documents can be viewed and copied.

b. The owner or operator shall place a copy of the documentation and support documents in a location accessible to the public in the vicinity of the proposed facility.

c. The owner or operator shall hold a public meeting not earlier than 15 days after the publication of the notice required in subdivision 6 a of this subsection and no later than seven days before the close of the 30-day comment period. The meeting shall be held to the extent practicable in the vicinity of the proposed facility.

d. The public shall be provided 30 days to comment on the technical and the regulatory aspects of the proposal. The comment period will begin on the date the owner or operator publishes the notice in the local newspaper.

e. The requirements of this section do not apply to the owners or operators of a material or energy recovery facility, an incinerator or a thermal treatment unit that has received a permit from the department based on the regulations promulgated by the State Air Pollution Control Board or State Water Control Board that required facility-specific public participation procedures.

7. Upon receiving the certifications and other required documents, including the results of the public meeting and the applicant's response to the comments received, the director will acknowledge their receipt within ~~10 working~~ 30 calendar days. If the applicant's submission is administratively incomplete, the letter will state that the facility will not be considered to have a permit-by-rule until the missing certifications or other required documentation is submitted. At the time of the initial receipt or at a later date, the director may require changes in the documents designed to assure compliance with the standards of Part VI (9 VAC 20-80-320 et seq.) and Part VIII (9 VAC 20-80-630 et seq.), if applicable. Should such changes not be accomplished by the facility owner or operator, the director may require the operator to submit the full permit application and to obtain a regular solid waste management facility permit.

8. Change of ownership. A permit by rule may not be transferred by the permittee to a new owner or operator. However, when the property transfer takes place without proper closure, the new owner shall notify the department of the sale and fulfill all the requirements contained in subdivisions 1 through 4 of this subsection with the exception of those dealing with the financial assurance. Upon presentation of the financial assurance proof required by 9 VAC 20-70 by the new owner, the department will release the old owner from his closure and financial responsibilities and acknowledge existence of the new permit by rule in the name of the new owner.

9. Facility modifications. The owner or operator of a facility operating under a permit by rule may modify its design and operation by furnishing the department a new certificate prepared by the professional engineer and new documentation required under subdivision 1, 2, 3, 4, or 5 as applicable, and 6 of this subsection. Whenever modifications in the design or operation of the facility affect the provisions of the approved closure plan, the owner or operator shall also submit an amended closure plan. Should there be an increase in the closure costs, the owner or operator shall submit a new proof of financial responsibility as required by the Financial Assurance Regulations for Solid Waste Disposal, Transfer, and Treatment Facilities (9 VAC 20-70).

10. Loss of permit by rule status. In the event that a facility operating under a permit by rule violates any applicable siting, design and construction, or closure provisions of Part VI of this chapter, the owner or operator of the facility will be considered to be operating an unpermitted facility as provided for in 9 VAC 20-80-80 and shall be required to either obtain a new permit as required by Part VII or close under Part V or VI of this chapter, as applicable.

11. Termination. The director shall terminate permit by rule and shall require closure of the facility whenever he finds that:

a. As a result of changes in key personnel, the requirements necessary for a permit by rule are no longer satisfied;

b. The applicant has knowingly or willfully misrepresented or failed to disclose a material fact in his disclosure statement, or any other report or certification required under this chapter, or has knowingly or willfully failed to notify the director of any material change to the information in the disclosure statement;

c. Any key personnel have been convicted of any of the crimes listed in § 10.1-1409 of the Code of Virginia, punishable as felonies under the laws of the Commonwealth, or the equivalent of them under the laws

of any other jurisdiction; or has been adjudged by an administrative agency or a court of competent jurisdiction to have violated the environmental protection laws of the United States, the Commonwealth or any other state and the director determines that such conviction or adjudication is sufficiently probative of the permittee's inability or unwillingness to operate the facility in a lawful manner; or

d. The operation of the facility is inconsistent with the facility's operations manual and the operational requirements of the regulations.

B. Emergency permits. Notwithstanding any other provision of Part VII of this chapter, in the event the director finds an imminent and substantial endangerment to human health or the environment, the director may issue a temporary emergency permit to a facility to allow treatment, storage, or disposal of solid waste for a nonpermitted facility or solid waste not covered by the permit for a facility with an effective permit. Such permits:

1. May be oral or written. If oral, it shall be followed within five days by a written emergency permit;

2. Shall not exceed 90 days in duration;

3. Shall clearly specify the solid wastes to be received, and the manner and location of their treatment, storage, or disposal;

4. Shall be accompanied by a public notice including:

a. Name and address of the office granting the emergency authorization;

b. Name and location of the facility so permitted;

c. A brief description of the wastes involved;

d. A brief description of the action authorized and reasons for authorizing it;

e. Duration of the emergency permit; and

5. Shall incorporate, to the extent possible and not inconsistent with the emergency situation, all applicable requirements of this chapter.

C. Experimental facility permits.

1. The director may issue an experimental facility permit for any solid waste treatment facility which proposes to utilize an innovative and experimental solid waste treatment technology or process for which permit standards for such experimental activity have not been promulgated under Part VI of this chapter. Any such permit shall include such terms and conditions as will assure protection of human health and the environment. Such permits:

a. Shall provide for the construction of such facilities based on the standards shown in 9 VAC 20-80-470, as necessary;

b. Shall provide for operation of the facility for no longer than one calendar year unless renewed as provided in subdivision 3 of this subsection;

c. Shall provide for the receipt and treatment by the facility of only those types and quantities of solid waste which the director deems necessary for purposes of determining the efficiency and performance capabilities of the technology or process and the effects of such technology or process on human health and the environment; and

d. Shall include such requirements as the director deems necessary to protect human health and the environment (including, but not limited to, requirements regarding monitoring, operation, closure and remedial action), and such requirements as the director deems necessary regarding testing and providing of information to the director with respect to the operation of the facility.

2. For the purpose of expediting review and issuance of permits under this subsection, the director may, consistent with the protection of human health and the environment, modify or waive permit application and permit issuance requirements in Part VII of this chapter except that there may be no modification or waiver of regulations regarding local certification, disclosure statement requirements, financial responsibility (including insurance) or of procedures regarding public participation.

3. Any permit issued under this subsection may be renewed not more than three times. Each such renewal shall be for a period of not more than one calendar year.

D. Research, development and demonstration plans. Research, development and demonstration (RDD) plans may be submitted for new sanitary landfills, existing sanitary landfills, or expansions of existing sanitary landfills.

1. Requirements.

a. No landfill owner or operator may commence a RDD plan without prior approval by the department through either a new permit or major permit amendment. Major amendments for a RDD plan that do not involve an increase in the landfill final grades or a lateral expansion of the footprint will not be subject to the landfill expansion criteria in 9 VAC 20-80-250 and 9 VAC 20-80-500.

b. Operating permitted sanitary landfills that have exceeded groundwater protection standards at statistically significant levels in accordance with 9 VAC 20-80-300 B, from any waste unit on site shall have implemented a remedy in accordance with 9 VAC 20-80-310 C prior to the RDD plan submittal. Operating permitted sanitary landfills that have an exceedance in gas migration in accordance with 9 VAC 20-80-280 shall

have a gas control system in place per 9 VAC 20-80-280 E prior to the RDD plan submittal.

c. RDD plans may be submitted for items such as the addition of liquids in addition to leachate and gas condensate from the same landfill for accelerated decomposition of the waste mass; allowing run-on water to flow into the landfill waste mass; and allowing testing of the construction and infiltration performance of alternative final cover systems. An RDD plan may be proposed for other measures to be taken to enhance stabilization of the waste mass.

d. All sanitary landfill units with an approved RDD plan shall have a leachate collection system designed and constructed to maintain less than a 30-cm depth of leachate on the liner.

e. An owner or operator of a sanitary landfill that disposes of 20 tons of municipal solid waste per day or less, based on annual average, may not apply for an RDD plan.

f. No landfill owner or operator may continue to implement an RDD plan beyond any time limit placed in the initial plan approval or any renewal without issuance of written prior approval by the department. Justification for renewals shall be based upon information in annual and final reports as well as research and findings in technical literature.

g. RDD plans shall be restricted to permitted sanitary landfills. Landfills for disposal of wastes, as listed in 9 VAC 20-80-250 C 16 and other wastes as approved, shall be designed with a composite liner, as required by 9 VAC 20-80-250 B 9 or 10. The effectiveness of the liner system and leachate collection system shall be demonstrated in the plan. The effectiveness of the liner and leachate collection system shall be assessed at the end of the testing period, with comparison to the effectiveness of the systems at the start of the testing period.

h. RDD plans may not include changes to the approved design and construction of subgrade preparation, liner system, leachate collection and removal systems, final cover system, gas and leachate systems outside the limits of waste, run-off controls, run-on controls, or environmental monitoring systems exterior to the waste mass.

i. Implementation of an approved research development and demonstration plan shall comply with the specific conditions of the RDD plan as approved in the permit or permit amendment for the initial testing period and any renewal.

j. Structures and features exterior to the waste mass or waste final grades shall be removed at the end of the testing period, unless otherwise approved by the department in writing.

k. The RDD plan may propose an alternate final cover installation schedule.

2. An RDD plan shall include the following details and specifications. Processes other than adding liquids to the waste mass and leachate recirculation may be practiced in conjunction with the research, development and demonstration plan.

a. Initial applications for RDD plans shall be submitted for review and approval prior to the initiation of the process to be tested. These plans shall specify the process that will be tested, describe preparation and operation of the process, describe waste types and characteristics that the process will affect, describe desired changes and end points that the process is intended to achieve, define testing methods and observations of the process or waste mass that are necessary to assess effectiveness of the process, and include technical literature references and research that support use of the process. The plans shall specify the time period for which the process will be tested. The plans shall specify the additional information, operating experience, data generation or technical developments that the process to be tested is expected to generate.

b. The test period for the initial application shall be limited to a maximum of three years.

c. Renewals of testing periods shall be limited to a maximum of three years each. The maximum number of renewals shall be limited to three.

d. Renewals shall require department review and approval of reports of performance and progress on achievement of goals specified in the RDD plan.

e. RDD plans for addition of liquids, in addition to leachate and gas condensate from the same landfill, for accelerated decomposition of the waste mass and/or for allowing run-on water to flow into the landfill waste mass shall demonstrate that there is no increased risk to human health and the environment. The following minimum performance criteria shall be demonstrated:

(1) Risk of contamination to groundwater and/or surface water will not be greater than the risk without an approved RDD plan.

(2) Stability analysis demonstrating the physical stability of the landfill.

(3) Landfill gas collection and control in accordance with applicable Clean Air Act requirements (i.e., Title V, NSPS or EG rule, etc.).

For RDD plans that include the addition of off-site nonhazardous waste liquids to the landfill, the following information shall be submitted with the RDD plan:

(a) Demonstration of adequate facility liquid storage volume to receive the off-site liquid,

(b) A list of proposed characteristics for screening the accepted liquids is developed, and

(c) The quantity and quality of the liquids are compatible with the RDD plan.

If off-site nonhazardous liquids are certified by the off-site generator as storm water uncontaminated by solid waste, screening is not required for this liquid.

f. RDD plans for testing of the construction and infiltration performance of alternative final cover systems shall demonstrate that there is no increased risk to human health and the environment. The proposed final cover system shall be as protective as the final cover system required by 9 VAC 20-80-250 E. The following minimum performance criteria shall be demonstrated:

(1) No build-up of excess liquid in the waste and on the landfill liner,

(2). Stability analysis demonstrating the physical stability of the landfill,

(3) No moisture will escape from the landfill to the surface water and/or groundwater, and

(4) Sufficient reduction in infiltration so that there will be no leakage of leachate from the landfill.

g. RDD plans that evaluate introduction of liquids in addition to leachate or gas condensate from the same landfill shall propose measures to be integrated with any approved leachate recirculation plan and compliance with requirements for leachate recirculation.

h. RDD plans shall include a description of warning symptoms and failure thresholds that will be used to initiate investigation, stand-by, termination, and changes to the process and any other landfill systems that might be affected by the process, such as gas extraction and leachate recirculation. Warning symptoms shall result in a reduction or suspension of liquids addition, leachate recirculation, investigation and changes to be implemented before resuming the process being tested. Failure thresholds shall result in termination of the process being tested, investigation and changes that will be submitted to the department for review and approval in writing prior to resumption of the process being tested.

i. RDD plans shall include an assessment of the manner in which the process to be tested might alter the impact that the landfill may have on human health or environmental quality. The assessment shall include both beneficial and deleterious effects that could result from the process.

j. RDD plans shall include a geotechnical stability analysis of the waste mass and an assessment of the changes that the implementation of the plan are expected to achieve. The geotechnical stability analysis and assessment shall be repeated at the end of testing period, with alteration as needed to include parameters and parameter values derived from field measurements. The plan shall define relevant parameters and techniques for field measurement.

k. RDD plans shall propose monitoring parameters, frequencies, test methods, instrumentation, record-keeping and reporting to the department for purposes of tracking and verifying goals of the process selected for testing.

l. RDD plans shall propose monitoring techniques and instrumentation for potential movements of waste mass and settlement of waste mass, including proposed time intervals and instrumentation, pertinent to the process selected for testing.

m. RDD plans shall propose construction documentation, construction quality control and construction quality assurance measures, and recordkeeping for construction and equipment installation that is part of the process selected for testing.

n. RDD plans shall propose operating practices and controls, staffing, monitoring parameters and equipment needed to support operations of the process selected for testing.

o. RDD plans that include aeration of the waste mass shall include a temperature monitoring plan, a fire drill and safety program, instructions for use of liquids for control of temperature and fires in the waste mass, and instructions for investigation and repair of damage to the liner and leachate collection system.

p. RDD plans may include an alternate interim cover system and final cover installation schedule. The interim cover system shall be designed to account for weather conditions, slope stability, and leachate and gas generation. The interim cover shall also control, at a minimum, disease vectors, fires, odors, blowing litter, and scavenging.

3. Reporting. An annual report shall be prepared for each year of the testing period, including any renewal periods, and a final report shall be prepared for the end of the testing period. These reports shall assess the attainment of goals proposed for the process selected for testing, recommend changes, recommend further work, and summarize problems and their resolution. Reports shall include a summary of all monitoring data, testing data and

observations of process or effects and shall include recommendations for continuance or termination of the process selected for testing. Annual reports shall be submitted to the department within three months after the anniversary date of the approved permit or permit amendment. Final reports shall be submitted 60 days prior to the end of the testing period in order for evaluation by the department. If the department's evaluation indicates that the goals of the project have been met, are reliable and predictable, the department will provide a minor permit amendment to incorporate the continued operation of the project with the appropriate monitoring.

4. Termination. The department may require modifications to or immediate termination of the process being tested if any of the following conditions occur:

a. Significant and persistent odors;

b. Significant leachate seeps or surface exposure of leachate;

c. Significant leachate head on the liner;

d. Excessively acidic leachate chemistry or gas production rates or other monitoring data indicate poor waste decomposition conditions;

e. Instability in the waste mass;

f. Other persistent and deleterious effects.

5. The RDD program is an optional participation program, the applicant must certify that they acknowledge that the program is optional; and that they are aware the department may provide suspension or termination of the program for any reasonable cause, without a public hearing. Notice of suspension or termination will be by letter for a cause related to a technical problem, nuisance problem, or for protection of human health or the environment as determined by the department.

**9 VAC 20-80-500. Permit application procedures.**

A. Any person who proposes to establish a new solid waste management facility ("SWMF"), or modify an existing SWMF, shall submit a permit application to the department, using the procedures set forth in this section and other pertinent sections of this part.

B. Notice of intent.

1. To initiate the permit application process, any person who proposes to establish a new solid waste management facility ("SWMF"), or modify an existing SWMF, or to amend an existing permit shall file a notice of intent with the director stating the desired permit or permit amendment, the precise location of the proposed facility, and the intended use of the facility. The notice shall be in letter form and be accompanied by area and site location maps.

2. No application for a new solid waste management facility permit or application for an amendment for a non-captive industrial landfill to expand or increase capacity shall be deemed complete unless it is accompanied by DEQ Form DISC-01 and 02 (Disclosure Statement) for all key personnel.

3. No application for a new solid waste management facility permit or application for an amendment for a non-captive industrial landfill to expand or increase capacity shall be considered complete unless the notice of intent is accompanied by a current certification from the governing body of the county, city, or town in which the facility is to be located stating that the location and operation of the facility are consistent with all applicable ordinances. No certification shall be required for the application for an amendment or modification of an existing permit other than for a non-captive industrial landfill as outlined above. DEQ Form SW-11-1 (Request for Local Government Certification) is provided for the use of the regulated community. Permit and permit-by-rule applicants shall comply with the statutory requirements for consistency with solid waste management plans as recorded in §§ 10.1-1408.1 B 9, D 1, and R of the Code of Virginia.

4. If the location and operation of the facility is stated by the local governing body to be consistent with all its ordinances, without qualifications, conditions, or reservations, the applicant will be notified that he may submit his application for a permit. This application shall be submitted in two parts, identified as Part A and Part B.

5. If the applicant proposes to operate a new sanitary landfill or transfer station, the notice of intent shall include a statement describing the steps taken by the applicant to seek the comments of the residents of the area where the sanitary landfill or transfer station is proposed to be located regarding the siting and operation of the proposed sanitary landfill or transfer station. The public comment steps shall be taken prior to filing with the department the notice of intent.

a. The public comment steps shall include publication of a public notice once a week for two consecutive weeks in a newspaper of general circulation serving the locality where the sanitary landfill or transfer station is proposed to be located and holding at least one public meeting within the locality to identify issues of concern, to facilitate communication and to establish a dialogue between the applicant and persons who may be affected by the issuance of a permit for the sanitary landfill or transfer station.

b. At a minimum, the public notice shall include:

(1) A statement of the applicant's intent to apply for a permit to operate the proposed sanitary landfill or transfer station;

(2) The proposed sanitary landfill or transfer station site location;

(3) The date, time and location of the public meeting the applicant will hold; and

(4) The name, address and telephone number of a person employed by an applicant who can be contacted by interested persons to answer questions or receive comments on siting and operation of the proposed sanitary landfill or transfer station.

c. The first publication of the public notice shall be at least 14 days prior to the public meeting date.

6. Disposal capacity guarantee. If the applicant proposes to construct a new sanitary landfill or expand an existing sanitary landfill, a signed statement must be submitted by the applicant guaranteeing that sufficient disposal capacity will be available in the facility to enable localities within the Commonwealth to comply with their solid waste management plans developed pursuant to 9 VAC 20-130 and certifying that such localities will be allowed to contract for and reserve disposal capacity in the facility. This provision does not apply to permit applications from one or more political subdivisions for new or expanded landfills that will only accept municipal solid waste generated within those jurisdictions or from other jurisdictions under an interjurisdictional agreement.

7. Host agreement. If the applicant proposes to construct a new sanitary landfill or expand an existing sanitary landfill, a certification from the local governing body must be provided indicating that a host agreement has been reached between the applicant and the host government or authority.

a. The host agreement shall include the following provisions at a minimum:

(1) The amount of financial compensation the applicant will provide the host locality;

(2) The daily travel routes and traffic volumes;

(3) The daily disposal limit; and

(4) The anticipated service area of the facility.

b. The host agreement shall contain a provision that the applicant will pay the full cost of a least one full-time employee of the host locality. The employee's responsibilities will include monitoring and inspecting waste disposal practices in the locality.

c. The host agreement shall provide that the applicant shall, when requested by the host locality, split air and water samples so that the host locality may independently test the samples, with all associated costs paid for by the applicant. All such sampling results shall be provided to the department.

d. No certification or host agreement is required if the owner and operator of the landfill is a locality or a service authority of which the local governing body is a member.

8. If the application is for a locality owned and operated sanitary landfill, or the expansion of such a landfill, the applicant shall provide information on:

a. The daily travel routes and traffic volumes;

b. The daily disposal limit; and

c. The service area of the facility.

9. If the application is for a new solid waste management facility or an amendment allowing a facility expansion or an increase in capacity, the director shall evaluate whether there is a need for the additional capacity in accordance with s 10.1-1408.1 D 1 of the Code of Virginia. The information in either subdivision 9 a or 9 b must be provided with the notice of intent to assist the director with the required investigation and analysis. Based on the information submitted, the owner or operator will demonstrate how the additional capacity will be utilized over the life of the facility.

a. For any solid waste management facility including a sanitary landfill, information demonstrating that there is a need for the additional capacity. Such information may include:

(1) The anticipated area to be served by the facility;

(2) Similar or related solid waste management facilities that are in the same service area and could impact the proposed facility, and the capacity and service life of those facilities;

(3) The present quantity of waste generated within the proposed service area;

(4) The waste disposal needs specified in the local solid waste plan;

(5) The projected future waste generation rates for the anticipated area to be served during the proposed life of the facility;

(6) The recycling, composting or other waste management activities within the proposed service area;

(7) The additional solid waste disposal capacity that the facility would provide to the proposed area of service; and

(8) Information demonstrating that the capacity is needed to enable localities to comply with solid waste plans developed pursuant to s 10.1-1411 of the Code of Virginia.

(9) Any additional factors that provide justification for the additional capacity provided by the facility.

b. As an alternative, for sanitary landfills, based on current or projected disposal rates, information demonstrating there is less than 10 years of capacity remaining in the facility and information demonstrating either of the following:

(1) The available permitted disposal capacity for the state is less than 20 years based on the most current reports submitted pursuant to the Waste Information and Assessment Program in 9 VAC 20-130-165; or

(2) The available permitted disposal capacity is less than 20 years in either:

(a) The planning region, or regions, immediately contiguous to the planning region of the host community.

(b) The facilities within a 75 mile radius of the proposed facility.

C. Part A application. Part A application provides the information essential for assessment of the site suitability for the proposed facility. It contains information on the proposed facility to be able to determine site suitability for intended uses. It provides information on all siting criteria applicable to the proposed facility.

1. The applicant shall complete, sign and submit three copies of the Part A application containing required information and attachments as specified in 9 VAC 20-80-510 to the director.

2. The Part A application will be reviewed for completeness. The applicant will be notified within ~~fifteen~~ 30 days whether the application is administratively complete or incomplete. If complete information is not provided within ~~thirty~~ 60 days after the applicant is notified, or an alternate timeframe approved by the department, the application will be returned to the applicant without further review. Subsequent resubmittals of the application, submitted after 18 months from the date of the department's response letter, shall be considered as a new application.

3. Upon receipt of a complete Part A application, the department shall conduct a technical review of the submittal. Additional information may be required or the site may be visited before the review is completed. The director shall notify the applicant in writing of approval or disapproval of the Part A application or provide conditions to be made a part of the approval.

4. For sanitary landfills, the director's notification must indicate that the site on which the landfill will be located is suitable for the construction and operation of a landfill. In making this determination, the director will consider the information presented in the site hydrogeologic and geotechnical report (9 VAC 20-80-510 F), the landfill impact statement (9 VAC 20-80-510 H 1) and the adequacy of transportation facilities (9 VAC 20-80-510 G). The director may also consider other factors at his discretion.

5. In case of the approval or conditional approval, the applicant may submit the Part B application provided the required conditions are addressed in the submission.

D. Part B application. The Part B application involves the submission of the detailed engineering design and operating plans for the proposed facility.

1. The applicant, after receiving Part A approval, may submit to the department a Part B application to include the required documentation for the specific solid waste management facility as provided for in 9 VAC 20-80-520, 9 VAC 20-80-530, or 9 VAC 20-80-540. The Part B application and supporting documentation shall be submitted in three copies and must include the financial assurance documentation as required by 9 VAC 20-70 Until the closure plans are approved and a draft permit is being prepared, the applicant must provide evidence of commitment to provide the required financial assurance from a financial institution or insurance company. If financial assurance is not provided within 30 days of notice by the director, the permit shall be denied.

2. The Part B application shall be reviewed for administrative completeness before technical evaluation is initiated. The applicant shall be advised in writing within thirty days whether the application is complete or what additional documentation is required. The Part B application will not be evaluated until an administratively complete application is received.

3. The administratively complete application will be coordinated with other state agencies according to the nature of the facility. The comments received shall be considered in the permit review by the department. The application will be evaluated for technical adequacy and regulatory compliance. In the course of this evaluation, the department may require the applicant to provide additional information. At the end of the evaluation, the department will notify the applicant that the application is technically and regulatorily adequate or that the department intends to deny the application.

4. The procedures addressing the denial are contained in 9 VAC 20-80-580.

E. Permit issuance.

1. If the application is found to be technically adequate and in full compliance with this chapter, a draft permit shall be developed by the department.

2. Copies of the draft permit will be available for viewing at the applicant's place of business or at the regional office

of the department, or both, upon request. A notice of the availability of the ~~proposed~~ draft permit shall be made in a newspaper with general circulation in the area ~~where~~ of the facility ~~is to be located~~. A copy of the notice of availability will be provided to the chief administrative officer of all cities and counties that are contiguous to the host community. ~~A public hearing will be scheduled and the notice shall be published at least 30 days in advance of the public hearing on the draft permit. Copies of the proposed draft permit will be available for viewing at the applicant's place of business or at the regional office of the department, or both, upon request in advance of the public hearing.~~

3. If the application is for a new landfill or an increase in landfill capacity, then the department shall hold a public hearing and the notice above will include such information.

4. For any application (other than for subdivision 3 of this subsection), the notice will include the opportunity to request a public hearing. The department shall hold a public hearing on the draft permit whenever the department finds, on the basis of requests, that:

a. There is a significant public interest in the issuance, denial, modification or revocation of the permit in question;

b. There are substantial, disputed issues relevant to the issuance, denial, modification or revocation of the permit in question; and

c. The action requested is not, on its face, inconsistent with, or in violation of, these regulations, the Waste Management Act, or federal law or regulations.

5. The department also may hold a public hearing when it is believed that such a hearing might clarify one or more issues involved in a permit decision.

~~3. The~~ 6. If a public hearing is to be held the department shall ~~hold the announced public hearing~~ convene it 30 days or more after the notice is published in the local newspaper. The public hearing shall be conducted ~~by the department~~ within the local government jurisdiction ~~where~~ of the facility ~~is to be located~~. A comment period shall extend for a 15-day period after the conclusion of the public hearing.

~~4.~~ 7. A final decision to permit, to deny a permit or to amend the draft permit shall be rendered by the director within 30 days of the close of the hearing comment period.

~~5.~~ 8. The permit applicant and the persons who commented during the public participation period shall be notified in writing of the decision on the draft permit. That decision may include denial of the permit (see also 9 VAC 20-80-580), issuance of the permit as drafted, or amendment of the draft permit and issuance.

~~6.~~ 9. No permit for a new solid waste management facility or an amendment allowing a facility expansion or an increase in capacity shall be approved by the director unless the facility meets the provisions of § 10.1-1408.1 D of the Code of Virginia. Before issuing a permit the director shall make a determination in writing in accordance with the provisions of § 10.1-1408.1 D of the Code of Virginia. The director may request updated information during the review of the permit application if the information on which the director's determination is based is no longer current. If, based on the analysis of the materials presented in the permit application, the determination required in § 10.2-1408.1 D cannot be made, the application will be denied in accordance with 9 VAC 20-80 580 A 6.

~~7.~~ 10. Any permit for a new sanitary landfill and any permit amendment authorizing expansion of an existing sanitary landfill shall incorporate the conditions required for a disposal capacity guarantee in § 10.1-1408.1 P of the Code of Virginia. This provision does not apply to permit applications from one or more political subdivisions that will only accept waste from within those political subdivisions' jurisdiction or municipal solid waste generated within other political subdivisions pursuant to an interjurisdictional agreement.

**9 VAC 20-80-510. Part A permit application.**

The following information shall be included in the Part A of the permit application for all solid waste management facilities unless otherwise specified in this section.

A. The Part A permit application consists of a letter stating the type of the facility for which the permit application is made and the certification required in subsection I of this section. All pertinent information and attachments required by this section are provided on DEQ Form SW 7-3 (Part A Permit Application).

B. A key map of the Part A permit application, delineating the general location of the proposed facility, shall be prepared and attached as part of the application. The key map shall be plotted on a seven and one-half minute United States Geological Survey topographical quadrangle. The quadrangle shall be the most recent revision available, shall include the name of the quadrangle and shall delineate a minimum of one mile from the perimeter of the proposed facility boundaries. One or more maps may be utilized where necessary to insure clarity of the information submitted.

C. A near-vicinity map shall be prepared and attached as part of the application. The vicinity map shall have a minimum scale of one inch equals 200 feet (1" = 200'). The vicinity map shall delineate an area of 500 feet from the perimeter of the property line of the proposed facility. The vicinity maps may be an enlargement of a United States Geological Survey

topographical quadrangle or a recent aerial photograph. The vicinity map shall depict the following:

1. All homes, buildings or structures including the layout of the buildings which will comprise the proposed facility;

2. The facility boundary;

3. The limits of the actual disposal operations within the boundaries of the proposed facility, if applicable;

4. Lots and blocks taken from the tax map for the site of the proposed facility and all contiguous properties;

5. The base floodplain, where it passes through the map area; or, otherwise, a note indicating the expected flood occurrence period for the area;

6. Existing land uses and zoning classification;

7. All water supply wells, springs or intakes, both public and private;

8. All utility lines, pipelines or land based facilities (including mines and wells); and

9. All parks, recreation areas, surface water bodies, dams, historic areas, wetlands areas, monument areas, cemeteries, wildlife refuges, unique natural areas or similar features.

D. Except in the case of a local governing body or a public service authority possessing a power of eminent domain, copy of lease or deed (showing page and book location) or certification of ownership of the site, the department will not consider an application for a permit from any person who does not demonstrate legal control over the site for a period of the permit life. A documentation of an option to purchase will be considered as a temporary substitute for a deed; however, the true deed must be provided to the department before construction at the site begins.

E. For solid waste disposal facilities regulated under Part V (9 VAC 20-80-240 et seq.) of this chapter, site hydrogeologic and geotechnical report by geologist or engineer registered for practice in the Commonwealth.

1. The site investigation for a proposed landfill facility shall provide sufficient information regarding the geotechnical and hydrogeologic conditions at the site to allow a reasonable determination of the usefulness of the site for development as a landfill. The geotechnical exploration efforts shall be designed to provide information regarding the availability and suitability of onsite soils for use in the various construction phases of the landfill including liner, cover, drainage material, and cap. The hydrogeologic information shall be sufficient to determine the characteristics of the uppermost aquifer underlying the facility. Subsurface investigation programs conducted shall meet the minimum specifications here.

a. Borings shall be located to identify the uppermost aquifer within the proposed facility boundary, determine the ability to perform ground water monitoring at the site, and provide data for the evaluation of the physical properties of soils and soil availability. Borings completed for the proposed facility shall be sufficient in number and depth to identify the thickness of the uppermost aquifer and the presence of any significant underlying impermeable zone. Impermeable zone shall not be fully penetrated within the anticipated fill areas, whenever possible. The number of borings shall be at a minimum in accordance with Table 7.1 as follows:

Table 7.1

| Acreage | Total Number of Borings |
|---|---|
| Less than 10 | 4 |
| 10 - 49 | 8 |
| 50 - 99 | 14 |
| 100 - 200 | 20 |
| More than 200 | 24 + 1 boring for each additional 10 acres |

b. The department reserves the right to require additional borings in areas in which the number of borings required by Table 7.1 is not sufficient to describe the geologic formations and ground water flow patterns below the proposed solid waste disposal facility.

c. In highly uniform geological formations, the number of borings may be reduced, as approved by the department.

d. The borings should employ a grid pattern, wherever possible, such that there is, at a minimum, one boring in each major geomorphic feature. The borings pattern shall enable the development of detailed cross sections through the proposed landfill site.

e. Subsurface data obtained by borings shall be collected by standard soil sampling techniques. Diamond bit coring, air rotary drilling or other appropriate methods, or a combination of methods shall be used as appropriate to characterize competent bedrock. The borings shall be logged from the surface to the lowest elevation (base grade) or to bedrock, whichever is shallower, according to standard practices and procedures. In addition, the borings required by Table 7.1 shall be performed on a continuous basis for the first 20 feet below the lowest elevation of the solid waste disposal facility or to the bed rock. Additional samples as determined by the registered geologist or engineer shall be collected at five-foot intervals thereafter.

f. Excavations, test pits and geophysical methods may be employed to supplement the soil boring investigation.

g. At a minimum, four of the borings shall be converted to water level observations wells, well nests, piezometers

or piezometer nests to allow determination of the rate and direction of ground water flow across the site. All ground water monitoring points or water level measurement points shall be designed to allow proper abandonment by backfilling with an impermeable material. The total number of wells or well nests shall be based on the complexity of the geology of the site.

h. Field analyses shall be performed in representative borings to determine the in situ hydraulic conductivity of the uppermost aquifer.

i. All borings not to be utilized as permanent monitoring wells, and wells within the active disposal area, shall be sealed and excavations and test pits shall be backfilled and properly compacted to prevent possible paths of leachate migration. Boring sealing procedures shall be documented in the hydrogeologic report.

2. The geotechnical and hydrogeologic reports shall at least include the following principal sections:

a. Field procedures. Boring records and analyses from properly spaced borings in the facility portion of the site. Final boring logs shall be submitted for each boring, recording soils or rock conditions encountered. Each log shall include the type of drilling and sampling equipment, date the boring was started, date the boring was finished, a soil or rock description in accordance with the United Soil Classification System or the Rock Quality Designation, the method of sampling, the depth of sample collection, the water levels encountered, and the Standard Penetration Test blow counts, if applicable. Boring locations and elevations shall be surveyed with a precision of 0.01 foot. At least one surveyed point shall be indelibly marked by the surveyor on each well. All depths of soil and rock as described within the boring log shall be corrected to National Geodetic Vertical Datum, if available.

b. Geotechnical interpretations and report including complete engineering description of the soil units underlying the site.

(1) Soil unit descriptions shall include estimates of soil unit thickness, continuity across the site, and genesis. Laboratory determination of the soil unit's physical properties shall be discussed.

(2) Soil units that are proposed for use as a drainage layer, impermeable cap or impermeable liner material shall be supported by laboratory determinations of the remolded permeability. Remolded hydraulic conductivity tests require a Proctor compaction test (ASTM D698) soil classification liquid limit, plastic limit, particle size distribution, specific gravity, percent compaction of the test sample, remolded density and remolded moisture content, and the percent saturation of the test sample. Proctor compaction test data and hydraulic conductivity test sample data should be plotted on standard moisture-density test graphs.

(3) The geotechnical report shall provide an estimate of the available volume of materials suitable for use as liner, cap, and drainage layer. It should also discuss the anticipated uses of the on-site materials, if known.

c. Hydrogeologic report.

(1) The report shall include water table elevations, direction and calculated rate of ground water flow and similar information on the hydrogeology of the site. All raw data shall be submitted with calculations.

(2) The report shall contain a discussion of field test procedures and results, laboratory determinations made on undisturbed samples, recharge areas, discharge areas, adjacent or areal usage, and typical radii of influence of pumping wells.

(3) The report shall also contain a discussion of the regional geologic setting, the site geology and a cataloging and description of the uppermost aquifer from the site investigation and from referenced literature. The geologic description shall include a discussion of the prevalence and orientation of fractures, faults, and other structural discontinuities, and presence of any other significant geologic features. The aquifer description should address homogeneity, horizontal and vertical extent, isotropy, the potential for ground water remediation, if required, and the factors influencing the proper placement of a ground water monitoring network.

(4) The report shall include a geologic map of the site prepared from one of the following sources as available, in order of preference:

(a) Site specific mapping prepared from data collected during the site investigation;

(b) Published geologic mapping at a scale of 1:24,000 or larger;

(c) Published regional geologic mapping at a scale of 1:250,000 or larger; or

(d) Other published mapping.

(5) At least two generally orthogonal, detailed site specific cross sections, which shall sufficiently describe the geologic formations identified by the geologic maps prepared in accordance with subdivision 2 c (4) of this subsection at a scale which clearly illustrates the geologic formations, shall be included in the hydrogeologic report. Cross sections shall show the geologic units, approximate construction of existing landfill cells base grades, water table, and surficial features along the line of the

cross section. Cross section locations shall be shown on an overall facility map.

(6) Potentiometric surface maps for the uppermost aquifer which sufficiently define the ground water conditions encountered below the proposed solid waste disposal facility area based upon stabilized ground water elevations. Potentiometric surface maps shall be prepared for each set of ground water elevation data available. The applicant shall include a discussion of the effects of site modifications, seasonal variations in precipitation, and existing and future land uses of the site on the potentiometric surface.

(7) If a geological map or report from either the Department of Mines, Minerals, and Energy or the U.S. Geological Survey is published, it shall be included.

F. For solid waste management facilities regulated under Part VI (9 VAC 20-80-320 et seq.) of this chapter:

1. A cataloging and description of aquifers, geological features or any similar characteristic of the site that might affect the operation of the facility or be affected by that operation.

2. If a geological map or report from either the Department of Mines, Minerals, and Energy or the U.S. Geological Survey is published, it shall be included.

G. For sanitary landfills, a VDOT adequacy report prepared by the Virginia Department of Transportation. As required under § 10.1-1408.4 A 1 of the Code of Virginia, the report will address the adequacy of transportation facilities that will be available to serve the landfill, including the impact of the landfill on the local traffic volume, road congestion, and highway safety.

H. For sanitary landfills, a Landfill Impact Statement (LIS).

1. A report must be provided to the department that addresses the potential impact of the landfill on parks, recreational areas, wildlife management areas, critical habitat areas of endangered species as designated by applicable local, state, or federal agencies, public water supplies, marine resources, wetlands, historic sites, fish and wildlife, water quality, and tourism. <u>This report shall comply with the statutory requirements for siting landfills in the vicinity of public water supplies or wetlands as recorded in §§ 10.1-1408.4 and 10.1-1408.5 of the Code of Virginia.</u>

2. The report will include a discussion of the landfill configuration and how the facility design addresses any impacts identified in the report required under subdivision 1 of this subsection.

3. The report will identify all of the areas identified under subdivision 1 of this subsection that are within five miles of the facility.

I. A signed statement by the applicant that he has sent written notice to all adjacent property owners or occupants that he intends to develop a SWMF on the site, a copy of the notice and the names and addresses of those to whom the notices were sent.

J. Information demonstrating that the facility is consistent with the local solid waste management plan including:

1. A discussion of the role of the facility in solid waste management within the solid waste planning region;

2. A description of the additional solid waste disposal capacity that the facility would provide to the proposed area of service;

3. Specific references to local solid waste management plan where discussions of the facility are provided.

K. One or more of the following indicating that the public interest would be served by a new facility or a facility expansion, which includes:

1. Cost effective waste management for the public within the service area comparing the costs of a new facility or facility expansion to waste transfer, or other disposal options;

2. The facility provides protection of human health and safety and the environment;

3. The facility provides alternatives to disposal including reuse or reclamation;

4. The facility allows for the increased recycling opportunities for solid waste;

5. The facility provides for energy recovery or the subsequent use of solid waste, or both, thereby reducing the quantity of solid waste disposed;

6. The facility will support the waste management needs expressed by the host community; or

7. Any additional factors that indicate that the public interest would be served by the facility.

VA.R. Doc. No. R06-32; Filed June 19, 2007, 12:05 p.m.

# TITLE 14. INSURANCE

## 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 that by the Constitution is expressly granted any of the powers of a court of record.

### Final Regulation

Title of Regulation: **14 VAC 5-215. Rules Governing Independent External Review of Final Adverse Utilization Review Decisions (amending 14 VAC 5-215-20, 14 VAC 5-215-30, 14 VAC 5-215-50, 14 VAC 5-215-60 and 14 VAC 5-215-80).**

Statutory Authority: §§ 12.1-13 and 38.2-223 of the Code of Virginia.

Effective Date: July 1, 2007.

Agency Contact: Kim R. Naoroz, Manager, External Appeals, Bureau of Insurance, State Corporation Commission, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9915, FAX (804) 371-9944, or email kim.naoroz@scc.virginia.gov.

Summary:

*The revisions to the Rules are necessary as a result of the passage of an amendment to §§ 38.2-5902 and 38.2-5905 of the Code of Virginia relating to expedited appeals of final adverse decisions regarding health care coverage. The revisions include provisions for expedited consideration of appeals involving a terminal condition. The provisions include a requirement that the commissioner or his designee shall issue his written ruling affirming, modifying, or reversing the final adverse decision no later than one business day following the receipt of such recommendation.*

AT RICHMOND, JUNE 11, 2007

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

CASE NO. INS-2007-00138

Ex Parte: In the matter of
adopting revisions to the
Rules Governing Independent
External Review of Final Adverse
Utilization Review Decisions

ORDER ADOPTING REVISIONS TO RULES

By Order entered herein by the State Corporation Commission ("Commission") on April 20, 2007, all interested persons were ordered to take notice that subsequent to May 25, 2007, the Commission would consider the entry of an Order adopting revisions proposed by the Bureau of Insurance (the "Bureau") to the Commission's Rules Governing Independent External Review of Final Adverse Utilization Review Decisions, which are set forth in Chapter 215 of Title 14 of the Virginia Administrative Code, unless on or before May 25, 2007, any person objecting to the adoption of the proposed revisions filed a request for hearing with the Clerk of the Commission (the "Clerk").

The Order to Take Notice also required all interested persons to file their comments in support of or in opposition to the proposed revisions on or before May 25, 2007.

There were no comments and no requests for hearing filed with the Clerk on or before May 25, 2007.

The revisions to the Rules are necessary as a result of the passage of an amendment to Code of Virginia §§ 38.2-5902 and 38.2-5905 relating to expedited appeals of final adverse decisions regarding health care coverage. The revisions include provisions for expedited consideration of appeals involving a terminal condition. The provisions include a requirement that the Commissioner of Insurance or his designee shall issue his written ruling affirming, modifying, or reversing the final adverse decision no later than one business day following the receipt of such recommendation.

The Bureau recommends that no changes be made to the recommended proposed revisions, and further recommends that the Commission adopt the proposed revisions.

THE COMMISSION, having considered the proposed revisions and the Bureau's recommendation, is of the opinion that the attached revisions to the Rules should be adopted.

THEREFORE IT IS ORDERED THAT:

(1) The revisions to the "Rules Governing Independent External Review of Final Adverse Utilization Review Decisions," which amend the Rules at 14 VAC 5-215-20, 14 VAC 5-215-30, 14 VAC 5-215-50, 14 VAC 5-215-60, and 14 VAC 5-215-80 and which are attached hereto and made a part hereof, should be, and they are hereby, ADOPTED to be effective July 1, 2007.

(2) AN ATTESTED COPY hereof, together with a copy of the revisions, shall be sent by the Clerk of the Commission to the Bureau of Insurance in care of Deputy Commissioner Jacqueline K. Cunningham, who forthwith shall give further notice of the adoption of the revisions by mailing a copy of this Order, together with clean copy of the Rules, to all health carriers with managed care health insurance plan (MCHIP) authority and who are licensed by the Commission to write accident and sickness insurance in the Commonwealth of

Virginia, including health maintenance organizations and health services plans, as well as all interested parties.

(3) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, together with the revisions to the Rules, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(4) The Commission's Division of Information Resources shall make available this Order and the attached Rules on the Commission's website, http://www.scc.virginia.gov/caseinfo.htm.

(5) The Bureau of Insurance shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements in Ordering Paragraph (2) of this Order.

**14 VAC 5-215-20. ~~Evidence of coverage forms~~ Notifications.**

~~A. The right of appeal contained in this chapter shall commence with regard to final adverse decisions rendered on or after May 17, 2000. Evidences of coverage affected by this chapter that are issued, extended, renewed, amended, or reissued on or after February 15, 2000, shall conform to the provisions of this chapter. Evidences of coverage in force on February 15, 2000, shall be deemed to be in compliance with this chapter and may continue to be used until the date that they are extended, renewed, amended, or reissued. If any provision of an evidence of coverage in force February 15, 2000, conflicts with provisions of this chapter, the Bureau of Insurance and the impartial health entity shall use the provision more beneficial to the covered person.~~

~~B.~~ In the event of a final adverse decision, a utilization review entity shall provide to the covered person or treating health care provider requesting the decision a clear and understandable written notification of (i) the right to appeal final adverse decisions to the Bureau of Insurance in accordance with the provisions of Chapter 59 (§ 38.2-5900 et seq.) of Title 38.2 of the Code of Virginia; (ii) the procedures for making such an appeal; and (iii) the binding nature and effect of such an appeal. The notice shall include a copy of the ~~then current~~ Instructions (Form 215A), Important Terms and Definitions (Form 215B), Appeal of Final Adverse Decision Form (Form 215C), and Authorization (Form 215D), or such other form or forms as may then be required by the Bureau of Insurance pursuant to 14 VAC 5-215-120.

**14 VAC 5-215-30. Definitions.**

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

"Appellant" means (i) the covered person; (ii) the covered person's parent, guardian, legal custodian, or other individual authorized by law to act on behalf of the covered person if the covered person is a minor; (iii) the covered person's spouse, parent, committee, legal guardian, or other individual authorized by law to act on behalf of the covered person if the covered person is not a minor but is incompetent or incapacitated; or (iv) the covered person's treating health care provider acting with the consent of the covered person, the covered person's parent, guardian, legal custodian, or other individual authorized by law to act on behalf of the covered person if the covered person is a minor, or the covered person's spouse, parent, committee, legal guardian, or other individual authorized by law to act on behalf of the covered person if the covered person is not a minor but is incompetent or incapacitated.

"Commission" means the Virginia State Corporation Commission.

"Commissioner" means the Commissioner of Insurance.

"Covered person" means an individual, whether a policyholder, subscriber, enrollee, covered dependent, or member of a managed care health insurance plan, who is entitled to health care services or benefits provided, arranged for, paid for or reimbursed pursuant to a managed care health insurance plan as defined in and subject to regulation under Chapter 58 (§ 38.2-5800 et seq.) of Title 38.2 of the Code of Virginia, when such coverage is provided under a contract issued in this Commonwealth.

"Emergency health care" means health care items and medical services furnished or required to evaluate and treat an emergency medical condition.

"Emergency medical condition" means the sudden and, at the time, unexpected onset of a health condition or illness that requires immediate medical attention, the absence of which would result in a serious impairment to bodily functions, serious dysfunction of a bodily organ or part, or would place the person's health in serious jeopardy. "Emergency medical condition" also means a health condition or illness that if not treated within the time frame allotted for a standard review under this chapter will result in a serious impairment to bodily functions, serious dysfunction of a bodily organ or part, or would place the person's health in serious jeopardy.

"Emergency medical condition" also means a health condition that would be terminal without the requested treatment, as determined by the person's treating health care provider.

"Evidence of coverage" means any certificate, individual or group agreement or contract, or identification card or related documents issued in conjunction with the certificate, agreement or contract, issued to a subscriber setting out the coverage and other rights to which a covered person is entitled.

"Final adverse decision" means a utilization review determination (i) declining to grant an expedited review in a situation involving an alleged emergency medical condition; (ii) declining to provide coverage or services for an alleged

emergency medical condition~~, whether before or~~ after granting an expedited review; or (iii) denying benefits or coverage, and concerning which all internal appeals available to the covered person pursuant to Title 32.1 of the Code of Virginia have been exhausted. For purposes of this chapter, a final adverse decision shall be deemed to have been made on the date that it is communicated to the covered person or treating health care provider.

"Treating health care provider" or "provider" means a licensed health care provider who renders or proposes to render health care services to a covered person.

"Utilization review" means a system for reviewing the necessity, appropriateness, and efficiency of hospital, medical or other health care services rendered or proposed to be rendered to a patient or group of patients for the purpose of determining whether such services should be covered or provided by an insurer, health services plan, managed care health insurance plan licensee, or other entity or person. As used herein, "utilization review" shall include, but shall not be limited to, preadmission, concurrent and retrospective medical necessity determination, and review related to the appropriateness of the site at which services were or are to be delivered.

"Utilization review" shall also include determinations of medical necessity based upon contractual limitations regarding "experimental" or "investigational" procedures, by whatever terms designated in the evidence of coverage. "Utilization review" shall not include any: (i) denial of benefits or services for a procedure which is explicitly excluded pursuant to the terms of the contract or evidence of coverage; (ii) review of issues concerning contractual restrictions on facilities to be used for the provision of services; or (iii) determination by an insurer as to the reasonableness and necessity of services for the treatment and care of an injury suffered by an insured for which reimbursement is claimed under a contract of insurance covering any classes of insurance defined in §§ 38.2-117 through 38.2-119, 38.2-124 through 38.2-126, 38.2-130 through 38.2-132, and 38.2-134 of the Code of Virginia.

"Utilization review entity" or "entity" means an insurer or managed care health insurance plan licensee that performs utilization review or upon whose behalf utilization review is performed with regard to the health care or proposed health care that is the subject of the final adverse decision.

**14 VAC 5-215-50. Appeals.**

A. An appeal of a final adverse decision made by a utilization review entity shall be submitted to the Bureau of Insurance within 30 days of the final adverse decision. The appeal shall be made by (i) completing and signing a copy of the ~~then current~~ Appeal of Final Adverse Decision Form, (Form 215C) or such other form or forms as may then be required by the Bureau of Insurance pursuant to 14 VAC 5-215-120; (ii) completing and signing an Authorization to Release Medical Information (Form 215D) in a form and manner required by the Bureau of Insurance; and (iii) forwarding a check or money order made payable to the Treasurer of Virginia in the amount of $50. The Bureau of Insurance shall provide a copy of the written appeal to the utilization review entity that made the final adverse decision.

B. The $50 fee required to file an appeal may be waived or refunded for good cause shown upon a determination by the Bureau of Insurance that payment of the filing fee will cause undue financial hardship for the covered person. Such determination shall be based upon information provided on the Appeal of Final Adverse Decision Form ~~then~~ (Form 215C) required by the Bureau of Insurance, and any supplemental information required by the Bureau of Insurance. The decision of the Bureau of Insurance as to whether good cause has been shown that payment of the filing fee will cause undue financial hardship shall be final.

C. A preliminary review of the appeal shall be conducted by the Bureau of Insurance or its designee to determine the following: (i) that the person on whose behalf the appeal has been filed is, or was, a covered person at the time the health care service in question was requested; (ii) that the appellant satisfies the definition of "appellant" set forth in 14 VAC 5-215-30; (iii) that the benefit or service that is the subject of the appeal reasonably appears to be a covered service for which the actual cost to the covered person would exceed $300 if the final adverse decision is not reversed; (iv) that all other appeal procedures available to the appellant have been exhausted, except in the case of an appeal accepted as one requiring expedited review; and (v) that the appeal is otherwise complete and filed in accordance with this section. The Bureau of Insurance shall not accept an appeal that does not meet the foregoing requirements.

D. The preliminary review shall be conducted within 10 working days of receipt of all information and documentation necessary to conduct the preliminary review.

E. The Bureau of Insurance shall notify the appellant and the utilization review entity in writing within five working days of the completion of the preliminary review whether the appeal has been accepted for review, and if not accepted, the reason or reasons ~~therefor~~.

F. The appellant, the treating health care provider, if not the appellant, and the utilization review entity shall provide to the Bureau of Insurance or its designee copies of all medical records relevant to the final adverse decision within 20 working days after the Bureau of Insurance has mailed, via certified mail, return receipt requested, written notice of its acceptance of the appeal. Failure to comply with ~~such~~ the request within the required time may result in the dismissal of the appeal or reversal of the final adverse decision, at the discretion of the commissioner. The confidentiality of these

medical records shall be maintained in accordance with the confidentiality and disclosure laws of the Commonwealth.

G. The Bureau of Insurance, or its designee, may request additional medical records from the appellant, the treating health care provider, if not the appellant, or the utilization review entity. Such medical records shall be provided to the entity making the request, whether the Bureau of Insurance or its designee, within 20 working days of the request. The confidentiality of these medical records shall be maintained in accordance with the confidentiality and disclosure laws of the Commonwealth. Failure to comply with the request within the required time may result in dismissal of the appeal or reversal of the final adverse decision at the discretion of the commissioner.

H. The commissioner, upon good cause shown, may provide an extension of time for the covered person, the treating health care provider, the utilization review entity and the Bureau of Insurance to meet the time requirements set forth in this section.

I. If an appeal that is reviewed as an expedited appeal by a utilization review entity results in a final adverse decision, the utilization review entity shall take the following actions immediately: (i) notify the person who requested the expedited review of the final adverse decision; and (ii) notify the appellant, by telephone, ~~telefacsimile~~ fax, or electronic mail, that the appellant is eligible for an expedited appeal to the Bureau of Insurance without the necessity of providing the justification required pursuant to subdivision 1 of 14 VAC 5-215-80. The notification shall be followed within 24 hours by written notice to the appellant and the treating health care provider, if not the appellant, clearly informing them of the right to appeal this decision to the Bureau of Insurance and providing the appropriate forms (Forms 215A, 215B, 215C, and 215D) by which ~~such~~ the appeal to the Bureau of Insurance may be filed. A copy of this written notice shall be retained by the utilization review entity and included with any materials forwarded to the Bureau of Insurance in the event the utilization review entity's decision is appealed to the Bureau of Insurance.

J. If a request for an expedited review is denied by a utilization review entity, the entity shall take the following actions immediately: (i) notify the appellant of the decision by telephone, ~~telefacsimile~~ fax, or electronic mail; and (ii) inform the appellant that the appellant has the right to file a request for an expedited appeal with the Bureau of Insurance pursuant to subdivision 1 of 14 VAC 5-215-80. This notification shall be followed within 24 hours by a written notice to the appellant and the treating health care provider, if not the appellant, clearly informing them of the right to appeal this decision to the Bureau of Insurance and providing the appropriate forms (Forms 215A, 215B, 215C, and 215D) by which ~~such~~ the appeal to the Bureau of Insurance may be filed. A copy of the written notice shall be retained by the utilization review entity and included with any materials forwarded to the Bureau of Insurance in the event the utilization review entity's decision is appealed to the Bureau of Insurance.

K. If the Bureau of Insurance, or its designee, determines that a request for an expedited review which has been reviewed in accordance with subsection J of this section does not meet its criteria for an expedited review, the appellant shall be notified in writing by the Bureau of Insurance, or its designee, within two working days from the time ~~such~~ the determination is made. The notice shall instruct the appellant wishing to pursue the appeal to contact the issuer of coverage and request a review through the standard review process of the issues for which an expedited review was sought.

**14 VAC 5-215-60. Impartial health entity.**

The Bureau of Insurance shall contract with one or more impartial health entities to perform the review of final adverse decisions made by utilization review entities. The impartial health entity shall examine the final adverse decision and determine whether the decision is objective, clinically valid, compatible with established principles of health care, and appropriate under the terms of the contractual obligations to the covered person. The impartial health entity shall issue its written recommendation affirming, modifying, or reversing the final adverse decision within 30 working days of the date that the impartial health entity has received from all parties all documentation and information necessary for it to complete its review in the case of a standard review as set forth in 14 VAC 5-215-70. In the case of an expedited review, the impartial health entity shall issue its written recommendation within five working days of ~~the acceptance of the appeal by the Bureau of Insurance~~ its receipt of sufficient information to review the appeal.

**14 VAC 5-215-80. Expedited review.**

Appeals presented to the Bureau of Insurance as requiring emergency health care shall be evaluated as follows:

1. Immediately upon receipt of an appeal indicating that emergency health care is required and otherwise meeting the requirements for review as provided in 14 VAC 5-215-50 C, the Bureau of Insurance shall consult with the impartial health entity to which the appeal normally would be assigned, and such entity shall determine if the appeal involves emergency health care.

2. If, after consultation with the impartial health entity, a determination is made by the Bureau of Insurance that the appeal does not qualify for an expedited review, the person making the request for the expedited review shall be notified within two working days of receipt by the Bureau of Insurance of sufficient information to support the request for expedited review. The declination by the Bureau of Insurance to provide an expedited review shall not preclude the appellant from resuming the normal appeal process

within the utilization review entity or from filing a request for a standard review by the Bureau of Insurance, provided the requirements set forth in 14 VAC 5-215-50 A have been met.

3. Immediately upon acceptance of an appeal for expedited review, the Bureau of Insurance shall notify the utilization review entity and the appellant by the most expeditious means available, including telephone, ~~telefacsimile~~ fax, or electronic mail, of their right to submit information and supporting documentation. Such information shall be submitted to the Bureau of Insurance or the impartial health entity within two working days of the acceptance of the appeal.

4. Upon the acceptance of the appeal for expedited review, the Bureau of Insurance shall assign the appeal to an impartial health entity for clinical review as provided in 14 VAC 5-215-60. The impartial health entity shall review the appeal and make a decision as required under 14 VAC 5-215-60 as soon as possible consistent with the medical exigencies of the case, but in no event more than five working days after its receipt of sufficient information to review the appeal.

5. a. Immediately upon receipt of the assigned impartial health entity's recommendation, the commissioner shall review the recommendation to ensure that it is not arbitrary or capricious.

b. The commissioner shall notify the appellant and the utilization review entity in writing of the decision to uphold or reverse the final adverse decision by issuing a written ruling affirming, modifying or reversing the final adverse decision. The written ruling shall bind the covered person and the issuer of the covered person's policy or contract for health benefits to the same extent to which each would have been bound by a judgment entered in an action at law or in equity with respect to the issues which the impartial health entity may examine when reviewing a final adverse decision. If the decision is regarding treatment for a covered person whose condition would be terminal without the treatment, the commissioner or his designee shall issue his written ruling no later than one business day following the receipt of the recommendation.

c. The commissioner shall include in the notice sent pursuant to subdivision 5 b of this section:

(1) The principal reason or reasons for the decision, including, as an attachment to the notice or in any other manner that the commissioner considers appropriate, the information provided by the assigned impartial health entity supporting its recommendations; and

(2) If applicable, the principal reason or reasons why the commissioner did not follow the assigned impartial health entity's recommendation.

d. Upon notice of a decision pursuant to subdivision 5 a of this section reversing the final adverse decision, the utilization review entity immediately shall approve and provide, or provide reimbursement for, any and all medical services that were the subject of the final adverse decision.

NOTICE: The forms used in administering 14 VAC 5-215, Rules Governing Independent External Review of Final Adverse Utilization Review Decisions, are not being published due to the large number; however, the name of each form is listed below. The forms are available for public inspection at the State Corporation Commission, Powers-Taylor Building, 13 South 13 Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

Instructions for Completing the Appeal of Final Adverse Decision Form, Form 215A (rev. ~~7/00~~ 7/07).

Important Terms and Definitions, Form 215B (rev. ~~7/00~~ 7/07).

Appeal of Final Adverse Decision Form, Form 215C (rev. ~~7/00~~ 7/07).

Authorization to Release Medical Information, Form 215D (rev. ~~7/00~~ 7/07).

VA.R. Doc. No. R07-196; Filed June 12, 2007, 12:59 p.m.

# TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

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

### Proposed Regulation

Title of Regulation: **18 VAC 10-20. Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects Regulations (amending 18 VAC 10-20-10, 18 VAC 10-20-280, 18 VAC 10-20-295, 18 VAC 10-20-310, 18 VAC 10-20-340, 18 VAC 10-20-350, 18 VAC 10-20-360, 18 VAC 10-20-380; adding 18 VAC 10-20-382, 18 VAC 10-20-392, and 18 VAC 10-20-395).**

Statutory Authority: §§ 54.1-201, 54.1-404, and 54.1-411 of the Code of Virginia.

Public comments: Public comments may be submitted until September 13, 2007.

Public Hearing Information:

September 13, 2007 - 9 a.m. -- The Perimeter center, 9960 Mayland Drive, Suite 200, Richmond, VA

Agency Contact: Mark N. Courtney, Executive Director, Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-0795, or email apelscidla@dpor.virginia.gov.

Basis: Section 54.1-201 of the Code of Virginia empowers the regulatory boards to promulgate regulations that are necessary to ensure continued competency, prevent deceptive or misleading practices by practitioners, and effectively administer the regulatory system administered by the regulatory board.

Section 54.1-404 of the Code of Virginia provides the board the authority to promulgate regulations governing its own organization, the professional qualifications of applicants, the requirements necessary for passing examinations in whole or in part, the proper conduct of its examinations, the implementation of exemptions from license requirements, and the proper discharge of its duties.

Section 54.1-411 of the Code of Virginia requires the board to adopt regulations governing the registration of persons, corporations, partnerships, limited liability companies, sole proprietors and other entities offering or rendering the practice of architecture, engineering, land surveying or offering the title of certified landscape architect or certified interior designer.

Purpose: The new and amended regulations are necessary to implement the provisions of HB 2863 of the 2005 General Assembly session that granted the APELSCIDLA Board authority to regulate the practice of photogrammetry as a subset of the land surveyor profession. This regulatory program will allow photogrammetrists to be licensed in an appropriate manner while ensuring the public is adequately protected through minimum competency standards of practice for individuals who are integral in the process of constructing improvements on real property and determining flood plains.

Substance: The board will develop regulations to implement a regulatory program for photogrammetrists, including standards for determination of topography, in accordance with the provisions of § 54.1-404 B of the Code of Virginia.

The proposed change is being considered as a study by the Board for Professional and Occupational Regulation since it determined that the practice of photogrammetry does affect the health, safety and welfare of the public. Further, in order to adequately protect the public, the General Assembly granted the APELSCIDLA Board the authority to develop the necessary regulatory program.

Other changes that may be necessary may also be considered.

Issues: The public and those associated with the development of real property will now have a pool of qualified photogrammetrists from which to select. In addition, the board will have the authority to discipline those regulants who show themselves to be a danger to the public. The photogrammetrists will bear the costs of the regulatory program; however, the expense is expected to be minimal (on par with what land surveyors currently pay) and should not have an adverse impact on the profession. The GIS community is exempted from this licensure program and should not be adversely affected.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Regulation. As permitted by Chapter 440 (2005 Acts of Assembly), the Board of Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects (board) proposes to create a sub-licensure of land surveyors that will encompass photogrammetrists as well as users of any other remote sensing technologies that are currently in use or have yet to be developed. Also pursuant to Chapter 440, individuals are exempted from having to be licensed if they use photogrammetry or other remote sensing methods only to:

- "(i) determine topography or contours, or to depict physical improvements, provided such maps or other documents shall not be used for design, modification, or construction of improvements to real property or for flood plain determination," or
- "(ii) graphically show existing property lines and boundaries on maps or other documents provided such depicted property lines and boundaries shall only be used for general information."

Result of Analysis. The costs likely exceed the benefits for this proposed regulatory change.

Estimated Economic Impact. Photogrammetry, in simple terms, is the practice of using overlapping aerial photographs to map contours and topography or to show physical improvements on the land being mapped. This method has been used since right after World War II as a means to map land more quickly, and at lower cost, than could traditional land surveying techniques.

Photogrammetry is of limited use when mapping areas where foliage blocks the view of the ground and is accurate to set specifications. Thus photogrammetric mapping of forested areas usually would occur in the fall or winter, after trees have dropped their leaves, and contracts for photogrammetric work would include the accuracy specifications required for whatever uses the maps will be put.

Laser Detection and Ranging (LIDAR) mapping is a newer technology that is used for the same end. Instead of

overlapping aerial photographs, LIDAR uses information gained from bouncing rays of light (up to 70,000 pulses of light per second) off the ground below. This allows mapping of areas that are forested at any time of the year since some light pulse will go between the leaves of trees and hit the ground below. LIDAR is apparently less useful for mapping shorelines since the pulses of light are absorbed by water and do not very effectively bounce back to the equipment doing the mapping.

Any land under consideration can also now be mapped, again only with specified accuracy, using satellite imagery. Other remote sensing technologies may yet be developed.

Currently, photogrammetrists and users of other remote sensing technologies are not, and historically have not been, required to be licensed. The board proposes to set up a license designation for land surveyor photogrammetrists that will be a discrete sub-licensure of land surveying. The board reports that this sub-licensure will only require competency in a specific sub-set of land surveying skills. This not withstanding, the board proposes to require photogrammetrists and users of other remote sensing technologies to meet education and experience requirements that are identical in length to those required of land surveyors.

This sublicensure program does have provisions to allow currently practicing photogrammetrists who meet certain criteria to continue practicing throughout the period that it takes for them to meet all the requirements for licensure.

Currently practicing photogrammetrists who do not meet these criteria, as well as individuals wanting to enter this field, will have to discontinue, or forego, independent practice until they are able to complete a two stage licensure process. They will have to complete a four year degree in an approved field (currently only a degree in land surveying is on this list) or complete a combination of education and experience scaled to the level of education attained. At this stage, individuals will be required to complete up to eight years of supervised work in the field before they can apply to sit for the exam that, if passed, will gain them a surveyor in training (SIT) designation.

After becoming an SIT, candidates will have to have four more years of supervised work experience, and will have to sit for another competency exam, before they can get their license and start practicing their trade independently.

Photogrammetrists who are able to show that they have at least eight years of board approved education and experience, and can provide evidence for other requirements, will be able to gain licensure without a break in their independent work. The other evidence that these photogrammetrists will have to provide includes:

- Certified proof of graduation from high school (with successful completion of courses in algebra, geometry and trigonometry) or certified proof of other, board accepted higher education.
- Evidence of progressively more responsible work experience, including a supervisor's verification of years worked, and clients' verification of the photogrammetrist's personal involvement in at least five projects.
- Three references written by land surveyors attesting to the qualifications and good character of the candidate.

These licensure standards are consistent with the aims of model laws accepted in 2003 by the National Council of Examiners for Engineers and Surveying (NCEES), and the board considers these standards to be appropriate for this proposed licensure program.

The Department of Professional and Occupational Regulation offers the Board of Professional and Occupational Regulation's (BPOR) 2003 report "Study of the Need to Regulate Photogrammetry" as evidence to support the necessity and appropriateness of the proposed regulation. This report concludes that photogrammetrists and users of other remote sensing technologies ought to be regulated because the public expects such regulation.

The report also offers some anecdotal evidence of harm caused that would support licensure. The report relates that, at several public hearings held on this issue:

> "…two commenters relayed information regarding a locality that incurred a significant financial loss due to its reliance on faulty work prepared by a photogrammetrist."

Upon closer study of hearing transcripts, however, at least one of these commenters appears to be making the point that a locality suffered a financial loss because the specifications in their contract with the photogrammetrist did not give them data that was usable for the purposes they intended. This commenter was very careful to point out that the photogrammetrist involved delivered the exact product outlined in his contract. None of the many localities that testified at the four public hearing held reported that they had been harmed by faulty photogrammetric work.

The report discloses another anecdote from a land surveyor who referenced a private developer who may have had to redesign roads and drainage and sewer systems in a development he was building because the original designs were based on faulty photogrammetric work. There was not enough information provided in the hearing notes to allow independent analysis of this private developer's experience. The board feels that licensure would give consumers of photogrammetric services an additional tool to redress harm caused (other than the currently available options of suing for damages and/or threatening the individuals who's work was sub-par with loss of reputation).

Most land surveyors who testified also felt that they did not have the knowledge necessary to certify the work of photogrammetrists with whom they might work. They felt, that being the case, that there was a benefit in licensing photogrammetrists who could then certify their own work.

The proposed licensure requirements will increase the cost to become a photogrammetrist and, so, in the future, there will likely be fewer individuals to offer these services than there would be without the proposed regulation. As a result of this, both land surveyors, and licensed photogrammetrists will likely gain some earning power. Land surveyors will benefit from the shrinking of the pool of possible substitutes for their own licensed profession. Photogrammetrists who stay in, or enter, the field, despite the barriers presented by licensure, will likely experience a bidding-up effect that would result when the pool of consumers of these services compete for the now more limited number of the photogrammetrists.

In contrast to the benefits listed above that might arise from the licensure, current and future photogrammetrists and users of other remote sensing technologies, as well as consumers of their services, will incur numerous costs on account of this proposed regulation.

The costs that the proposed regulants would experience will vary according to whom they are providing work.

Although it is not likely that they would choose to do so, photogrammetrists could choose to provide only exempt services. If photogrammetrists were to provide only exempt work, they would be able to forgo the licensure process but would also incur opportunity costs attached to the work foregone. In order to do non-exempt work for private firms or individuals, photogrammetrists and others would have to have gone through an arduous licensure process as described above. This process will take, at a minimum, eight years and may take more than 12 years. In order to do non-exempt work for state and local governments, photogrammetrists and others will have to go through the licensure process and they will also have to bear additional costs associated with putting together time consuming and minutely detailed proposals for the competitive negotiation process that statute dictates for governmental entities who want to procure the services of certain professionals.

The costs that consumers of photogrammetric services would experience will also vary according to whether these consumers are private or public entities and, for public entities, will vary according to whether the work product will be used for exempt or non-exempt ends.

Private entities that are contracting work will likely not see much differentiation between the cost of work used for exempt ends and work used for non-exempt ends. The market price of licensed photogrammetrists will rise because the pool of candidates will very likely be smaller than it was before licensure. This market price will dictate that non-exempt work would be more costly than it would be absent licensure. As mentioned above, not many photogrammetrists who continue their work in the field would choose to remain unlicensed. In addition, there appears to be no good substitute pool of candidates that can do photogrammetry but are not photogrammetrists. This being said, private consumers of exempt services are likely to see price increases of approximately the same magnitude as those experienced by private consumers of non-exempt services.

The costs that public consumers of these services will bear are greatly complicated by state procurement statutes that require an extremely proscribed method of procurement for the 11 occupations officially identified as "professions" by the Code of Virginia.

State and local public agencies that intend only to use photogrammetric work product for exempt ends will have to pay an increased price because the market price for licensed photogrammetric will be higher. State and local agencies that need photogrammetric work for non-exempt ends will see even larger cost increases.

Historically, localities that needed photogrammetric work done have decided the maximum error tolerances they can accept (as well as other particulars that ought to be in the contract for that work). They have then put out an Invitation for Bids (IFB) in a public forum. After bids were collected, the individual public employee in charge of procuring this work product awarded the contract to the lowest competent bidder who could meet the requirements set out in the contract. Under the proposed regulation, this procurement method may only be used to contract for photogrammetric work product that will be used solely for exempt ends.

An effect of licensing photogrammetrists, and designating that license as a sub-licensure of land surveying, is that state and local public entities will be forced to use the competitive negotiation process to contract for all photogrammetric work products that may or will be used for non-exempt ends. This means that, in addition to bearing the increased cost caused by the increasing market price for photogrammetric services, these public entities will also see increased costs from this procurement process for "professional" services.

Competitive negotiation is a long and arduous process. When state and local public entities need to contract for the services of a "professional", they will normally form a committee; in any case, this discussion will assume the formation of a committee. This committee would then have to post a notice of Request for Proposals (RFP) in a public forum and publish this notice in a newspaper of general circulation. The committee may not, however, ask that the cost for services be listed in proposals.

After two or more proposals have been collected from possible candidates, the committee will talk with each candidate individually (sometimes repeatedly). During these

discussions, the committee may encourage candidates to talk about their qualifications and past performance. After that, the committee ranks candidates and begin negotiations with the first ranked candidate. If the committee and the first ranked candidate can not agree upon a price, the committee would formally release that candidate from negotiations and move on to negotiating with the second ranked candidate. The committee may move down through the ranked candidates but may not return to negotiating with higher ranked candidates.

If no suitable contract is negotiated with any of the candidates, the committee is forced to start the whole process over. This process is very obviously more time consuming and costly than the IFB process. Bill Shinar, who works for the Virginia Information Technologies Agency (VITA) as the coordinator of the Virginia Geographic Information Network (VGIN), commented on this cost differential at the public hearing held in Richmond. He talked about a large project that he worked on (in 2001) and estimated that it would have cost the state at least two million dollars more if he had had to use a competitive negotiation process. Independent analysis indicates that the cost of this project would have been higher using competitive negotiation although the magnitude of the increase could not be verified.

Although the board believes that the statutory definition of land surveying in the Code of Virginia, as amended in 1984, includes the work done by photogrammetrists (and so localities should have been using the competitive negotiation process all along); there is much controversy on this point. The assistant attorney general (AG) assigned to advise DPOR on legal matters concluded, in 2001, that statutory language granting the board power and setting limits on that grant did not allow the board:

> '… requisite authority to sublicense other recognized professions in this area of practice, or to allow various types of licensure for occupations collateral to land surveying.'

In addition to all other costs, the proposed regulation will likely suppress development and use of new remote sensing technologies within the state. Individuals who have new ideas for possibly better technology will likely be disinclined to develop them in this state, since they would have to gain licensure as land surveyor photogrammetrists first. They would be much more likely to develop their ideas in another state that did not have this requirement. In addition, individuals who wanted to use new technologies that had been developed by others would have to gain licensure first.

Businesses and Entities Affected. The proposed regulation will affect all non-exempt individuals who currently practice photogrammetry or LIDAR mapping or who determine topography and contours or depict physical improvements to land using satellite imagery. The proposed regulation will also affect all users of future remote sensing technologies that might come into use. DPOR estimates that 100-200 individuals will apply for licensure once the proposed regulation is promulgated. In addition, consumers of these services will be affected.

Localities Particularly Affected. The proposed regulation will affect all localities in the Commonwealth. The nature and magnitude of any effects will vary according to whether localities employ, or contract with, photogrammetrists. The effects will also vary according to the use photogrammetric work is put to. All effects are discussed in the Estimated Economic Impact above.

Projected Impact on Employment. Individuals who might want to become licensed photogrammetrists or licensed users of other remote sensing technologies in the future will face significant educational costs and significant opportunity costs for time spent under supervision, time spent gaining required experience and time spent preparing for, and taking, competency examinations. They will also incur explicit costs for exam and licensure fees.

Individuals who currently independently use photogrammetric or other remote sensing methods, but do not meet grandfather requirements, will incur some portion of these same costs as well as the opportunity cost that can be assigned for loss of ability to work independently.

Grandfathered individuals will not have to stop working independently until they can become licensed. They will incur various, relatively minor, explicit costs (such as licensure fees, costs to copy documents and postage cost for mailing documentation) as well as considerable implicit costs (for time spent searching out high school and/or college transcripts, time spent gathering proof of employment and of jobs successfully completed and time spent searching out sources for letters of recommendation).

Because licensure will increase the costs associated with entering into, or remaining in, the affected fields, fewer individuals will find it worthwhile to do so. Thus, the proposed regulation is likely to have a negative impact on total employment for photogrammetrists and users of LIDAR and other remote sensing technologies.

Effects on the Use and Value of Private Property. Licensing will tend to decrease the pool of practicing photogrammetrists and, other things being equal, increase the revenue for the firms employing this smaller pool of now-licensed professionals.

For the non-exempt work that these firms do for other private firms or individuals, if this increase in revenue is greater than the extra costs incurred (in the licensing process and for higher salaries for licensed photogrammetrists), these photogrammetric or other remote sensing firms will likely earn a greater profit. If, on the other hand, costs associated with licensure exceed any increase in revenue, firms will likely earn less profit.

For the non-exempt work these firms do for localities or the state, if this increase in revenue is greater than the extra costs incurred (in the licensing process, for higher salaries for licensed photogrammetrists and as a result of the method by which state and local agencies must procure their services), these photogrammetric or other remote sensing firms will likely earn a greater profit. If, on the other hand, costs associated with licensure exceed any increase in revenue, firms will likely earn less profit.

Firms will likely have a greater chance of increased profits when working in the private sector than when working for public entities.

Small Businesses: Costs and Other Effects. Most, if not all, 100-200 individuals DPOR estimates will be immediately affected likely currently work for small businesses. DPOR estimates that there are 10-20 such businesses in the Commonwealth. Costs and other effects are listed in the section above.

Small Businesses: Alternative Methods that Minimizes Adverse Impact. Since legislation allows, but does not require, the board to license photogrammetrists and users of other remote sensing technologies; the board has the option of eliminating adverse impacts entirely by not requiring these individuals to be licensed. Barring that, and because there is little clear evidence to support a need for the level of the education/experience requirements in the proposed regulation, the board could choose to require less education/experience for these individuals. This would minimize the adverse impact of costs associated with becoming licensed but would not affect the costs associated with being labeled "professionals" for the public procurement purposes.

Legal Mandate. 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. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007 H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis:

The Department of Professional and Occupational Regulation does not concur with the concerns raised in the economic impact analysis completed by the Department of Planning and Budget.

Summary:

*The proposed amendments implement a regulatory program for photogrammetrists, including standards for determination of topography, as permitted by Chapter 440 of the 2005 Acts of Assembly.*

**18 VAC 10-20-10. Definitions.**

Section 54.1-400 of the Code of Virginia provides definitions of the following terms and phrases as used in this chapter:

Architect

Board

Certified interior designer

Certified landscape architect

Interior design by a certified interior designer

Land surveyor. When used in this chapter, land surveyor shall include surveyor photogrammetrist unless stated otherwise or the context requires a different meaning.

Practice of architecture

Practice of engineering

Practice of land surveying

Practice of landscape architecture

Professional engineer

The following words, terms, and phrases when used in this chapter shall have the meanings ascribed to them except where the context clearly indicates or requires different meanings:

"Application" means a completed application with the appropriate fee and any other required documentation, including, but not limited to, references, employment verification, degree verification, and verification of examination and licensure or certification.

"Certified" means an individual holding a valid certification issued by the board that has not been suspended, revoked, or surrendered, and is currently registered with the board to

practice in the Commonwealth in accordance with § 54.1-405 or 54.1-414 of the Code of Virginia.

"Comity" means the recognition of licenses or certificates issued by other states, the District of Columbia, or any territory or possession of the United States as permitted by § 54.1-103 C of the Code of Virginia.

"Department" means the Department of Professional and Occupational Regulation.

"Direct control and personal supervision" shall be that degree of supervision by a person overseeing the work of another whereby the supervisor has both control over and detailed professional knowledge of the work prepared under his supervision and words and phrases of similar import mean that the professional shall have control over the decisions on technical matters of policy and design, and exercises his professional judgment in all professional matters that are embodied in the work and the drawings, specifications, or other documents involved in the work; and the professional has exercised critical examination and evaluation of an employee's, consultant's, subcontractor's, or project team members' work product, during and after preparation, for purposes of compliance with applicable laws, codes, ordinances, regulations and usual and customary standards of care pertaining to professional practice. Further, it is that degree of control a professional is required to maintain over decisions made personally or by others over which the professional exercises direct control and personal supervision. "Direct control and personal supervision" also includes the following:

1. The degree of control necessary for a professional to be in direct control and personal supervision shall be such that the professional:

a. Personally makes professional decisions or reviews and approves proposed decisions prior to their implementation, including the consideration of alternatives, whenever professional decisions that could affect the health, safety, and welfare of the public are made; and

b. Determines the validity and applicability of recommendations prior to their incorporation into the work, including the qualifications of those making the recommendations.

2. Professional decisions that must be made by and are the responsibility of the professional in direct control and personal supervision are those decisions concerning permanent or temporary work that could affect the health, safety, and welfare of the public, and may include, but are not limited to, the following:

a. The selection of alternatives to be investigated and the comparison of alternatives for designed work; and

b. The selection or development of design standards and materials to be used.

3. A professional shall be able to clearly define the scope and degree of direct control and personal supervision and how it was exercised and to demonstrate that the professional was answerable within said scope and degree of direct control and personal supervision necessary for the work for which the professional has signed and sealed; and

4. No sole proprietorship, partnership, corporation, limited liability company, joint venture, professional corporation, professional limited liability corporation, or other entity shall practice, or offer to practice, any profession regulated under this chapter unless there is a resident professional for that service providing direct control and personal supervision of such service in each separate office in which such service is performed or offered to be performed.

"Good moral character" may be established if the applicant or regulant:

1. Has not been convicted of a felony or misdemeanor that has a reasonable relationship to the functions of the employment or category for which the license or certification is sought;

2. Has not, within 10 years of application for licensure, certification, or registration, committed any act involving dishonesty, fraud, misrepresentation, breach of fiduciary duty, negligence, or incompetence reasonably related to the applicant's proposed area of practice;

3. Has not engaged in fraud or misrepresentation in connection with the application for licensure, certification, or registration, or related examination;

4. Has not had a license, certification or registration revoked or suspended for cause by this state or by any other jurisdiction, or surrendered a license, certificate, or registration in lieu of disciplinary action;

5. Has not practiced without the required license, registration, or certification in this state or in another jurisdiction within the five years immediately preceding the filing of the application for licensure, certification, or registration by this Commonwealth; or

6. Has not, within 10 years of application for licensure, certification, or registration, committed an act that would constitute unprofessional conduct, as set forth in Part XII of this chapter.

"Landscape architect" means an individual who has been certified as a landscape architect pursuant to the provisions of this chapter and is in good standing with the board to practice in the Commonwealth in accordance with § 54.1-409 of the Code of Virginia.

"Licensed" means an individual who holds a valid license issued by the board that has not been suspended, or revoked,

or surrendered and who is currently registered with the board to practice in the Commonwealth in accordance with § 54.1-405 of the Code of Virginia.

"Place of business" means any location which offers to practice or practices through licensed or certified professionals the services of architecture, engineering, land surveying, certified landscape architecture or certified interior design, or any combination thereof. A temporary field office established and utilized for the duration of a specific project shall not qualify as a place of business under this chapter.

"Profession" means the practice of architecture, engineering, land surveying, certified landscape architecture, or certified interior design.

"Professional" means an architect, professional engineer, land surveyor, landscape architect or interior designer who is licensed or certified, as appropriate, pursuant to the provisions of this chapter and is in good standing with the board to practice his profession in this Commonwealth.

"Registrant" means a business currently registered with the board to offer or provide one or more of the professions regulated by the board.

"Regulant" means a licensee, certificate holder or registrant.

"Resident" means physically present in said place of business a majority of the operating hours of the place of business.

"Responsible person" means the individual named by the entity to be responsible and have control of the regulated services offered, or rendered, or both, by the entity.

"Surveyor photogrammetrist" means a person who by reason of specialized knowledge in the area of photogrammetry has been granted a license by the board to survey land in accordance with Chapter 4 (§ 54.1-400 et seq.) of Title 54.1 of the Code of Virginia for the determination of topography, contours and/or location of planimetric features using photogrammetric methods or similar remote sensing technology.

**18 VAC 10-20-280. Fee schedule.**

All fees are nonrefundable and shall not be prorated.

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| Application for Fundamentals of Land Surveying | $60 |
| Application for Principles and Practice of Land Surveying | $90 |
| Application for Surveyor Photogrammetrist | $90 |
| Application for Land Surveyor B | $90 |
| Renewal | $90 |
| Comity | $90 |
| Out-of-state proctor | $100 |

**18 VAC 10-20-295. Definitions.**

"Absolute horizontal positional accuracy" means the value expressed in feet or meters that represents the uncertainty due to systematic and random errors in measurements in the location of any point on a survey relative to the defined datum at the 95% confidence level.

"Approved land surveying experience" means a record of progressive experience under the direct control and personal supervision of a licensed land surveyor, or an individual authorized by statute to practice land surveying, on land surveying work during which the applicant has made practical utilization of acquired knowledge and has demonstrated continuous improvement, growth, and development through the utilization of that knowledge as revealed in the complexity and technical detail of the applicant's work product or work record. The applicant must show continuous assumption of greater individual responsibility for the work product over the relevant period. The progressive experience on land surveying work shall be of a grade and character that indicates to the board that the applicant is minimally competent to practice land surveying. Notwithstanding the definition of "approved land surveying experience," the requirements set forth in 18 VAC 10-20-310 shall not be waived.

"Approved photogrammetric surveying or similar remote sensing technology experience" means diversified training in photogrammetric land surveying under the supervision and direction of a licensed land surveyor, licensed surveyor photogrammetrist, or under the supervision and direction of an individual authorized by statute to practice land surveying or photogrammetry. This experience shall have been acquired in positions requiring the exercise of independent judgment, initiative and professional skill in the office and field and written verification of such work experience shall be on forms provided by the board. Experience may be gained either prior to or after education is obtained. Notwithstanding the definition of "approved photogrammetric surveying or similar remote sensing technology experience," the requirements set forth in 18 VAC 10-20-310 shall not be waived.

"Relative horizontal positional accuracy" means the value expressed in feet or meters that represents the uncertainty due to random errors in measurements in the location of any point on a survey relative to any other point on the same survey at the 95% confidence level.

**18 VAC 10-20-310. Requirements for a licensed land surveyor or surveyor photogrammetrist.**

A. An SIT who, after meeting the requirements of 18 VAC 10-20-300, has a minimum of four years of approved land surveying experience, and has been land surveying under the direct control and personal supervision of a licensed land surveyor, shall be admitted to an examination in the

Principles and Practice of Land Surveying and the Virginia state-specific examination, provided the applicant is otherwise qualified. Upon passing such examination, the applicant shall be granted a license to practice land surveying, provided the applicant is otherwise qualified.

B. An SIT who, after meeting the requirements of 18 VAC 10-20-300, has a specific record of four years of approved photogrammetric surveying or similar remote sensing technology experience of which a minimum of three years experience has been progressive in complexity and has been on photogrammetric surveying or similar remote sensing technology projects under the supervision of a licensed land surveyor or licensed surveyor photogrammetrist shall be admitted to a board-approved surveyor photogrammetrist examination and the Virginia state specific examination. Upon passing such examinations, the applicant shall be granted a license to practice photogrammetric surveying, provided the applicant is otherwise qualified.

C. In lieu of the provisions of subsection B of this section, any person presently providing photogrammetric or similar remote sensing technology services with any combination of at least eight years of board-approved education and progressive experience in photogrammetry or similar remote sensing technology, four or more of which shall have been in responsible charge of photogrammetric mapping projects meeting National Map Accuracy Standards or National Standard for Spatial Data Accuracy, or equivalent, may be licensed to practice photogrammetric surveying provided an individual submits an application to the board that provides evidence to the satisfaction of the board of the following:

1. The applicant submits to the board certified proof of graduation from high school or high school equivalency that is acceptable to the board, both with evidence of successful completion of courses in algebra, geometry and trigonometry either by transcript or examination, or certified proof of a related higher degree of education, or other evidence of progressive related higher education acceptable to the board;

2. The applicant submits to the board satisfactory proof and evidence of employment as a photogrammetrist or similar remote sensing technology in responsible charge as defined in 18 VAC 10-20-310 D providing such services within any of the 50 states, the District of Columbia, or any territory or possession of the United States. Evidence of employment shall include verification of the applicant's progressive experience by his supervisor and by the applicant's clients of the applicant's personal involvement in a minimum of five projects;

3. The applicant must submit three references with the application, all of whom shall be licensed land surveyors in a state or territory of the United States;

4. The applicant shall certify that they have read and understood Chapter 4 (§ 54.1-400 et seq.) of Title 54.1 and Chapter 17 (§ 54.1-1700 et seq.) of Title 55 of the Code of Virginia, and this chapter; and

5. The applicant shall apply to the board and submit an application fee for licensure within one year of (insert the effective date of these regulations) or until such time as the examinations required by 18 VAC 10-20-310 B are available, whichever is later. After (insert the effective date of these regulations plus one year), or when the examinations required by subsection B of this section become available, whichever is later, no person shall be eligible to apply for licensure as a surveyor photogrammetrist pursuant to this section.

D. Within the context of subsection C of this section, responsible charge of photogrammetric or similar remote sensing technology mapping projects means technical supervision of:

1. Assessing the project needs and constraints and accuracies;

2. Creating the project plan including determining data standards;

3. Creating overall project specifications;

4. Determining flight lines and appropriate photogrammetric control required for project accuracies and constraints;

5. Reviewing and approval of aerotriangulation results, prior to map compilation and certification of the final report of project control;

6. Determining the appropriate features to be collected, how they are to be collected, annotated, stored;

7. Editing and reviewing of collected data and features;

8. Reviewing of equipment, technology, and procedures that meet project requirements;

9. Determining final data standards and quality control for a project;

10. Reviewing and approving the final map products, deliverables, files, and spatial data;

11. Checking and editing final map data for specified completeness and accuracies including project reports, metadata, and any associated databases;

12. Project management; and

13. Other duties requiring decision-making, control, influence, and accountability of the project.

E. Any person licensed pursuant to the terms of subsection B or C of this section shall be licensed as a surveyor photogrammetrist.

**18 VAC 10-20-340. Experience standards.**

An applicant shall submit written verification from each employment engagement that has been gained under the direct control and personal supervision of a licensed land surveyor, licensed surveyor photogrammetrist or an individual authorized by statute to practice land surveying on forms provided by the board to be considered by the board as approved land surveying experience.

**18 VAC 10-20-350. Examinations.**

A. The Fundamentals of Land Surveying examination consists of the National Council of Examiners for Engineering and Surveying (NCEES) examination on the fundamentals of land surveying.

B. The Principles and Practice of Land Surveying examination consists of an NCEES examination on applied land surveying, or a board-approved surveyor photogrammetrist examination, and a Virginia state-specific examination.

C. The examination for land surveying under § 54.1-408 of the Code of Virginia (Land Surveyor B) shall be given at times designated by the board.

D. Unless otherwise stated, applicants approved to sit for an examination must register and submit the required examination fee to be received in the board office, or by the board's designee, at a time designated by the board. Applicants not properly registered will not be allowed into the examination site.

E. Applicants shall be notified by the board of passing or failing the examination but shall not be notified of actual scores. Only the board and its staff shall have access to examination papers, scores, and answer sheets. Examinations may not be reviewed.

F. Should the applicant fail to pass an examination within three years after being authorized to take the examination, the applicant must reapply and meet all current entry requirements at the time of reapplication.

**18 VAC 10-20-360. Licensure by comity.**

A. A person in good standing and holding a valid license to engage in the practice of land surveying in another state, the District of Columbia, or any territory or possession of the United States may be licensed, provided the applicant submits verifiable documentation to the board that the education, experience, and examination requirements by which the applicant was first licensed in the original jurisdiction were substantially equivalent to those existing in Virginia at the time of the applicant's original licensure. No person shall be so licensed, however, who has not passed an examination in another jurisdiction that was substantially equivalent to that approved by the board at the time of the applicant's original licensure. If the applicant does not meet the requirements for licensure in Virginia that were in effect at the time of original licensure, the applicant shall be required to meet the entry requirements current at the time the completed application for comity is received in the board's office. All applicants shall be required to pass a written Virginia state-specific examination. The examination shall include questions on law, procedures and practices pertaining to land surveying in Virginia.

B. A person holding a current license to engage in the practice of land surveying or photogrammetric surveying issued to the applicant by other states, the District of Columbia or any territory or possession of the United States based on requirements that do not conflict with and are at least as rigorous as the provisions contained in 18 VAC 10-20-310 C may be licensed as a surveyor photogrammetrist without further examination except for the Virginia state examination provided that the applicant was originally licensed prior to the ending date of the provisions contained in 18 VAC 10-20-310 C.

**18 VAC 10-20-380. Minimum standards and procedures for surveys determining the location of physical improvements; field procedures; office procedures.**

A. The following minimum standards and procedures are to be used for surveys determining the location of physical improvements on any parcel of land or lot containing less than two acres or metric equivalent (sometimes also known as "building location survey," "house location surveys," "physical surveys," and the like) in the Commonwealth of Virginia. The application of the professional's seal, signature and date as required by these regulations shall be evidence that the survey determining the location of physical improvements is correct to the best of the professional's knowledge, information, and belief, and complies with the minimum standards and procedures set forth in this chapter.

B. The professional shall determine the position of the lot or parcel of land in accordance with the intent of the original survey and shall set or verify permanent monumentation at each corner of the property, consistent with the monumentation provisions of subdivision C 4 of 18 VAC 10-20-370. All such monumentation, other than natural monumentation, shall, when feasible, be identified by temporary witness markers.

When the professional finds discrepancies of sufficient magnitude to warrant, in his opinion, the performance of a land boundary survey (pursuant to the provisions of 18 VAC 10-20-370), he shall so inform the client or the client's agent that such land boundary survey is deemed warranted as a requisite to completion of the physical improvements survey.

The location of the following shall be determined in the field:

1. Fences in near proximity to the land boundary lines and other fences which may reflect lines of occupancy or possession.

2. Other physical improvements on the property and all man-made or installed structures, including buildings, stoops, porches, chimneys, visible evidence of underground features (such as manholes, catch basins, telephone pedestals, power transformers, etc.), utility lines and poles.

3. Cemeteries, if known or disclosed in the process of performing the survey; roads or travelways crossing the property which serve other properties; and streams, creeks, and other defined drainage ways.

4. Other visible evidence of physical encroachment on the property.

C. The plat reflecting the work product shall be drawn to scale and shall show the following, unless requested otherwise by the client and so noted on the plat:

1. The bearings and distances for the boundaries and the area of the lot or parcel of land shall be shown in accordance with record data, unless a current, new land boundary survey has been performed in conjunction with the physical improvements survey. If needed to produce a closed polygon, the meander lines necessary to verify locations of streams, tidelands, lakes and swamps shall be shown. All bearings shall be shown in a clockwise direction, unless otherwise indicated.

2. North arrow, in accordance with record data.

3. Fences in the near proximity to the land boundary lines and other fences which may reflect lines of occupancy or possession.

4. Improvements and other pertinent features on the property as located in the field pursuant to subsection B of this section.

5. Physical encroachment, including fences, across a property line shall be identified and dimensioned with respect to the property line.

6. On parcels where compliance with restriction is in question, provide the closest dimension (to the nearest 0.1 foot or metric equivalent) from the front property line, side property line, and if pertinent, rear property line to the principal walls of each building. Also, all principal building dimensions (to the nearest 0.1 foot or metric equivalent).

7. Building street address numbers, as displayed on the premises, or so noted if no numbers are displayed.

8. Stoops, decks, porches, chimneys, balconies, floor projections, and other similar type features.

9. Street name(s), as posted or currently identified, and as per record data, if different from posted name.

10. Distance to nearest intersection, based upon record data. If not available from record data, distance to nearest intersection may be determined from best available data, and so qualified.

11. Building restriction or setback line(s) per restrictive covenants, if shown or noted on the record subdivision plat.

12. The caption or title of the plat shall include the type of survey performed; lot number, block number, section number, and name of subdivision, as appropriate, or if not in a subdivision, the name(s) of the record owner; town or county, or city; date of survey; and scale of drawing.

13. Adjoining property identification.

14. Easements and other encumbrances set forth on the record subdivision plat, and those otherwise known to the professional.

15. A statement as to whether or not a current title report has been furnished to the professional.

16. The professional shall clearly note inconsistencies found in the research of common boundaries between the land being surveyed and the adjoining land(s).

17. Professional's seal, signature and date.

18. Name and address of the land surveyor or registered business.

D. Notwithstanding the monumentation provisions of subsection B of this section or any other provision of these regulations, a professional, in performing a physical improvements survey, shall not be required to set corner monumentation on any property when corner monumentation is otherwise required to be set pursuant to the provisions of a local subdivision ordinance as mandated by § 15.2-2240 of the Code of Virginia, or by subdivision A 7 of § 15.2-2241 of the Code of Virginia, or where the placing of such monumentation is covered by a surety bond, cash escrow, set-aside letter, letter of credit, or other performance guaranty. When monumentation is not required, the surveyor shall clearly note on the plat "no corner markers set" and the reason to include name of guarantors.

E. Notwithstanding anything to the contrary in this chapter, this chapter shall be construed as to comply in all respects with § 54.1-407 of the Code of Virginia.

~~F. In no event may this chapter be interpreted or construed to require the professional to perform work of a lesser quality or quantity than that which is prudent or warranted under the existing field conditions and circumstances.~~

**18 VAC 10-20-382. Minimum standards and procedures for surveys determining topography; field procedures; office procedures.**

A. The minimum standards and procedures set forth in this section are to be used for topographic surveys performed in the Commonwealth of Virginia pursuant to Chapter 4 (§ 54.1-400 et seq.) of Title 54.1 of the Code of Virginia. The application of the professional's seal, signature and date as required by these regulations shall be evidence that the

topographic survey is correct to the best of the professional's knowledge and belief, and complies with the minimum standards and procedures.

B. Minimum field and office procedures. The following information shall be shown on or contained in all plats, maps, or digital geospatial data including metadata used to depict the results of the topographic survey:

1. Physical improvements on the property, all man-made or installed structures, as well as visible evidence of underground features (such as manholes, catch basins, telephone pedestals, power transformers, etc.), and utility lines and poles shall be shown or depicted when they are visible based on the methodology and scale. If the methodology or scale prevents the depiction of physical improvements on the property, all man-made or installed structures, as well as visible evidence of underground features (such as manholes, catch basins, telephone pedestals, power transformers, etc.), and utility lines and poles, then such notice shall be clearly stated on or contained in the map, plat, or digital geospatial data including metadata.

2. Elevations shall be provided as spot elevations, contours or digital terrain models.

3. Onsite bench mark(s) shall be established with reference to vertical datum, preferably North American Vertical Datum (NAVD), and shown in the correct location.

4. The title of the topographic survey identifying the land surveyed and showing the state, county or city in which property is located.

5. Name of the individual or entity for whom the survey is being performed.

6. Date, graphic scale, numerical scale, and contour interval of plat, map, or digital geospatial data including metadata.

7. Depiction and definition of north used for the survey.

8. Names of highways, streets and named waterways shall be shown.

9. The horizontal and vertical unit of measurement, coordinate system, and datums, including adjustments if applicable.

10. The following minimum positional accuracies shall be met:

a. Scale and contour interval combinations.

| Map or Plat Scale | Contour Interval |
|---|---|
| 1" = 20' | 1 or 2 feet |
| 1" = 30' | 1 or 2 feet |
| 1" = 40' | 1 or 2 feet |
| 1" = 50' | 1 or 2 feet |
| 1" = 100' | 1 or 2 feet |
| 1" = 200' | 2, 4 or 5 feet |
| 1" = 400' | 4, 5 or 10 feet |

b. Vertical accuracy standards.

| | Contours - Vertical Positional Accuracy | Spot Elevations - Vertical Positional Accuracy |
|---|---|---|
| Contour line 1' interval | ± 0.60 feet | ± 0.30 feet |
| Contour line 2' interval | ± 1.19 feet | ± 0.60 feet |
| Contour line 4' interval | ± 2.38 feet | ± 1.19 feet |
| Contour line 5' interval | ± 2.98 feet | ± 1.49 feet |
| Contour line 10' interval | ± 5.96 feet | ± 2.98 feet |

Positional Accuracy is given at the 95% confidence level.

c. Horizontal accuracy standards.

Well defined ground points - Horizontal (Radial) Positional Accuracy

| Map or Plat Scale | Absolute Horizontal Positional Accuracy | Relative Horizontal Positional Accuracy |
|---|---|---|
| 1" = 20' | ± 0.8 feet | ± 0.20 feet |
| 1" = 30' | ± 1.1 feet | ± 0.30 feet |
| 1" = 40' | ± 1.5 feet | ± 0.40 feet |
| 1" = 50' | ± 1.9 feet | ± 0.50 feet |
| 1" = 100' | ± 3.8 feet | ± 1.00 feet |
| 1" = 200' | ± 7.6 feet | ± 2.00 feet |
| 1" = 400' | ± 15.2 feet | ± 4.00 feet |

Positional Accuracy is given at the 95% confidence level.

The accuracy standards tables as shown are not intended to be acceptable in all situations. The professional shall be responsible to perform the work to the appropriate quality and extent that is prudent or warranted under the existing field conditions and circumstances.

Metric or other unit of measurements shall meet an equivalent positional accuracy.

Map or plat scales, or contour intervals, other than those defined in these tables shall meet an equivalent positional accuracy.

11. A statement, in the following form, shall be shown on or contained in plats, maps, or digital geospatial data including metadata:

This _____ (provide description of the project) was completed under the direct and

responsible charge of, _____ (Name of Surveyor or Surveyor Photogrammetrist) from an actual ☐ Ground or ☐ Airborne (check the one that is applicable) survey made under my supervision; that the imagery and/or original data was obtained on _____ (Date); and that this plat, map, or digital geospatial data including metadata meets minimum accuracy standards unless otherwise noted.

**18 VAC 10-20-392. Photogrammetric surveys.**

The use of photogrammetric methods or similar remote sensing technology to perform any part of the practice of land surveying as defined in Chapter 4 (§ 54.1-400 et seq.) of Title 54.1 of the Code of Virginia, shall be performed under the direct control and supervision of a licensed land surveyor or a licensed surveyor photogrammetrist.

**18 VAC 10-20-395. Standard of care.**

In no event may the requirements contained in 18 VAC 10-20-280 through 18 VAC 10-20-392 be interpreted or construed to require the professional to perform work of a lesser quality or quantity than that which is prudent or warranted under the existing field conditions and circumstances.

VA.R. Doc. No. R06-86; Filed June 11, 2007, 11:44 a.m.

## BOARD FOR CONTRACTORS

### Proposed Regulation

Title of Regulation: **18 VAC 50-22. Board for Contractors Regulations (amending 18 VAC 50-22-40, 18 VAC 50-22-50, 18 VAC 50-22-60; adding 18 VAC 50-22-300 through 18 VAC 50-22-350).**

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

Public Comments: Public comments may be submitted until September 7, 2007.

Public Hearing Information:

July 17, 2007 - 10 a.m. - Department of Professional and Occupational Regulation, 3600 West Broad Street, 5th Floor Conference Room, Richmond, VA

Agency Contact: Eric L. Olson, Executive Director, Board for Contractors, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-2785, FAX (804) 367-2474, or email contractor@dpor.virginia.gov.

Basis: As provided in Chapters 454 and 475 of the 2006 Acts of Assembly, § 54.1-1102 of the Code of Virginia was amended to require that the board promulgate regulations adding prelicense education to the eligibility criteria for licensure as a contractor.

Section 54.1-1102 of the Code of Virginia provides the authority for the board to promulgate regulations for the licensure of contractors in the Commonwealth. The content of the regulations is determined at the discretion of the board, but shall not be in conflict with the purposes of the statutory authority.

Purpose: In order to protect the public from inexperienced, irresponsible or incompetent contractors, the Commonwealth initiated the licensing of those performing work in the construction industry in 1938. The purpose of amending these regulations is to add a requirement that a member of responsible management or the designated employee of an applicant successfully complete a business education course as a prerequisite for licensure as a contractor. The implementation of this requirement and the amendment to the regulations should result in a decrease of violations of the standards of conduct set forth in the board's regulations.

Substance: Since the purpose of this action is to promulgate regulations mandating the successful completion of a business class, approved by the Board for Contractors, as a prerequisite for licensure as a contractor in Virginia, all substantive changes involve the identification of the new requirement and the logistical implementation of the approval process for education providers. The entry portion of the regulations (Part II) has been amended in order to add the prelicense education requirement to the applicable sections for each of the three license classes.

Prior to the 2006 amendment to Title 54.1 of the Code of Virginia, there were no specific education requirements for businesses applying for contractor licenses. The addition of a prelicense education requirement to the current eligibility criteria necessitates a new portion of the regulations in order to lay the logistical groundwork for the approval of courses, registration and reporting of students and other requirements.

Issues: Since January 2003, the board has adjudicated nearly 2,000 disciplinary cases, with over 1,900 of those cases involving disciplinary action against businesses holding a contractor license. As a result of those cases the board has levied $4.2 million in fines, revoked 618 licenses, sent 1,059 contractors to remedial education classes and reimbursed consumers over $3 million from the Contractor Transaction Recovery Fund. The citizens filing complaints against and being harmed by these contractors were subject to deliberate fraud in only a small percentage of the cases, while over three-quarters of the sanctions levied by the board involve violations that could have been prevented if the licensees had been provided with the knowledge of some basic business tools and their relationship to the Board for Contractors Regulations. The implementation of this requirement will likely result in a decrease in the number of complaints received against contractors who have been through the training, a significant advantage to the public, in that less consumers will be subject to financial harm.

The workload of the Board for Contractors continues to increase at a rapid pace. Since FY 2003 the board has increased the number of meetings held per year by 50%, to once a month. The increase in the workload has been mirrored by an increase in expenses, a result of more investigations, more hearings and a larger compliance caseload. Even a small decrease in the number of cases processed by the board or DPOR could result in a decrease in expenditures.

An increase in the knowledge base of the regulated community may result in more informative business decisions, which could lead to more successful businesses. Syllabuses of courses approved by the board after the promulgation of emergency regulations include a module on permitting and inspection requirements of local government, an area of concern reflected in disciplinary data. Educating contractors in the statewide permitting and inspection requirements set forth in the Virginia Uniform Statewide Building Code should result in a greater level of compliance with local requirements, a pleasant "side effect" for local governments.

The promulgation of these regulations poses no disadvantages to the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Virginia Acts of Assembly (2006) Chapters 454 and 475 specify that the Board of Contractors (Board) "shall include in its regulations a requirement that as a condition for initial licensure as a contractor the designated employee or a member of the responsible management personnel of the contractor shall have successfully completed a Board-approved basic business course, which shall not exceed eight hours of classroom instruction." The Board proposes new regulatory language that: 1) includes the requirement that as a condition for initial licensure as a contractor the designated employee or a member of the responsible management personnel of the contractor shall have successfully completed a Board-approved basic business course, 2) specifies required attributes of the basic business course, 3) specifies requirements for course providers, and 4) details how course results are to be reported.

Result of Analysis. There is insufficient data to accurately compare the magnitude of the benefits versus the costs. Detailed analysis of the benefits and costs can be found in the next section.

Estimated Economic Impact. As indicated above, Virginia Acts of Assembly (2006) Chapters 454 and 475 amended § 54.1-1102 of the Code of Virginia to state that "… the contractor shall have successfully completed a Board-approved basic business course, which shall not exceed eight hours of classroom instruction." The Board proposes to specify in these regulations that "Courses must be eight hours in length." Thus under the proposed regulations the course cannot be less than eight hours.

The most recent release (May 2005) of the U.S. Bureau of Labor Statistics Occupational Employment Statistics listed the average hourly wage for a construction manager in Virginia as $43.47. This information allows us to estimate the value of an hour of a construction manager's time to be $43.47. Just accounting for the time of the course, and not including travel time, the required eight-hour course will cost approximately $348 of the construction manager's time. According to the Board, the providers have charged from $130 to $400 for their respective courses while this regulation has been in effect as an emergency regulation. Thus not including the time and dollars associated with travel, the required basic business course will cost contractors at least $475.

According to the Department of Professional and Occupational Regulation (DPOR):

> Since January 2003, the Board has adjudicated nearly 2000 disciplinary cases, with over 1900 of those cases involving disciplinary action against businesses holding a contractor license. As a result of those cases the Board has levied $4.2 million in fines, revoked 618 licenses, sent 1059 contractors to remedial education classes and reimbursed consumers over $3 million from the Contractor Transaction Recovery Fund. The citizens filing complaints against and being harmed by these contractors were subject to deliberate fraud in only a small percentage of the cases, while over three-quarters of the sanctions levied by the Board involve violations that could have been prevented if the licensees had been provided with the knowledge of some basic business tools … . The implementation of this requirement will likely result in a decrease in the number of complaints received against contractors who have been through the training, a significant advantage to the public, in that less consumers will be subject to financial harm.

Thus, to the extent that the required basic business course will in practice reduce the incidence of unintended financial harm, the requirement that the contractor shall have successfully completed a board-approved basic business course will provide public benefit. The magnitude of this potential public benefit is not yet known. Therefore we cannot determine definitively whether the value of this benefit exceeds the more easily estimated cost of the required course.

Businesses and Entities Affected. The proposed amendments affect the approximate 10,000 applicants for new contractor licenses each year. According to DPOR, about 99 percent of those applications are for small businesses. The proposed amendments also affect providers of basic business courses.

Localities Particularly Affected. The proposed regulations do not disproportionately affect specific localities.

Projected Impact on Employment. The requirement that as a condition for initial licensure as a contractor the designated employee or a member of the responsible management personnel of the contractor shall have successfully completed a Board-approved basic business course will increase employment for providers of these courses. Most potential contractors will absorb the cost of this new requirement. The cost may discourage a few marginal potential contractors from entering the business.

Effects on the Use and Value of Private Property. The requirement that as a condition for initial licensure as a contractor the designated employee or a member of the responsible management personnel of the contractor shall have successfully completed a Board-approved basic business course will in most cases increase the effective cost for initial licensure as a contractor by at least $475. The firms will receive some benefit from the course; so, the effective net cost to the firms will be somewhat less. The requirement will clearly increase demand for the course and will consequently increase revenue and net value for providers of the courses.

Small Businesses: Costs and Other Effects. According to the U.S. Bureau of Labor Statistics, as of May 2005 the average hourly wage for a construction manager in Virginia was $43.47. Thus we can estimate the value of an hour of a construction manager's time to be $43.47. Just accounting for the time of the course, and not including travel time, the required eight-hour course will cost construction managers approximately $348 of the construction manager's time. According to the Board, the providers have charged from $130 to $400 for their respective courses while this regulation has been in effect as an emergency regulation. Thus not including the time and dollars associated with travel, the required basic business course will cost small contractors at least $475.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The Code of Virginia (§ 54.1-1102) states that the Board of Contractors "shall include in its regulations a requirement that as a condition for initial licensure as a contractor the designated employee or a member of the responsible management personnel of the contractor shall have successfully completed a Board-approved basic business course, which shall not exceed eight hours of classroom instruction." Thus, the Code allows the possibility that a course provider could design a basic business course that sufficiently covered the necessary material in less than eight hours. The proposed regulations (18 VAC 50-22 – 300) state that "Courses must be eight hours in length." The adverse impact to small businesses could potentially be modestly lessened if the proposed regulations matched the statutory language that allows for courses of less than eight hours. The current Board may not entertain the possibility that a course provider could design a basic business course that sufficiently covered the necessary material in less than eight hours, but future board members may be willing to consider such courses.

References

U.S. Bureau of Labor Statistics Occupational Employment Statistics, May 2005, "http://www.bls.gov/oes/#data"

Legal Mandate. 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 36 (06). 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. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007 H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency concurs with the economic impact analysis completed by the Department of Planning and Budget and will maintain data that will help in that determination at a later date.

Summary:

*The proposed amendments implement new prelicense education requirements as mandated by Chapters 454 and 475 of the Acts of Assembly and promulgated as emergency regulations by the board on August 21, 2006.*

*The proposed regulations amend sections regarding entry requirements for Class A, B and C contractors by adding the requirement of successful completion of board-approved prelicense education for the designated employee or responsible management. A new section (Part VI) is added to the regulations to provide eligibility and reporting criteria for education providers and education courses.*

**18 VAC 50-22-40. Requirements for a Class C license.**

A. A firm applying for a Class C license must meet the requirements of this section.

B. For every classification or specialty in which the firm seeks to be licensed, the firm shall name a qualified individual who meets the following requirements:

1. Is at least 18 years old;

2. Has a minimum of two years experience in the classification or specialty for which he is the qualifier;

3. Is a full-time employee of the firm as defined in this chapter or is a member of the responsible management of the firm;

4. Where appropriate, has passed the trade-related examination or has completed an education and training program approved by the board and required for the specialties listed below:

Blast/explosive contracting

Electrical

Fire sprinkler

Gas fitting

HVAC

Plumbing

~~Blast/explosive contracting~~

Radon mitigation

Water well drilling

~~Fire sprinkler~~

5. Has obtained, pursuant to the tradesman regulations, a master tradesman license as required for those classifications and specialties listed in 18 VAC 50-22-20 and 18 VAC 50-22-30.

C. The firm shall provide information for the past five years prior to application on any outstanding, past-due debts and judgments; outstanding tax obligations; defaults on bonds; or pending or past bankruptcies. The firm, its qualified individual or individuals, and all members of the responsible management of the firm shall submit information on any past-due debts and judgments or defaults on bonds directly related to the practice of contracting as defined in Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia.

D. The firm, the qualified individual, and all members of the responsible management of the firm shall disclose at the time of application any current or previous contractor licenses held in Virginia or in other jurisdictions and any disciplinary actions taken on these licenses. This includes but is not limited to any monetary penalties, fines, suspensions, revocations, surrender of a license in connection with a disciplinary action, or voluntary termination of a license in Virginia or in any other jurisdiction.

E. In accordance with § 54.1-204 of the Code of Virginia, each applicant shall disclose the following information about the firm, all members of the responsible management, and the qualified individual or individuals for the firm:

1. All misdemeanor convictions within three years of the date of application; and

2. All felony convictions during their lifetime.

Any plea of nolo contendere shall be considered a conviction for purposes of this subsection. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt. The board, in its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia.

F. A member of responsible management shall have successfully completed a board-approved basic business course.

**18 VAC 50-22-50. Requirements for a Class B license.**

A. A firm applying for a Class B license must meet the requirements of this section.

B. A firm shall name a designated employee who meets the following requirements:

1. Is at least 18 years old;

2. Is a full-time employee of the firm as defined in this chapter, or is a member of responsible management as defined in this chapter;

3. Has passed a board-approved examination as required by § 54.1-1108 of the Code of Virginia or has been exempted from the exam requirement in accordance with § 54.1-1108.1 of the Code of Virginia; and

4. Has followed all rules established by the board or by the testing service acting on behalf of the board with regard to conduct at the examination. Such rules shall include any written instructions communicated prior to the examination date and any oral or written instructions given at the site on the date of the exam.

C. For every classification or specialty in which the firm seeks to be licensed, the firm shall name a qualified individual who meets the following requirements:

1. Is at least 18 years old;

2. Has a minimum of three years experience in the classification or specialty for which he is the qualifier;

3. Is a full-time employee of the firm as defined in this chapter or is a member of the responsible management of the firm;

4. Where appropriate, has passed the trade-related examination or has completed an education and training program approved by the board and required for the classifications and specialties listed below:

Blast/explosive contracting

Electrical

Fire sprinkler

Gas fitting

HVAC

Plumbing

Radon mitigation

Water well drilling

5. Has obtained, pursuant to the tradesman regulations, a master tradesman license as required for those classifications and specialties listed in 18 VAC 50-22-20 and 18 VAC 50-22-30.

D. Each firm shall submit information on its financial position. Excluding any property owned as tenants by the entirety, the firm shall state a net worth or equity of $15,000 or more.

E. Each firm shall provide information for the five years prior to application on any outstanding, past-due debts and judgments; outstanding tax obligations; defaults on bonds; or pending or past bankruptcies. The firm, its designated employee, qualified individual or individuals, and all members of the responsible management of the firm shall submit information on any past-due debts and judgments or defaults on bonds directly related to the practice of contracting as defined in Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia.

F. The firm, the designated employee, the qualified individual, and all members of the responsible management of the firm shall disclose at the time of application any current or previous substantial identities of interest with any contractor licenses issued in Virginia or in other jurisdictions and any disciplinary actions taken on these licenses. This includes but is not limited to any monetary penalties, fines, suspension, revocation, or surrender of a license in connection with a disciplinary action. The board, in its discretion, may deny licensure to any applicant when any of the parties listed above have had a substantial identity of interest (as deemed in § 54.1-1110 of the Code of Virginia) with any firm that has had a license suspended, revoked, voluntarily terminated or surrendered in connection with a disciplinary action in Virginia or any other jurisdiction.

G. In accordance with § 54.1-204 of the Code of Virginia, each applicant shall disclose the following information about the firm, designated employee, all members of the responsible management, and the qualified individual or individuals for the firm:

1. All misdemeanor convictions within three years of the date of application; and

2. All felony convictions during their lifetime.

Any plea of nolo contendere shall be considered a conviction for purposes of this subsection. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt. The board, in its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia.

H. The designated employee or a member of responsible management shall have successfully completed a board-approved basic business course.

**18 VAC 50-22-60. Requirements for a Class A license.**

A. A firm applying for a Class A license shall meet all of the requirements of this section.

B. A firm shall name a designated employee who meets the following requirements:

1. Is a least 18 years old;

2. Is a full-time employee of the firm as defined in this chapter or is a member of the responsible management of the firm as defined in this chapter;

3. Has passed a board-approved examination as required by § 54.1-1106 of the Code of Virginia or has been exempted from the exam requirement in accordance with § 54.1-1108.1 of the Code of Virginia; and

4. Has followed all rules established by the board or by the testing service acting on behalf of the board with regard to conduct at the examination. Such rules shall include any written instructions communicated prior to the examination date and any oral or written instructions given at the site on the day of the exam.

C. For every classification or specialty in which the firm seeks to be licensed, the firm shall name a qualified individual who meets the following requirements:

1. Is a least 18 years old;

2. Has a minimum of five years of experience in the classification or specialty for which he is the qualifier;

3. Is a full-time employee of the firm as defined in this chapter or is a member of the firm as defined in this chapter or is a member of the responsible management of the firm;

4. Where appropriate, has passed the trade-related examination or has completed an education and training program approved by the board and required for the classifications and specialties listed below:

Blast/explosive contracting

Electrical

Fire sprinkler

Gas fitting

HVAC

Plumbing

Radon mitigation

Water well drilling

5. Has obtained, pursuant to the tradesman regulations, a master tradesman license as required for those classifications and specialties listed in 18 VAC 50-22-20 and 18 VAC 50-22-30.

D. Each firm shall submit information on its financial position. Excluding any property owned as tenants by the entirety, the firm shall state a net worth or equity of $45,000.

E. The firm shall provide information for the five years prior to application on any outstanding, past-due debts and judgments; outstanding tax obligations; defaults on bonds; or pending or past bankruptcies. The firm, its designated employee, qualified individual or individuals, and all members of the responsible management of the firm shall submit information on any past-due debts and judgments or defaults on bonds directly related to the practice of contracting as defined in Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia.

F. The firm, the designated employee, the qualified individual, and all members of the responsible management of the firm shall disclose at the time of application any current or previous substantial identities of interest with any contractor licenses issued in Virginia or in other jurisdictions and any disciplinary actions taken on these licenses. This includes but is not limited to, any monetary penalties, fines, suspensions, revocations, or surrender of a license in connection with a disciplinary action. The board, in its discretion, may deny licensure to any applicant when any of the parties listed above have had a substantial identity of interest (as deemed in § 54.1-1110 of the Code of Virginia) with any firm that has had a license suspended, revoked, voluntarily terminated, or surrendered in connection with a disciplinary action in Virginia or in any other jurisdiction.

G. In accordance with § 54.1-204 of the Code of Virginia, each applicant shall disclose the following information about the firm, all members of the responsible management, the designated employee and the qualified individual or individuals for the firm:

1. All misdemeanor convictions within three years of the date of application; and

2. All felony convictions during their lifetime.

Any plea of nolo contendere shall be considered a conviction for purposes of this subsection. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt. The board, in its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia.

H. The designated employee or a member of responsible management shall have successfully completed a board-approved basic business course.

PART VI.
PRELICENSE EDUCATION.

**18 VAC 50-22-300. Prelicense education courses.**

All courses offered by prelicense education providers must be approved by the board prior to the initial offering of the course, and shall cover business principles related to the standards of conduct found in 18 VAC 50-22-260 B and other applicable requirements of continued licensure set forth in this chapter. Courses must be eight hours in length. Correspondence and other distance learning courses must include appropriate testing procedures to verify completion of the course.

**18 VAC 50-22-310. Requirements for prelicense education providers.**

A. Each provider of a prelicense education course shall submit an application for course approval on a form provided by the board. The application shall include but is not limited to:

1. The name of the provider;

2. Provider contact person, address and telephone number;

3. Course contact hours;

4. Schedule of courses, if established, including dates, time and locations;

5. Instructor information, including name, license number(s) if applicable, and a list of other appropriate trade designations;

6. Course and material fees; and

7. Course syllabus.

B. All providers must establish and maintain a record for each student. The record shall include: the student's name and address; social security number or DMV control number; the course name and clock hours attended; the course syllabus or outline; the name or names of the instructor; the date of successful completion; and the board's course code. Records shall be available for inspection during normal business hours by authorized representatives of the board. Providers must maintain class records for a minimum of five years.

**18 VAC 50-22-320. Reporting of course completion.**

All prelicense education providers shall electronically transmit course completion data to the board in an approved format within seven days of the completion of each individual course. The transmittal will include each student's name, social security number or DMV control number, the date of successful completion of the course and the board's course code.

**18 VAC 50-22-330. Posting prelicense education course certificates of approval.**

Copies of prelicense education course certificates of approval must be available at the location a course is taught.

**18 VAC 50-30-340. Reporting of changes.**

Any change in the information provided in 18 VAC 50-22-310 A must be reported to the board within 30 days of the change with the exception of changes in the schedule of courses, which must be reported within 10 days of the change. Failure to report the changes as required may result in the withdrawal of approval of a prelicense education provider by the board.

**18 VAC 50-30-350. Denial or withdrawal of approval.**

The board may deny or withdraw approval of any prelicense education provider for the following reasons:

1. The courses being offered no longer meet the standards established by the board.

2. The provider, through an agent or otherwise, advertises its services in a fraudulent or deceptive way.

3. The provider, instructor, or designee of the provider falsifies any information relating to the application for approval, course information, student records or fails to produce records required by the Board for Contractors Tradesman Regulations.

VA.R. Doc. No. R06-340; Filed June 14, 2007, 4:05 p.m.

## BOARD OF OPTOMETRY

### Fast Track Regulation

Title of Regulation: **18 VAC 105-20. Regulations Governing the Practice of Optometry (amending 18 VAC 105-20-10).**

Statutory Authority: Chapter 32 (§ 54.1-3200 et seq.) of Title 54.1 of the Code of Virginia.

Public Comments: Public comments may be submitted until 5 p.m. on September 7, 2007.

Public Hearing Information:

August 6, 2007 - 8:30 a.m. - Department of Professional and Occupational Regulation, 3600 West Broad Street, 5th Floor, Richmond, VA

Effective Date: September 24, 2007.

Agency Contact: Elizabeth A. Carter, Ph.D., Executive Director, Board of Optometry, 6603 West Broad Street, 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9910, FAX (804) 662-7098 or email elizabeth.carter@dhp.virginia.gov.

Basis: Regulations are promulgated under the general authority of Chapter 24 (§ 54.1-2400 et seq.) of Title 54.1 of the Code of Virginia. Section 54.1-2400 provides the Board of Optometry the authority to promulgate regulations to administer the regulatory system.

Purpose: In optometry, an applicant who has been licensed on the basis of passage of the national examination may be licensed by examination; an applicant who has not passed the national examination and was licensed based on a state examination at the time of initial licensure may be licensed by endorsement. In either case, the board has an obligation to ensure that an applicant who has been licensed and practicing in another state has not practiced in a negligent manner, has maintained continued competency in his practice and has not committed an act that would be considered unprofessional conduct in Virginia. To allow an optometrist whose license is restricted in another state or who has a history of malpractice or violations of law or regulation to be licensed in Virginia would place Virginia consumers at risk. As the practice of optometry has expanded to include prescribing and treating with controlled substances, it is even more important to ensure the safety and competency of those being licensed by this board.

Substance: The regulation has been reviewed for consistency with law and clarity. The substantive changes include the addition of requirements for licensure by examination relating to compliance with law and competency to practice – the same as current requirements for licensure by endorsement. The additional requirements would only apply to those applicants who have held a license in another jurisdiction and not to those who are receiving their first license based on passage of the national examination. The additional subsection E will require that someone who took the licensure examination more than five years ago has either been engaged in active practice in another jurisdiction or has completed CE courses or has retaken some portion of the examination to ensure that he is currently competent to practice.

Issues: There are no disadvantages to the public of these amendments. The public is better protected by requiring information on malpractice, continuing education compliance and any possible acts of unprofessional conduct that may have occurred in a state in which an applicant is currently licensed.

There are no advantages or disadvantages to the agency or the Commonwealth.

There are no other pertinent matters of interest.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Licensure by endorsement is intended as a method for optometrists who have competently and ethically practiced in other jurisdictions to become licensed to practice in Virginia. For optometrists who are applying for licensure by endorsement, the current regulations include language stating that if the applicant is currently licensed in another jurisdiction: 1) the license must be full and unrestricted, 2) all continuing education requirements must have been completed, 3) the applicant must not be a respondent in any pending or unresolved board action, and 4) the applicant must not have committed any of the prohibited acts listed in Code of Virginia § 54.1-3204 or committed any acts that are grounds for reprimand revocation or suspension listed in § 54.1-3215. Also, applicants for licensure by endorsement may not be a respondent in a pending or unresolved malpractice claim, whether or not the applicant is currently licensed in another jurisdiction. For the sake of brevity, let us call the above requirements "out-of-state requirements."

Licensure by examination is primarily intended for optometrists seeking initial licensure in Virginia, but can also be achieved by optometrists who have been licensed elsewhere. The Board of Optometry (Board) proposes to add analogous "out-of-state requirements" for optometrists who have been licensed in another jurisdiction and are applying for licensure by examination.

Additionally, the Board proposes to specify that "An applicant who did not complete all parts of the board-approved examination within five years prior to the date of receipt of their application for licensure by this board may be required to retake all or any part of the board-approved examination or take board-approved continuing education unless they demonstrate that they have maintained clinical, ethical, and legal practice for 36 of the past 60 months immediately prior to submission of an application for licensure."

Result of Analysis. The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact. An individual may apply for licensure by endorsement if she "has successfully completed a licensing examination or certification in optometry in any jurisdiction of the United States that is approximately comparable to the Virginia examination at the time of initial licensure," and met several other requirements, including the out-of-state requirements listed above. Under the current regulations an individual may apply for licensure by examination if she has passed all the required parts of the National Board of Examiners in Optometry examination, and met several other requirements, not including the out-of-state requirements. In practice the Board has asked for the out-of-state requirement information on their licensure by examination application forms, and no one has objected.[8] The Board now proposes to formally add the out-of-state requirements to the regulations.

Since no one has challenged the out-of-state requirement information in the past, adding the out-of-state requirements to the licensure by examination portion of the regulations will not likely have a large impact. To the extent that it does have an impact, that impact should be positive for the Commonwealth since it will increase the likelihood that the Board is informed of possible incompetent or unethical practice by applicants who have practiced out of state.

As in many other professions, significant advances in the science and technology of optometry occur as time passes. Passing an exam that was produced many years in the past does not necessarily indicate that the applicant is knowledgeable about advances in the science of optometry and competent in current techniques. Thus, the Board's proposal to reserve the right to require that an applicant who did not complete all parts of the examination within five years prior to the date of receipt of their application retake all or any part of the exam or take board-approved continuing education unless they demonstrate that they have maintained clinical, ethical, and legal practice for 36 of the past 60 months is beneficial in that optometrists who have not demonstrated that they are competent in the current practice of optometry are less likely to become licensed and certified to the public as having such expertise.

Businesses and Entities Affected. The proposed regulations will affect those individuals who are applying for licensure by examination who have been licensed in another jurisdiction. Each year typically 12 to 16 individuals apply for licensure by examination who already hold a license in another state.[9]

According to the Department of Health Professions, in most years there are no applicants for licensure by examination who passed parts or all of the board-approved examination five or more years ago, who were not also practicing legally in another jurisdiction. Thus, the proposal to require that an applicant who did not complete all parts of the examination within five years prior to the date of receipt of their application retake all or any part of the exam or take board-approved continuing education unless they demonstrate that they have maintained clinical, ethical, and legal practice for 36 of the past 60 months immediately prior to submission of an application for licensure will affect very few optometrists.

Localities Particularly Affected. Localities near state borders may be more likely to have optometrists licensed in another state apply for licensure in Virginia as well. Otherwise, no locality is known to be disproportionately affected by the proposed amendments.

[8] Information Source: Department of Health Professions

[9] Source: Department of Health Professions

Projected Impact on Employment. The proposed amendments are unlikely to significantly affect employment.

Effects on the Use and Value of Private Property. With rare exceptions, the proposed amendments are unlikely to significantly affect the use and value of private property. The rare individual who passed the licensure examinations more than five years ago, has not practiced, and cannot now pass the examinations, will be prevented from practicing optometry. The earning potential for this rare individual will thus be diminished.

Small Businesses: Costs and Other Effects. The proposed amendments are unlikely to significantly affect small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed amendments are unlikely to significantly affect small businesses.

Legal Mandate. 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 36 (06). 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. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007 H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis:

The Board of Optometry concurs with the analysis of the Department of Planning and Budget on proposed fast-track regulations for 18 VAC 105-20, Regulations Governing the Practice of Optometry.

Summary:

*The amendments add requirements for licensure by examination including an attestation that the applicant is not a respondent in a pending or unresolved malpractice claim or in any pending or unresolved board action, that the existing license is unrestricted, any continuing education requirements have been met, and the applicant has not committed any act that would constitute a violation of laws in Virginia.*

*The board has also added a subsection to authorize the board to require an applicant who passed the board examination more than five years ago to either retake all or portions of the examination or take board-approved continuing education unless the applicant can document active practice for at least 36 out of the past 60 months.*

**18 VAC 105-20-10. Licensure by examination.**

A. The applicant, in order to be eligible for licensure by examination to practice optometry in the Commonwealth, shall meet the requirements for TPA certification in 18 VAC 105-20-16 and shall:

1. Be a graduate of a school of optometry accredited by the Council on Optometric Education; have an official transcript verifying graduation sent to the board;

2. Request submission of an official report from the NBEO of a score received on each required part of the NBEO examination or other board-approved examination; and

3. Submit a completed application and the prescribed fee.

B. Applicants who passed the National Board Examination prior to May 1985 shall apply for licensure by endorsement as provided for in 18 VAC 105-20-15.

C. Required examinations.

1. For the purpose of § 54.1-3211 of the Code of Virginia, the board adopts all parts of the NBEO examination as its written examination for licensure. After July 1, 1997, the board shall require passage as determined by the board of Parts I, II, and III of the NBEO examination.

2. As part of the application for licensure, an applicant must sign a statement attesting that he has read, understands, and will comply with the statutes and regulations governing the practice of optometry in Virginia.

D. If an applicant has been licensed in another jurisdiction, the following requirements shall also apply:

1. The applicant shall attest that he is not a respondent in a pending or unresolved malpractice claim; and

2. Each jurisdiction in which the applicant is currently licensed shall verify that:

a. The license is full and unrestricted, and all continuing education requirements have been completed, if applicable;

b. The applicant is not a respondent in any pending or unresolved board action; and

c. The applicant has not committed any act that would constitute a violation of § 54.1-3204 or 54.1-3215 of the Code of Virginia.

E. An applicant who did not complete all parts of the board-approved examination within five years prior to the date of receipt of their application for licensure by this board may be required to retake all or any part of the board-approved examination or take board-approved continuing education unless they demonstrate that they have maintained clinical, ethical, and legal practice for 36 of the past 60 months immediately prior to submission of an application for licensure.

VA.R. Doc. No. R07-278; Filed June 19, 2007, 12:10 p.m.

## REAL ESTATE BOARD

### Fast-Track Regulation

Title of Regulation: **18 VAC 135-50. Fair Housing Regulations (amending 18 VAC 135-50-10, 18 VAC 135-50-20, 18 VAC 135-50-220 and 18 VAC 135-50-400).**

Statutory Authority: §§ 36-96.8 and 54.1-2344 of the Code of Virginia; 42 USC § 3613.

Public Comments: Public comments may be submitted until 5 p.m. on September 7, 2007.

Public Hearing Information: No public hearings are scheduled.

Effective Date: September 22, 2007.

Agency Contact: Karen O'Neal, Deputy Director for Licensing and Regulation, Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-8537, FAX (804) 367-2475 or email reboard@dpor.virginia.gov.

Basis: Section 54.1-2344 of the Code of Virginia gives the Real Estate Board the authority to administer and enforce the Fair Housing Law with respect to real estate brokers, real estate salespersons, and real estate brokerage firms licensed in accordance with § 54.1-2100 or their agents or employees. Section 54.1-2344 further gives the Fair Housing Board the authority to administer and enforce the Fair Housing Law with respect to all others who have allegedly violated or have violated the law. Section 36-96.8 states that both the Real Estate and Fair Housing Boards may "perform all acts necessary and proper to carry out the provisions of this chapter and may promulgate and amend necessary regulations." Note that the Chapter 575 of the 2003 Acts of Assembly created the Fair Housing Board and contained an enactment clause as follows: "3. That all rules and regulations adopted by the Real Estate Board that are in effect as of the effective date of this act and that pertain to the subject of this act shall remain in full force and effect until altered, amended or rescinded by the Fair Housing Board." The authority of the boards is discretionary; however the proposed changes are necessary to comply with statute and maintain substantial equivalency status with the Department of Housing and Urban Development.

Purpose: The Fair Housing Board was created in 2003 (Chapter 575, 200 Acts of Assembly). The regulatory proposal adds language referencing the Fair Housing Board in accordance with § 54.1-2344 of the Code of Virginia, and specifically states the authority of both the Real Estate and Fair Housing Boards in administration and enforcement of the Virginia Fair Housing Law. The Virginia Fair Housing Office and both the Real Estate and Fair Housing Boards have been administering and enforcing the provisions of the Virginia Fair Housing Law in accordance with changes made to the law in 2003 since the effective date of those changes on July 1, 2003. The regulatory proposal will clearly reference the 2003 changes and provide the public with a better understanding of the role of the boards in administration and enforcement of the Fair Housing Law.

The proposal also adds language regarding the board's interpretation of conduct that is unlawful under the Fair Housing Law, specifically interfering with a person's enjoyment of their dwelling based on race, color, religion, sex, handicap, familial status, elderliness, or national origin. This language was erroneously deleted during the last regulatory change in 2003 when several provisions that duplicated statutes were removed. These provisions do not duplicate statute and are necessary to enforce the law and to maintain Virginia's substantial equivalency status with the Department of Housing and Urban Development.

Rationale for Using Fast-Track Process: Changes relating to the role of both the Real Estate and Fair Housing Boards in administration and enforcement of Virginia's Fair Housing Law are proposed simply to clarify statutory changes made in 2003. The Virginia Fair Housing Office and both the Real Estate and Fair Housing Boards have been administering and enforcing the provisions of the Virginia Fair Housing Law in accordance with changes made to the law in 2003 since the effective date of those changes on July 1, 2003. The regulatory proposal will provide the public with a better understanding of the role of the boards in administration and enforcement of the Fair Housing Law.

Changes made to 18 VAC 135-50-220 relating to the board's interpretation of conduct that is unlawful under the Fair Housing Law, specifically interfering with a person's enjoyment of their dwelling based on race, color, religion, sex, handicap, familial status, elderliness, or national origin, were made to correct an error made during the regulatory review process in 2003. The language was erroneously deleted when several provisions that duplicated statutes were removed. The language does not duplicate statute and is necessary to enforce the law and to maintain Virginia's substantial equivalency status with the Department of

Housing and Urban Development. This change is not anticipated to be controversial.

Substance: Changes relating to the role of both the Real Estate and Fair Housing Boards in administration and enforcement of Virginia's Fair Housing Law are proposed simply to clarify statutory changes made in 2003. The change is not substantive.

Changes made to 18 VAC 135-50-220 relating to the board's interpretation of conduct that is unlawful under the Fair Housing Law, specifically interfering with a person's enjoyment of their dwelling based on race, color, religion, sex, handicap, familial status, elderliness, or national origin, were made to correct an error made during the regulatory review process in 2003. The language was erroneously deleted when several provisions that duplicated statutes were removed. The language does not duplicate statute and is necessary to enforce the law and to maintain Virginia's substantial equivalency status with the Department of Housing and Urban Development.

Issues: Changes relating to the role of both the Real Estate and Fair Housing Boards in administration and enforcement of Virginia's Fair Housing Law are proposed simply to clarify statutory changes made in 2003. The advantage is that the public will have a better understanding of how the Fair Housing Law is administered and enforced. No disadvantages have been identified.

Changes made to 18 VAC 135-50-220 relating the board's interpretation of conduct that is unlawful under the Fair Housing Law, specifically interfering with a person's enjoyment of their dwelling based on race, color, religion, sex, handicap, familial status, elderliness, or national origin, are necessary to ensure enforcement of the Fair Housing Law. The advantages are to further protect members of protected classes from discrimination and to maintain substantial equivalency with the Department of Housing and Urban Development. No disadvantages have been identified.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Real Estate Board and the Fair Housing Board (Boards) propose to add 1) "Fair Housing Board" to the definition of "Board," 2) language specifically referencing the Fair Housing Board and describing the role of the Real Estate and Fair Housing Boards in the administration and enforcement of Virginia's Fair Housing Law, 3) language referencing the right of a member of a protected class to enjoy a dwelling free from interference, coercion or intimidation based on being a member of a protected class, and 4) other clarifying language.

Result of Analysis. The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact. Chapter 575 of the 2003 Acts of the Assembly created the Fair Housing Board. Prior to that, Virginia's Fair Housing Law was administered and enforced solely by the Real Estate Board. Now both the Real Estate and Fair Housing Boards administer and enforce Virginia's Fair Housing Law. The current regulations define "Board" as "the Real Estate Board." Under the proposed regulations the definition of "Board" would be "the Real Estate Board or the Fair Housing Board." In practice this change is a clarification and will not have significant impact.

The Boards also propose to add language concerning the responsibilities of the Fair Housing Board. The proposed language is essentially repetitious of language in the Code of Virginia; thus its addition will have little impact. The inclusion may be beneficial though for those individuals who read the regulations, but not the relevant sections of the Code.

The Boards propose to add language regarding the interpretation of conduct that is unlawful under the Fair Housing Law, specifically interfering with a person's enjoyment of their dwelling based on race, color, religion, sex, handicap, familial status, elderliness, or national origin. According to the Department of Professional and Occupational Regulation (Department), this language was erroneously deleted during the last regulatory change in 2003 when several provisions that duplicated statutes were removed. These provisions do not duplicate Virginia statute and are necessary to enforce the law and to maintain Virginia's substantial equivalency status with the Department of Housing and Urban Development. Without this language change, violators could technically only be prosecuted in federal court. According to the Department there have been no cases where the absence of this language has been problematic, but such cases could occur in the future. Adding this language back to the regulations likely produces a net benefit in that unlawful interference with a person's enjoyment of their dwelling based on race, color, religion, sex, handicap, familial status, elderliness, or national origin can more quickly be dealt with when state courts are available as well as federal court.

Finally, the current regulations state that "Based on the authority delegated to the fair housing administrator by the Real Estate Board, the administrator may investigate housing practices to determine whether a complaint should be filed." The Boards propose to strike out the words "Real Estate." As mentioned above, under the proposed regulations the definition of "Board" would be "the Real Estate Board or the Fair Housing Board." Thus, the proposed elimination of the words "Real Estate" would make clear that the administrator may investigate housing practices based on authority delegated by either the Real Estate Board or the Fair Housing Board. Under current law this does not give the administrator any additional authority in practice. Nevertheless, the change is beneficial for clarity.

Businesses and Entities Affected. The fair housing regulations potentially affect all consumers of housing in Virginia, i.e., all 7.6 million citizens of the Commonwealth, as well as business and individuals involved in the provision of housing, i.e., landlords, home sellers, realtors, banks, mortgage brokers, insurance companies, etc.

Localities Particularly Affected. The proposed amendments do not disproportionately affect particular localities.

Projected Impact on Employment. The proposed changes will not significantly affect employment.

Effects on the Use and Value of Private Property. The proposal to add back language regarding the interpretation of conduct that is unlawful under the Fair Housing Law may moderately reduce the chance that housing is used in a discriminatory manner.

Small Businesses: Costs and Other Effects. The proposed amendments do not significantly affect costs for small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed amendments do not produce adverse impact for small businesses.

Legal Mandate. 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 36 (06). 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. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007 H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: Concur with the approval.

Summary:

*The proposed amendments add language referencing the Fair Housing Board in accordance with § 54.1-2344 of the Code of Virginia, and specifically state the authority of both the Real Estate and Fair Housing Boards in administration and enforcement of the Virginia Fair Housing Law.*

*The amendments also add language regarding the board's interpretation of conduct that is unlawful under the Fair Housing Law, specifically interfering with a person's enjoyment of their dwelling based on race, color, religion, sex, handicap, familial status, elderliness, or national origin.*

**18 VAC 135-50-10. Definitions.**

The definitions provided in the Virginia Fair Housing Law, as they may be supplemented herein, shall apply throughout this chapter.

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

"Authorized representative" means (i) an attorney licensed to practice law in the Commonwealth, or (ii) a law student appearing in accordance with the third-year student practice rule, or (iii) a non-lawyer under the supervision of an attorney and acting pursuant to Part 6, § 1, Rule 1 (UPR 1-101(A)(1)) of the Rules of the Supreme Court of Virginia, or (iv) a person who, without compensation, advises a complainant, respondent, or aggrieved person in connection with a complaint, a conciliation conference or proceeding before the board. When a complainant, respondent, or aggrieved person authorizes a person to represent him under subdivision (iv) of this definition, such authority shall be made to the board, in writing or orally in an appearance before the board, and shall be accepted by the representative by sending a written acknowledgement to the board or by the representative's appearance before the board.

"Board" means the Real Estate Board or the Fair Housing Board.

"Broker" or "agent" means any person authorized to perform an action on behalf of another person regarding any matter related to the sale or rental of dwellings, including offers, solicitations or contracts and the administration of matters regarding such offers, solicitations or contracts or any residential real estate-related transactions.

"Department" means the Virginia Department of Professional and Occupational Regulation.

"Fair housing administrator" means the individual employed and designated as such by the Director of the Department of Professional and Occupational Regulation.

"Fair housing law" means the Virginia Fair Housing Law, Chapter 5.1 (§ 36-96.1 et seq.) of Title 36 of the Code of Virginia, effective July 1, 1991.

"Person in the business of selling or renting dwellings" means any person who (i) within the preceding 12 months, has participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest therein; (ii) within the preceding 12 months, has participated as agent, other than in the sale of his own personal residence, in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any dwelling or any interest therein; or (iii) is the owner of any dwelling designed or intended for occupancy by or occupied by, five or more families.

"Receipt of notice" means the day that personal service is completed by handing or delivering a copy of the document to an appropriate person or the date that a document is delivered by certified mail, or three days after the date of the proof of mailing of first class mail.

**18 VAC 135-50-20. Purpose.**

This chapter governs the exercise of the administrative and enforcement powers granted to and the performance of duties imposed upon the Real Estate Board and the Fair Housing Board by the Virginia Fair Housing Law. In accordance with § 54.1-2344 of the Code of Virginia, the Real Estate Board is responsible for the administration and enforcement of the Fair Housing Law with respect to real estate licensees or their agents or employees who have allegedly violated or violated the Fair Housing Law. The Fair Housing Board is responsible for the administration and enforcement of the Fair Housing Law with respect to all others who have allegedly violated or violated the Fair Housing Law.

This chapter provides the board's interpretation of the coverage of the fair housing law regarding discrimination related to the sale or rental of dwellings, the provision of services in connection therewith, and the availability of residential real estate-related transactions.

**18 VAC 135-50-220. Interference, coercion or intimidation.**

A. This section provides the board's interpretation of the conduct that is unlawful under § 36-96.5 of the Virginia Fair Housing Law.

B. It shall be unlawful to coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or on account of that person having exercised or enjoyed, or on account of that person having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by the Virginia Fair Housing Law and these regulations.

~~B.~~ C. Conduct made unlawful under this section includes, but is not limited to, the following:

1. Coercing a person, either orally, in writing, or by other means, to deny or limit the benefits provided that person in connection with the sale or rental of a dwelling or in connection with a residential real estate-related transaction because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.

2. Threatening, intimidating or interfering with persons in their enjoyment of a dwelling because of the race, color, religion, sex, handicap, familial status, elderliness, or national origin of such persons, or of visitors or associates of such persons.

~~2.~~ 3. Threatening an employee or agent with dismissal or an adverse employment action, or taking such adverse employment action, for any effort to assist a person seeking access to the sale or rental of a dwelling or seeking access to any residential real estate-related transaction, because of the race, color, religion, sex, handicap, familial status, elderliness, or national origin of that person or of any person associated with that person.

~~3.~~ 4. Intimidating or threatening any person because that person is engaging in activities designed to make other persons aware of, or encouraging such other persons to exercise, rights granted or protected by this part.

~~4.~~ 5. Retaliating against any person because that person has made a complaint, testified, assisted, or participated in any manner in a proceeding under the fair housing law.

**18 VAC 135-50-400. Investigations.**

A. Upon the filing of a complaint, the administrator shall investigate the allegations. The purposes of an investigation are:

1. To obtain information concerning the events or transactions that relate to the alleged discriminatory housing practice identified in the complaint.

2. To document policies or practices of the respondent involved in the alleged discriminatory housing practice raised in the complaint.

3. To develop factual data necessary for the administrator on behalf of the board to make a determination whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, and to take other actions provided under this part.

B. Based on the authority delegated to the fair housing administrator by the ~~Real Estate Board~~ board, the administrator may investigate housing practices to determine whether a complaint should be filed. Such an initiation may include using testers and other established practices or procedures.

VA.R. Doc. No. R07-274; Filed June 12, 2007, 2:24 p.m.

# TITLE 22. SOCIAL SERVICES

## STATE BOARD OF SOCIAL SERVICES

### Final Regulation

Title of Regulation: **22 VAC 40-41. Neighborhood Assistance Tax Credit Program (amending 22 VAC 40-41-10 through 22 VAC 40-41-50, 22 VAC 40-41-55 and 22 VAC 40-41-60).**

Statutory Authority: §§ 63.2-217 and 63.2-2002 of the Code of Virginia.

Effective Date: September 1, 2007.

Agency Contact: J. Mark Grigsby, Director, Office of Community Services, Department of Social Services, 7 North Eighth Street, Richmond, VA 23219, telephone (804) 726-7922, FAX (804) 726-7946 or email james.grigsby@dss.virginia.gov.

Summary:

The intent of the amendments is to ensure the availability of tax credits and their equitable distribution among approved organizations and ensure fairness in the valuation of certain donated items and improve the process for determining eligibility of organizations applying to participate in the Neighborhood Assistance Program (NAP). In addition, the amendments make several technical and clarifying changes including updating code citations and correcting inconsistencies in terminology.

Six changes were made since publication of the proposed regulation. Two changes are technical in nature: the definition of "professional services" was amended to add clarifying language that was inadvertently left out when published, and an unneeded term was stricken. Two changes clarify that certifications are submitted to the Department of Social Services. The fifth change was made as a result of public comment and pertains to additional allocations of tax credits. The last change requires that at least 50% of the population served by the applicant be impoverished and at least 50% of total expenditures be used to serve impoverished people. The proposed regulation imposed a 60% threshold amount.

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.

**22 VAC 40-41-10. Definitions.**

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

"Approved organization" means a neighborhood organization that has been found eligible to participate in the Neighborhood Assistance Program.

"Audit" means any audit required under the federal Office of Management and Budget's Circular A-133, or, if a neighborhood organization is not required to file an audit under Circular A-133, a detailed financial statement prepared by ~~a~~ an outside independent certified public accountant.

"Business firm" means any corporation, partnership, electing small business (Subchapter S) corporation, limited liability company, or sole proprietorship authorized to do business in this Commonwealth subject to tax imposed by Articles 2 (§ 58.1-320 et seq.) and 10 (§ 58.1-400 et seq.) of Chapter 3, Chapter 12 (§ 58.1-1200 et seq.), Article 1 (§ 58.1-2500 et seq.) of Chapter 25, or Article 2 (§ 58.1-2620 et seq.) of Chapter 26 of Title 58.1 of the Code of Virginia.

"Commissioner" means the Commissioner of the Department of Social Services, his designee or authorized representative.

"Community services" means any type of counseling and advice, emergency assistance, medical care, provision of basic necessities, or services designed to minimize the effects of poverty, furnished primarily to impoverished people.

"Contracting services" means the provision, by a business firm licensed by the Commonwealth of Virginia as a contractor under Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia, of labor or technical advice to aid in the development, construction, renovation, or repair of (i) homes of impoverished people or (ii) buildings used by neighborhood organizations.

"Education" means any type of scholastic instruction or scholarship assistance to an individual who is impoverished.

"Housing assistance" means furnishing financial assistance, labor, material, or technical advice to aid the physical improvement of the homes of impoverished people.

"Impoverished people" means people in Virginia with incomes at or below 150% of the poverty guidelines as defined by the United States Office of Management and Budget as published in the Federal Register (62 FR 10856), and as updated and republished annually in the Federal Register.

"Job training" means any type of instruction to an individual who is impoverished that enables him to acquire vocational skills so that he can become employable or able to seek a higher grade of employment.

"Neighborhood assistance" means providing community services, education, housing assistance, or job training.

"Neighborhood organization" means any local, regional or statewide organization whose primary function is providing neighborhood assistance for impoverished people, and holding a ruling from the Internal Revenue Service of the

United States Department of the Treasury that the organization is exempt from income taxation under the provisions of § 501(c)(3) or § 501(c)(4) of the Internal Revenue Code of 1986, as amended from time to time, or any organization defined as a community action agency in the Economic Opportunity Act of 1964 (42 USC § 2701 et seq.), or any housing authority as defined in § 36-3 of the Code of Virginia.

"Professional services" means any type of personal service to the public which requires as a condition precedent to the rendering of such service the obtaining of a license or other legal authorization and [ shall include, but not be limited to, the personal services rendered by medical doctors, dentists, architects, professional engineers, certified public accountants and attorneys-at-law. ]

**22 VAC 40-41-20. Purpose; procedure for becoming ~~neighborhood assistance project~~ an approved organization; eligibility criteria; termination of ~~project status~~ approved organization; appeal procedure.**

A. The purpose of the Neighborhood Assistance Program is to encourage business firms and individuals to make donations to neighborhood organizations for the benefit of impoverished people.

B. Neighborhood organizations wishing to become an approved ~~neighborhood assistance project~~ organization must submit ~~a proposal~~ an application and provide the following information to the commissioner ~~of Social Services or his designee. This proposal must be on the form prescribed by the commissioner or his designee and at a minimum contain~~:

1. A description of their eligibility as a neighborhood organization, the ~~program to be~~ programs being conducted, the impoverished people ~~to be~~ assisted, the estimated amount that will be donated to the ~~program~~ programs, and plans for implementing the ~~program~~ programs.

2. Proof of the neighborhood organization's current exemption from income taxation under the provisions of § 501(c)(3) or § 501(c)(4) of the Internal Revenue Code, or the organization's eligibility as a community action agency as defined in the Economic Opportunity Act of 1964 (42 USC § 2701 et seq.) or housing authority as defined in § 36-3 of the Code of Virginia.

3. A copy of the neighborhood organization's ~~most recent~~ current audit, a copy of the organization's ~~most~~ current federal form 990, a current brochure describing the organization's programs, and a copy of the annual report filed with the Department of Agriculture and Consumer Services' Division of Consumer Protection.

4. A statement of objective and measurable outcomes that are expected to occur and the method the organization will use to evaluate the program's effectiveness.

C. To be eligible for participation in the Neighborhood Assistance Program, the applicant must meet the following criteria:

1. Applicants must have been in operation as a viable entity, providing neighborhood assistance for impoverished people, for at least 12 months.

2. Applicants must be able to demonstrate that at least [ ~~60~~ 50 ] % of the total people served and at least [ ~~60~~ 50 ] % of the total expenditures were for impoverished people.

3. Applicant's audit must not contain any significant findings or areas of concern for the ongoing operation of the neighborhood organization.

4. Applicants must demonstrate that at least 75% of total revenue received is expended to support their ongoing programs each year.

~~C.~~ D. The application period ~~for neighborhood organizations to become approved neighborhood assistance projects~~ will start no later than March ~~1~~ 15 of each year. All applications must be received by the Department of Social Services no later than the first ~~working~~ business day of May.

~~D.~~ E. Those ~~organizations~~ applicants submitting all required information and reports~~,~~ and meeting the eligibility criteria ~~of a neighborhood organization, and whose proposals are consistent with the Neighborhood Assistance Act (§ 63.1-320 et seq. of the Code of Virginia),~~ described in this section will be determined an ~~eligible project for the Neighborhood Assistance Program~~ approved organization. The program year will run from July 1 through June 30 of the following year.

~~E.~~ F. The commissioner ~~or his designee~~ may terminate ~~a project's~~ an approved organization's eligibility based on a finding of program abuse involving illegal activities or fraudulent reporting on contributions.

~~F.~~ G. Any neighborhood organization that disagrees with the disposition of ~~their applications~~ its application, or ~~their~~ its termination as an ~~eligible project~~ approved organization, may appeal to the commissioner in writing for a reconsideration. Such requests must be made within 30 days of the denial or termination. The commissioner will act on the request and render a final decision within 30 days of the request for reconsideration.

**22 VAC 40-41-30. Allocation of tax credits.**

A. The available tax credits will be allocated among all approved ~~projects~~ organizations as follows:

1. Any amounts legislatively set aside for special purposes will be allocated for these purposes.

2. At least 10% of the available amount of tax credits each year shall be allocated to ~~qualified programs proposed by neighborhood~~ approved organizations not receiving allocations in the preceding year; however, if the amount of

requested tax credits for ~~qualified programs requested by such neighborhood~~ approved organizations is less than 10% of the available amount of tax credits, the unallocated portion of such 10% shall be allocated to other ~~eligible neighborhood~~ approved organizations.

3. ~~Projects~~ Approved organizations that ~~had~~ received a tax credit allocation within the last four years will be given an allocation based on the average amount of tax credits actually used in prior years. ~~This amount may be reduced by a percentage or be capped in order to stay within the total available funding. 4. The remaining allocation will be distributed among projects which have not received an allocation within the last four years. This~~ The allocation process may include a determination of the reasonableness of requests, caps, and percentage reductions in order to stay within the total available funding.

~~5. The steps provided in subdivisions 3 and 4 of this subsection may be used for any amount legislatively designated for specific types of projects. Alternate procedures may be developed to ensure equitable distribution of available tax credits.~~

B. During the program year, ~~neighborhood~~ approved organizations [ that have used at least 75% of their allocation ] may request additional allocations of tax credits within the limits described in this section. Requests will be evaluated on reasonableness, and ~~funds~~ tax credits will be reallocated on a first-come basis as they become available. ~~Requests for increases to an organization's allocation received more than two weeks after the end of the program year will not be processed.~~ [ An exception may be made for organizations that have received a written commitment for a donation of real estate. ]

C. Maximum allocation of tax credits.

1. No organization shall receive an allocation greater than $500,000.

2. For the process of determining the maximum allocation for an organization whose purpose is to support and benefit another approved organization, the combined allocation will not exceed the $500,000 maximum cap.

~~C.~~ D. ~~A neighborhood organization shall not assign or transfer an allocation of tax credits to another neighborhood organization without the approval of the Commissioner of Social Services or his designee.~~ Organizations may release all or a portion of their unused tax credit allocation to be reallocated in accordance with subsection B of this section.

**22 VAC 40-41-40. Value of donations.**

A. The approved ~~neighborhood~~ organization is responsible for maintaining documentation ~~acceptable to~~ as required by the Department of Social Services ~~and establishing~~ to verify the date and value of all donations.

B. The value of donations of cash, including stocks, ~~bonds, or other negotiable items, merchandise, and real estate~~ real estate, and merchandise to be used by the approved organization is the value determined for federal tax purposes using IRS regulations (26 CFR 1 et seq., and as amended).

C. The value of merchandise donated to be sold, auctioned or raffled is the lesser of the value determined for federal tax purposes using IRS regulations or the actual proceeds received by the approved organization.

~~C.~~ D. The value assigned for donated rent/lease of ~~property~~ the approved organization's facility must be reasonable and cannot exceed the prevailing square footage rental charge for comparable property.

~~D.~~ E. The value of professional and contracting services is determined as follows:

1. When a business donates professional or contracting services provided by employees, the value of the donation shall be equal to the salary that such employee was actually paid for the period of time that such employee rendered professional or contracting services to the approved ~~program~~ organization. Operating overhead and benefit costs are not included in determining the ~~contribution~~ value.

2. When a sole proprietor, partner in a partnership, or member of a limited liability company renders professional or contracting services to ~~a program~~ an approved organization, the value of the professional or contracting services shall not exceed the lesser of the reasonable cost for similar services from other providers or the maximum amount set forth in ~~§§ 63.1-325~~ §§ 63.2-2004 and ~~63.1-325.1~~ 63.2-2005 of the Code of Virginia.

~~3. When a physician, dentist, nurse practitioner, physician's assistant, optometrist, dental hygienist, or pharmacist licensed pursuant to Title 54.1 of the Code of Virginia provides health care services, the value of such services shall not exceed the lesser of the reasonable cost for similar services from other providers or the maximum amount set forth in § 63.1-325 of the Code of Virginia.~~

**22 VAC 40-41-50. Donations by businesses and health care professionals.**

A. As provided by ~~§ 63.1-324~~ § 63.2-2003 of the Code of Virginia, a business firm shall be eligible for a tax credit based on the value of the money, property, ~~and~~ professional services, and contracting services donated by the business firm during its taxable year to an approved ~~neighborhood~~ organization.

B. No tax credit shall be granted to any business firm for donations to ~~a neighborhood~~ an approved organization providing job training or education for individuals employed by the business firm.

C. ~~Physicians, dentists, nurse practitioners, physician's assistants, optometrists, dental hygienists, and pharmacists licensed pursuant to Title 54.1 of the Code of Virginia who provide health care services without charge at a clinic which is an approved neighborhood organization, and is organized in whole or in part for the delivery of health care services without charge,~~ Health care professionals that meet certain conditions, as specified in § 63.2-2004 C of the Code of Virginia, shall be eligible for a tax credit based on the time spent in providing health care services ~~at~~ for such clinic.

D. All donations must be made directly to the approved organization without any conditions or expectation of monetary benefit ~~from the project~~. Discounted ~~property or professional services is~~ donations and bargain sales are not ~~an~~ allowable ~~donation~~ donations for the Neighborhood Assistance Program.

E. Granting of tax credits shall conform to the minimum and maximum amounts prescribed in ~~§ 63.1-324~~ § 63.2-2003 of the Code of Virginia.

F. Credits granted to a partnership, electing small business (Subchapter S) corporation, or limited liability company shall be allocated to their individual partners, shareholders, or members, respectively, in proportion to their ownership or interest in such business entities.

G. The ~~Neighborhood Assistance project~~ approved organization and ~~its~~ donor shall complete a certification on a form prescribed by the Department of Social Services ~~and submit it to the commissioner or his designee~~. The certification shall identify the date, type and value of the donation.

H. All certifications must be submitted ~~to the commissioner or his designee~~ [ to the Department of Social Services ] within four years of the date of donation.

I. Upon receipt and approval of the certification, the commissioner ~~or his designee~~ shall issue a tax credit certificate to the business.

**22 VAC 40-41-55. Donations by individuals.**

A. As provided in ~~§ 63.1-325.2~~ § 63.2-2006 of the Code of Virginia, an individual shall be eligible for a tax credit for a cash donation to ~~a Neighborhood Assistance project~~ an approved organization.

B. Such donations are subject to the minimum and maximum amounts and other provisions set forth in ~~§ 63.1-325.2~~ § 63.2-2006 of the Code of Virginia.

C. The ~~Neighborhood Assistance project~~ approved organization and the individual shall complete a certification on a form prescribed by the Department of Social Services ~~and submit it to the commissioner or his designee~~. The certification shall identify the date and amount of the donation.

D. All certifications must be submitted [ to the Department of Social Services ] within four years of the date of donation.

~~D.~~ E. Upon receipt and approval of the certification, the commissioner [ ~~or his designee~~ ] shall issue a tax credit certificate to the individual.

**22 VAC 40-41-60. Determining date of donation.**

A. The date of donation for cash, including stocks, ~~bonds, or other negotiable items, merchandise, and real estate~~ real estate, and merchandise to be used by the approved organization, is the date used for federal tax purposes according to IRS regulations.

B. The date of the donation for merchandise donated to be sold, auctioned or raffled is the date the proceeds were received by the approved organization

~~B.~~ C. The date of donation for professional services is the date the service is completed.

~~C.~~ D. The date of donation for donated rent/lease is the effective date of the lease.

~~FORMS~~

~~Contribution Notification Form A (CNF-A) (eff. 7/98).~~

~~Contribution Notification Form B (CNF-B) (eff. 7/98).~~

~~Contribution Notification Form C (CNF-C) (eff. 7/98).~~

~~Neighborhood Assistance Program Application, July 1998 - June 1999.~~

VA.R. Doc. No. R05-232; Filed June 18, 2007, 11:03 a.m.

# TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

## COMMONWEALTH TRANSPORTATION BOARD

### Proposed Regulation

Titles of Regulations: **24 VAC 30-150. Land Use Permit Manual (REPEALED.)**

**24 VAC 30-151. Land Use Permit Manual (adding 24 VAC 30-151-10 through 24 VAC 30-151-760).**

Statutory Authority: §§ 33.1-12 and 33.1-206.1 of the Code of Virginia.

Public Comments: Public comments may be submitted until September 9, 2007.

Public Hearing Information:

August 2, 2007 - 10 a.m. - VDOT Main Auditorium, First Floor, 731 Harrison Avenue, Salem, Virginia

August 6, 2007 - 10 a.m. - VDOT Conference Room, First Floor, 14685 Avion Parkway, Chantilly, Virginia

August 10, 2007 - 10 a.m. - VDOT Conference Room, Basement, Brookfield Office Park, 6600 West Broad Street, Richmond, Virginia

Agency Contact: Mutaz Alkhadra, Land Use Permits Manager, Assets Management Division, Virginia Department of Transportation, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 662-9403, FAX (804) 662-9426, or email mutaz.alkhadra@vdot.virginia.gov.

Basis: Section 33.1-12 (3) of the Code of Virginia gives the Commonwealth Transportation Board the authority to make regulations concerning the use of the system of state highways. This authority is broadly stated, so there is significant discretion in establishing the criteria, policies, and procedures addressing work performed on state-owned rights-of-way. Section 33.1-198 of the Code of Virginia requires persons wishing to construct commercial entrances to obtain permits for the entrances. Section 33.1-206.1 of the Code of Virginia requires the Commonwealth Transportation Board to make regulations concerning the erection of roadside memorials.

The CTB has used this authority to maintain the rights-of-way along the highways in a manner necessary to preserve the integrity, operational safety, and service of function of the roadway. The permit process allows VDOT to ensure that work on its property is performed with little or no damage to existing structures or utilities. Commercial and private users benefit from the cooperative system of land management because a consistent permit program minimizes costs, allows more precise planning to perform the work, ensures fair treatment, and assists in facilitating residential and commercial development.

To accomplish its purpose, the regulation is broad in scope. For example, it addresses general and specific policies concerning placement of utilities (e.g., controlled access rights-of-way, etc.); installation of drainage pipe, commercial entrance curbing, landscape planting and trimming, miscellaneous permits and special agreements (e.g., agricultural or commercial use).

This regulation does not exceed minimum requirements of the state mandate, as the statutes specify none.

Failure to follow the provisions of this regulation may subject violators to a civil penalty, as provided in § 33.1-19 of the Code of Virginia.

Purpose: This regulation sets forth the requirements applicable to all activities permitted within the right-of-way as allowed by the board. These activities include installation of utilities, construction of private and commercial entrances, landscaping and temporary use of the right-of-way. The regulation sets forth criteria used to consider the issuance of permits, which are handled at VDOT's local field offices, called residencies. The regulation is intended to preserve the integrity of the highway system and protect the safety of motorists, pedestrians and workers. The Land Use Permit Manual was last updated in 1983. This review and update are necessary to accommodate changes in technology that impact the use of the right-of-way, as well as changes in business practices.

Substance: 1. Removed internal guidance and procedures from the regulation - Throughout the regulation, procedural and design guidance information has been deleted. The procedural information is used solely by VDOT staff, but it is not needed as part of the regulation, and permit applicants will not be inconvenienced by its omission. Eliminating the specific design criteria provides flexibility in applying exceptions and responding to development trends. General design standards are contained in VDOT's Road Design Manual. Deletion of procedures and design guidance ensures that the regulation contains only the information necessary for the administration of land use permits.

2. Increased fees - Fees have not been increased since 1983. The new fees will reflect actual costs of permit issuance and administration. The replacement regulation also clarifies that residencies may set up accounts receivables for plan review, inspection and administration of complex permits.

3. Accommodation fees - The replacement regulation also includes annual accommodation fees for nontelecommunication utilities within limited access right-of-way. The current regulation does not allow this access, and companies have expressed an interest to be able to access these rights-of-way, even if a fee is assessed.

4. Private entrances - Previously, private entrance permits issued to the property owner were provided at no cost. If the property owner purchased the drainage pipe for the entrance, VDOT maintenance forces would install the pipe at no cost. This practice takes maintenance forces away from necessary roadwork and drains funds from the construction budget for each county's secondary roads. The replacement regulation requires an application fee for the permit and requires the property owner to arrange installation of the entrance. This change is not anticipated to cause any inconvenience, since property owners will already need to engage the services of a contractor to perform grading and other work associated with the pipe installation, and this part of the job can be performed with the other work.

5. Logging permits - Logging Permits are no longer available as a blanket permit. In the current regulation, logging companies could purchase a district or statewide permit that allowed them to create an entrance for logging on any primary or secondary road. The permit was issued annually. This very broad permit did not provide the residency with adequate measures to control access to the roadway. Requiring logging permits to be issued as single use permits

allows the residency to ensure adequate sight distance at the entrance and provides the opportunity for VDOT to better monitor the entrance for proper installation and maintenance.

6. Commercial entrance permits - This has been expanded to address the concept of access management. Access management practices provide VDOT with the necessary means to control entrances along the roadway and better protect the integrity of our highways.

7. In place permits - These permits can be issued for utilities located within a subdivision without plan and full permit submittal. These one page permits provide VODT with the necessary information without inundating residency offices and utility companies with unneeded paper.

Generally speaking, most of the changes in this regulation fall into three categories: (i) eliminating redundant or obsolete text to improve the user-friendliness of the regulation; (ii) updating the regulation to reflect VDOT permit administration procedures and other guidance that have always been in effect, but not necessarily addressed explicitly in the regulation; or (iii) addressing subjects resulting from new technology, regulations and rules from parties external to VDOT, etc. that were not in existence when the regulation was last amended.

Issues: Issues include the following:

1. The primary advantage to the public of promulgating the replacement regulation is the emphasis on providing an up-to-date and more flexible regulatory resource for utilities, developers, and others to use.

The increase in fees may be considered a disadvantage; however, fees have not been increased in over 20 years. The increased fees will offset some of the costs incurred in VDOT's permit review, issuance and inspection.

2. The primary advantage to VDOT and the Commonwealth is essentially the same as that to the public – the replacement regulation provides an up-to-date and clarified resource concerning the issuance of permits for users, including VDOT personnel. VDOT will be able to perform its mission with greater efficiency and effectiveness, while addressing the concerns of stakeholders, utilities and the land development industry and preserving the safety and integrity of the transportation infrastructure.

Another advantage to VDOT is the elimination of private entrance installation by VDOT maintenance crews. This allows those crews to concentrate time and resources on repair and restoration of the roadways.

Other advantages to VDOT include an update of the fees to help offset VDOT's costs. The only disadvantage to the agency or the Commonwealth is in the time and expense to VDOT to implement the changes, through a combination of training and printing the replacement regulation, etc. Some other regulations that reference the regulation may need to be updated. However, VDOT believes that the benefits from an updated regulation outweigh this disadvantage.

VDOT will be able to repeal another regulation, the Minimum Standards of Entrances to State Highways (24 VAC 30-71). Regulations relating to commercial entrances are already addressed in the Land Use Permit Manual. The design information currently included in the Minimum Standards of Entrances to State Highways will be included in the Road Design Manual. The Minimum Standards are based on the same administrative processes as the LUPM, so there will be one less regulation for permittees to deal with. The Minimum Standards will need to be revised anyway, so the repeal of the regulation will save time and effort that would otherwise be spent on a separate action. The General Rules will also need to be revised to reflect the new status of the Minimum Entrance Standards.

3. Any pertinent matters of interest to the regulated community, government officials, and the public will be addressed as a result of the promulgation of the final replacement regulation and the repeal of the existing one through the Administrative Process Act.

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 Commonwealth Transportation Board (board) proposes to repeal and replace existing regulations that establish the policy and guidelines of land use permit. Major changes include:

1. Logging permits are required to be issued as single use permits and are no longer available as a blanket permit.

2. Entrance pipes where private driveways meet public roads will no longer be installed by Virginia Department of Transportation (VDOT). The property owners are required to arrange installation of the pipes.

3. Fees for permits will be increased to reflect the actual costs of permit issuance and administration.

4. Accommodation fees will be added for utilities within limited access right-of-way.

5. The concept of access management is addressed in the review of commercial entrance permits.

6. The proposed regulations establish the authority for VDOT to adjust the application fee and additive fees by up to 25% on an annual basis, based on a review of cost by the department.

7. Redundant or obsolete provisions are eliminated to provide clarity.

Estimated Economic Impact. The Land Use Permit Manual was last updated in 1983. The board proposes that logging permits be issued as single use permits. In the current regulation, logging companies can purchase a district or statewide permit at the cost of $200 per year that allowed them to create an entrance for logging on any primary and secondary road. This very broad permit does not provide VDOT local offices with adequate measures to control access to the roadway. Requiring logging permits to be issued as single use permits allows VDOT local offices to ensure adequate sight distance at the entrances and monitor whether the public road has been damaged. Hence the probability of accidents and damages to private vehicles will be reduced. On the other hand, the single logging permit requirement will raise the cost for the logging companies, wood product companies and paper companies, because each single permit will be subject to a $100 non-refundable application fee. According to VDOT, currently there are about 90 blanket logging permits issued each year, with a total cost of $18,000 for the applicants.[1] Under the proposed regulation, VDOT estimates that there will be 450 single logging permits which would be currently covered by blanket permits, indicating a total cost of $45,000 for the applicants. Therefore the proposed regulation will cause an increase in fees of approximately $27,000 for the logging permit applicants. Although the increase in cost will reduce the profits and the single permit requirement will cause more processing time for the logging companies, wood product companies and paper companies, it is likely not large enough to have a significant impact on the behavior of the businesses. VDOT will have about 360 more permits to be reviewed or inspected each year, which means 2772 more hours of work given that the average time spent on miscellaneous permits is 7.7 hours. [2]

The board also proposes to establish that VDOT will no longer be responsible for installing the entrance pipes where private driveways meet public roads. The property owners will be required to arrange installation of the pipes. Currently, if the property owner purchases the pipe for the entrance, VDOT maintenance forces would install the pipe at no cost. According to VDOT, the average cost for pipe installation is roughly $1000, and the total statewide expenditure for pipe installation is $2,957,919 for the last fiscal year. Relieving VDOT from the commitment of pipe installation will shift the installation cost from public construction funds onto private property owners and will provide the VDOT maintenance forces with more time for necessary roadwork. To the private property owner, this proposed change causes a $1,000 increase in cost. However, this increase in cost is likely not large enough to have a significant impact on the behavior of property owners.

According to VDOT, permit fees have not increased since 1983. Under the current regulations, VDOT charges the following fees: 1) $100 minimum for special use permit (where a special agreement has to be drafted), 2) $60 minimum for building movements, 3) $40 minimum for private entrances, 4) $5 additive fee per entrance (private, commercial and logging), medium crossover or connection. The board proposes to charge permit fees as follows to reflect the actual costs of permit issuance and administration: 1) $100 non-refundable application fee for a single permit, 2) $10 additive fee per logging entrance, 3) $150 additive fee for first commercial entrances and $50 for each additional entrance, 4) $150 additive fee for first street connection and $50 for each additional connection, 5) $500 additive fee per crossover, 6) $1,000 additive fee per traffic signal.

These changes will cause the permit fees for building movements to increase from $50 to $100 and that for private entrances to increase from $40 to $100. For commercial entrances or street connections, a new additive fee of $150 will be added for the first commercial entrance or street connection, and the additive fee for each additional entrance or connection will be raised from $5 to $50. In addition, an additive fee of $500 will be charged for each crossover and $1,000 will be charged for a traffic signal installation. The increased fees will raise the cost and reduce the profit for the permit applicants. However, given that the application fee or additive fees are such a small portion of the construction cost, these changes will not often affect the business decisions.

The board also proposes to add annual accommodation fees for non-telecommunication utilities within limited access right-of-way. For example, fees for limited access crossings will be $50 per crossing and fees for limited access longitudinal installation will be $250 per mile annually. These fees are to cover the permit review and administration costs for VDOT. Although this change will raise the costs for the non-telecommunication utilities, generally the power, gas, water or sewage providers, no significant impact on their behavior is expected as the fees are a minor part of the total installation cost. A fixed annual use payment for telecommunication tower sites is also included in the proposed regulations. Currently these fees are charged on a negotiated basis without a fixed rate. The amount is set based upon the value of the right-of-way to the private corporations to make it competitive with off-right-of-way installations. According to VDOT, the proposed fee, which is $24,000 for a communication tower site on the right-of-way and $14,000 for co-location on a tower site, equals the average rate

[1] Calculation: 90 x 200 = $18,000

[2] VDOT provided estimate of time spent reviewing permits.

currently charged. Although the private companies may currently pay more or less than the proposed fees, incorporating these fees into the proposed regulations will likely not cause significant effects on the behavior of the businesses as a whole.

In addition, the proposed regulation addresses the concept of access management for the review of commercial entrance permits, which is defined as "the systematic control of the location, spacing, design, and operation of driveways, median openings, interchanges, and street connections to a roadway." As a part of any commercial entrance permit review, VDOT will determine what improvements are needed to accommodate the proposed traffic and if entrance modifications are needed to protect the transportation corridor. Although not addressed in the current regulation, principles of access management have been applied to the design of commercial entrances in VDOT procedures and there were some access management provisions in the Commercial Entrances Standards. So the inclusion of access management will not affect the behavior of businesses significantly.

Finally, the proposed regulations establish the authority for VDOT to adjust the application fee and additive fees on an annual basis, based on a review of cost by the department. VDOT will have the option of adjusting the land use permit application fee and additive fees, in which case it shall compile information regarding its costs for permit review, administration and inspection of permit work during the previous fiscal year and report this information to the commissioner by January of each year. The commissioner may adjust the permit application fee and additive fees by no more than 25% of the fee structure in effect on July 1 of the previous calendar year and no greater than the VDOT's average direct cost as established in the report. If the commissioner deems that a change in the permit application fee and additive fee structure is warranted, notice of the adjusted fee structure, including the report on which it is based or information about where the report may be viewed, will be published in the Virginia Register of Regulations in April of that year and the adjusted fee structure shall become effective on July 1 of that year. Although this change will facilitate VDOT's needs to adjust the fees on an annual basis in order to recover its costs and at the same time provide adequate notice to the public of a change to the fee amount, this regulatory change may cause disincentive for VDOT to reduce the costs.

In summary, the single logging permit requirement and inclusion of access management will allow VDOT to better monitor the entrances and protect the integrity of the highways. The proposed fee-related changes and single logging permit requirement will raise the cost for the permit applicants, but the impact on the behavior of the businesses will be small. To VDOT, the saved time and cost from pipe installation will counteract the increased hours and cost spent on logging permits.

Businesses and Entities Affected. This proposed regulation will affect businesses and entities that are involved in activities permitted with the right-of-way, including installation of utilities, construction of private and commercial entrances, landscaping and temporary use of the right-of-way. Specifically, the single logging permit requirement will affect the logging companies directly. The wood product companies and paper companies will be affected indirectly through logging. The new accommodation fees will affect non-telecommunication utility companies installing lines within the right-of-way. Although the proposed fees for communication tower sites on the right-of-way equal the average rates currently charged, telecommunication companies will be affected because currently they may have paid more or less than the proposed fixed amount. End of free pipe installations for private entrances permit applicants will affect homeowners building a new driveway. Commercial developers installing entrances onto existing roads will be affected by the access management requirement. The increased additive fees will affect businesses that are involved in activities such as commercial entrance installation, street connection or traffic signal installation, most of which are in logging, utilities, construction, wood product and paper manufacturing. To provide a rough idea of how broad the impact of the changes will be, the following is a list of the number of businesses in the industries that are most likely to be affected by the regulatory changes. [3]

| Industry | Number of Businesses |
|---|---|
| Logging | 469 |
| Utilities | 425 |
| Construction of buildings | 7880 |
| Heavy and civil engineering construction | 1865 |
| Wood product manufacturing | 638 |
| Paper manufacturing | 117 |
| Telecommunications | 1415 |

Localities Particularly Affected. The proposed regulation applied to localities throughout the Commonwealth.

Projected Impact on Employment. Since the increased fees and other changes such as the single logging permit requirement will not discourage permit applications and constructions very much given the scope and expenses of the

[3] These numbers were calculated based on data provided by the Virginia Employment Commission that were collected for the last quarter of 2004.

whole projects, the impact of the proposed regulations on employment will be small. There may be a minimal decrease in employment in the affected industries listed above.

Effects on the Use and Value of Private Property. The proposed increased fees will reduce the value of firms that pay those fees commensurately. The requirement for the property owners to arrange entrance pipe installations at their own expense will also commensurately reduce the value of their property. There will likely not be significant effects on the use of private property given the magnitude of the costs.

Small Businesses: Costs and Other Effects. The proposed regulation will affect small businesses in logging, utilities, construction, telecommunications, wood product and paper manufacturing. However, the proposed increased costs are likely not large enough to discourage permit applications or keep the projects from going forward. Specifically, the single logging permit requirement will affect small businesses in logging directly and those in wood product and paper manufacturing indirectly through logging, because each single permit will be subject to a $100 non-refundable application fee. The new accommodation fees will affect small businesses in non-telecommunication utilities installing lines within the right-of-way. For example, accommodation fee for limited access crossings will be $50 per crossing. The increased additive fees will affect small businesses that are involved in activities such as commercial entrances installation, street connection or traffic signal installation.

Below are the numbers of small businesses in the industries that may be affected by the regulatory changes. [4]

| Industry | Number of Small Businesses (Employment < 500) |
|---|---|
| Logging | 469 |
| Utilities | 420 |
| Construction of buildings | 7876 |
| Heavy and civil engineering construction | 1859 |
| Wood product manufacturing | 537 |
| Paper manufacturing | 114 |
| Telecommunications | 1401 |

Small Businesses: Alternative Method that Minimizes Adverse Impact. According to VDOT, the current fees, which were established in 1983, are far below their costs of permit review, administration and inspection. Thus, these activities have been subsidized by outside revenue sources. The proposed amendments to the Land Use Permit Manual consist of fee increases to better reflect these costs and the end of a free service. Avoiding the adverse impacts of higher fees and the end of a free service could only be accomplished by continued effective subsidies by outside revenue sources.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Virginia Department of Transportation concurs with the economic impact analysis prepared by the Department of Planning and Budget concerning the replacement regulation for the Land Use Permit Manual (24 VAC 30-151).

Summary:

*This proposed action repeals the existing Land Use Permit Manual and replaces it with a new regulation. The proposed changes require logging permits to be used as single use permits and eliminate the availability of blanket permits, provide that the Virginia Department of Transportation (VDOT) will no longer install entrance pipes where private driveways meet public roads and impose the responsibility for installation of the pipes on the property owners, permit roadside memorial signing under certain conditions, increase permit fees, add accommodation fees for utilities within limited access right-of-way, address the concept of access management in the review of commercial entrance permits, establish the authority for VDOT to adjust the application fee and additive fees by up to 25% on an annual basis, eliminate redundant and obsolete provisions, and make other clarification changes.*

CHAPTER 151.
LAND USE PERMIT MANUAL.

PART I.
DEFINITIONS.

**24 VAC 30-151-10. Definitions.**

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

"AASHTO" means American Association of State Highway and Transportation Officials.

"Backfill" means replacement of suitable material compacted as specified around and over a pipe, conduit, casing, or gallery.

"Boring" means a method of installation that is done underground and by which a carrier or casing is jacked through an oversize bore. The bore is carved progressively ahead of the leading edge of the advancing pipe as soil is mucked back through the pipe. Direction drilling, coring, jacking, etc., are also considered boring.

"Carrier" means a pipe directly enclosing a transmitted fluid (liquid or gas).

[4] These numbers were calculated based on data provided by the Virginia Employment Commission that were collected for the last quarter of 2004.

"Casing" means a larger pipe enclosing a carrier.

"Class G utility" means any utility facility that is owned and operated by a city, county, town, public utility district, public utility authority, or a political subdivision of the Commonwealth, which has the right to install lines within a specific area, except where they are providing telecommunication services.

"Class P utility" means all owners and operators of a utility facility, except those that are providing telecommunication or cable television services, and not meeting the definition of a Class G Utility, as defined in this section, to include all privately, investor- and cooperatively owned entities.

"Class T utility" means all owners and operators of a telecommunication or cable television facility that have been authorized to provide telecommunication or cable television services.

"Clear zone" means the unobstructed, relatively flat area provided beyond the edge of the traveled way for the recovery of errant vehicles. The width of the clear zone is determined by the type of facility, traffic volume, speed, horizontal alignment and embankment and is detailed in VDOT's Road Design Manual (revised January 2005) (see 24 VAC 30-151-760 for document information).

"CFR (Code of Federal Regulations)" means the regulations promulgated by the administrative and regulatory agencies of the federal government.

"Commercial entrance" means any entrance serving all entities other than two or fewer individual private residences. (See "private entrance.")

"Commonwealth" means the Commonwealth of Virginia.

"Comprehensive agreement" means an agreement between VDOT and utility companies allowing utility placements within VDOT right-of-way.

"Conduit" means an enclosed tubular runway for carrying wires, cable or fiber optics.

"Cover" means the depth of the top of a pipe, conduit, or casing below the grade of the roadway, ditch, or natural ground.

"Crossing" means any utility facility that is installed across the roadway, either perpendicular to the longitudinal axis of the roadways or at a skew of no more than 60 degrees to the roadway centerline.

"District roadside manager" means the VDOT employee assigned to provide management, oversight and technical support for district-wide vegetation program activities.

"Drain" means an appurtenance to discharge liquid contaminants from casings.

"Encasement" means a structural element surrounding a pipe.

"Erosion and sediment control" means the control of soil erosion or the transport of sediments caused by the natural forces of wind or water.

"Functional area" means the area of the physical highway feature, including a specific highway feature such as an intersection, traffic circle, roundabout, railroad grade crossing, or interchange, plus that portion of highway that comprises the decision and maneuver distance and required vehicle storage length to serve that highway feature.

"Grounded" means connected to earth or to some extended conducting body that serves instead of the earth, whether the connection is intentional or accidental.

"Highway," "street," or "road" means a public way for purposes of vehicular travel, including the entire area within the right-of-way.

"Limited access highway" means a highway especially designed for through traffic over which abutters have no easement or right of light, air, or access by reason of the fact that their property abuts upon such limited access highway.

"Longitudinal installations" means any utility facility that is installed parallel to the centerline of the roadway or at a skew of less than 60 degrees to the roadway centerline.

"Manhole" means an opening in an underground system that workers or others may enter for the purpose of making installations, inspections, repairs, connections and tests.

"Median" means the portion of a divided highway separating the traveled ways for traffic in opposite directions.

"Nonbetterment cost" means the cost to relocate an existing facility as is with no improvements.

"Permit" means a document that sets the conditions under which VDOT allows others to use or change VDOT right-of-way.

"Permittee" means the person or persons, firm, corporation or government entity that has been issued a land use permit.

"Pipe" means a tubular product or hollow cylinder made for conveying materials.

"Pole line" means poles or a series or line of supporting structures such as towers, cross arms, guys, racks (conductors), ground wires, insulators and other materials assembled and in place for the purpose of transmitting or distributing electric power or communication, signaling and control. It includes appurtenances such as transformers, fuses, switches, grounds, regulators, instrument transformers, meters, equipment platforms and other devices supported by poles.

"Power line" means a line for electric power or communication services.

"Pressure" means relative internal pressure in pounds per square inch gauge (psig).

"Private entrance" means an entrance that serves up to two private residences and is used for the exclusive benefit of the occupants.

"Private subdivision road or street" means a road or street that serves more than two individual properties or residences, and is maintained by entities other than VDOT.

"Professional engineer" means a person who is qualified to practice engineering by reason of his special knowledge and use of mathematical, physical and engineering sciences and the principles and methods of engineering analysis and design acquired by engineering education and experience, and whose competence has been attested by the Virginia Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects through licensure as a professional engineer.

"Relocate" means the movement and reestablishment of existing facilities.

"Residency" means the local VDOT office for the county in which the applicant will be performing the work.

"Residency administrator" means the VDOT employee assigned to supervise departmental operations within a specified geographical portion of the Commonwealth, consisting of one to four counties, or his designee. In districts having centralized functions for the review and approval of site plans, this position may be either:

1. The district land development manager for functions related to plan approval;

2. The residency permit manager for functions related to construction and inspection of permits; or

3. Any other position specifically designated to perform these functions.

"Right-of-way" means that property within the system of state highways that is open or may be opened for public travel or use or both in the Commonwealth. This definition includes those public rights-of-way in which the Commonwealth has a prescriptive easement for maintenance and public travel. The property includes the traveled way and associated boundary lines and parking and recreation areas.

"Roadside" means the area adjoining the outer edge of the roadway. The median of a divided highway may also be considered a "roadside."

"Roadway" means the portion of a highway, including shoulders, for vehicular use. A divided highway has two or more roadways.

"Service connections" means any utility facility installed overhead or underground between a distribution main, pipelines, or other sources of supply and the premises of the individual customer.

"Site plan" means the engineered or surveyed drawings depicting proposed development of land.

"Storm sewer" means the system containing and conveying roadway drainage. Storm sewer systems are not utilities.

"Stormwater management" means the engineering practices and principles used to intercept stormwater runoff, remove pollutants and slowly release the runoff into natural channels to prevent downstream flooding.

"Structure" means that portion of the transportation facility that spans space, supports the roadway, or retains soil. This definition includes, but is not limited to, bridges, tunnels, drainage structures, retaining walls, sound walls, signs, traffic signals, etc.

"System of state highways" means all highways and roads under the ownership, control, or jurisdiction of VDOT, including but not limited to, the primary, secondary and interstate systems.

"Telecommunication service" means the offering of telecommunications for a fee directly to the public or to privately, investor- or cooperatively owned entities.

"Transportation project" means a public project in development or under construction to provide a new transportation facility or to improve or maintain the existing system of state highways.

"Traveled way" means the portion of the roadway for the movement of vehicles, exclusive of shoulders and auxiliary lanes.

"Trenched" means installed in a narrow, open excavation.

"Underground utility facilities" means any item of public or private property placed below ground or submerged for use in connection with the storage or conveyance of materials.

"Utility" means a privately, publicly or cooperatively owned line, facility, or system for producing, transmitting, or distributing telecommunications, cable television, electricity, gas, oil, petroleum products, water, steam, storm water not connected with highway drainage, or any other similar commodity, including any fire or police signal system.

"VDOT" means the Virginia Department of Transportation, the Commonwealth Transportation Commissioner, or a designee.

"Vent" means an appurtenance to discharge gaseous contaminants from casing.

"Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life

in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.

PART II.
AUTHORITY.

**24 VAC 30-151-20. Authority.**

The General Rules and Regulations of the Commonwealth Transportation Board (24 VAC 30-20) are adopted pursuant to the authority of § 33.1-12 of the Code of Virginia, and in accordance with the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia). These rules and regulations provide that no work of any nature shall be performed on any real property under the ownership, control, or jurisdiction of VDOT until written permission has been obtained from VDOT. Real property includes, but is not limited to, the right-of-way of any highway in the state highways system. Written permission is granted either by permit or a state-authorized contract let by VDOT. By issuing a permit, VDOT is giving permission only for whatever rights it has in the right-of-way; the permittee is responsible for obtaining permission from others who may also have an interest in the property. Agents of VDOT are authorized to issue permits as described in this chapter. This chapter prescribes the specific requirements of such permits.

**24 VAC 30-151-30. Permits and agreements.**

One of the following types of documents shall be used to authorize the use or occupancy of the right-of-way.

1. Single use permits. A single use permit allows the permittee to perform all approved activities within limited access and nonlimited access rights-of-way. All permits issued pursuant to this chapter are single use permits unless otherwise noted. The following requirements apply to single use permits:

a. A permit is required for all types of utility activities occurring within the rights-of-way. These activities include, but are not limited to, changes in voltage or pressure of an existing facility, maintenance activities affecting vehicle traffic, all crossings of the right-of-way, and in all cases where utility installations are relocated or modified within the existing right-of-way.

b. A permit is required for all entrances onto state highways.

c. A permit is required for all agricultural and commercial uses and occupancy of the right-of-way.

d. A permit is required for all miscellaneous activities or uses as defined in Part VII of this chapter.

2. Residencywide permits. The following requirements apply to residencywide permits:

a. A residencywide permit allows the permittee to perform multiple occurrences of certain activities within nonlimited access right-of-way without obtaining specific permission for each occurrence. A residencywide permit shall be issued for one year. The residency administrator may exercise discretion to require a single use permit for the operations described in the following list of accepted activities for residencywide permits:

(1) Utilities. Residencywide permits may be issued to allow cities, towns, counties, public agencies, or utility companies the authority to install and maintain service connections to their existing main line facilities. Work under a residencywide permit will allow the permittee to install a service connection across a two-lane road above or below ground, provided the installation can be made from the side of the roadway without equipment stopping or impeding travel lanes, and where no part of the roadway pavement, shoulders and ditch lines will be disturbed. It does not allow the permittee to perform maintenance operations on existing mainline facilities or to expand existing plants.

(2) Surveying. Residencywide permits may be issued for surveying operations where no part of the roadway pavement, shoulders and ditch lines will be disturbed.

b. The permittee must apply for a separate single use permit when the activities listed below occur, because they are not covered under the authority of a residencywide permit:

(1) Stopping or impeding highway travel or if any variance in implementing standardized traffic control plan is desired.

(2) Performing work within the "limited access" right-of-way.

(3) Trimming or cutting of any trees located within the right-of-way, applying any pesticide, or landscape activities.

(4) Cutting highway pavement or shoulders to locate utilities.

(5) Working within a highway travel lane on a nonemergency basis.

(6) Constructing a permanent entrance.

(7) Upgrading in excess of normal maintenance.

(8) Installing electrical lines that exceed 34.5 KV.

(9) Installing new poles, anchors, parallel lines or pipe extension to existing utilities necessitating disturbance of the pavement, shoulder, or ditch line.

3. In-place permits. The following requirements apply to in-place permits:

In-place permits allow utilities to remain within the right-of-way of newly constructed subdivision streets. These utilities shall be installed according to VDOT approved street plans and in-place prior to VDOT street acceptance. No fee is required for these permits.

4. Other requirements.

In addition to obtaining a single use permit, some utilities may be required to enter an agreement with VDOT allowing the utility to use the right-of-way in exchange for monetary compensation, barter of services, or both.

a. Permit agreement.

(1). A permit agreement is required for:

(a) Any new longitudinal occupancy of the limited access right-of-way, as allowed for in 24 VAC 30-151-300 and 24 VAC 30-151-320.

(b) Any new communication tower or small site facilities installed within the right-of-way, as allowed for in 24 VAC 30-151-320 or 24 VAC 30-151-350.

(2) All agreements and attachments shall specify the terms and conditions required in conjunction with work performed within the right-of-way. If appropriate, all agreements shall provide for the payment of monetary compensation as may be deemed proper by the Commonwealth Transportation Commissioner or a designee for the privilege of utilizing the right-of-way.

b. Shared resource agreement. A shared resource agreement allows the utility to occupy the limited access right-of-way in exchange for the utility providing the needed VDOT facility or services. VDOT and the utility will agree upon the appropriate facilities or services to be provided and will establish the length of the term that will be compensated through the infrastructure needs or monetary compensation, or both. Any shared resource agreement shall also provide for compensation as may be deemed proper by the Commonwealth Transportation Commissioner or a designee in any renewal term. The shared resource agreement shall specify the initial and renewal terms of the lease.

**24 VAC 30-151-40. General rules, regulations and requirements.**

A. A land use permit is valid only on highways and rights-of-way under VDOT's jurisdiction. This permit neither implies nor grants otherwise. County and city permits must be secured for work on roads and streets under their jurisdictions. A land use permit covers the actual performance of work within highway rights-of-way and the subsequent maintenance, adjustments or removal of the work as approved by the residency administrator. The residency administrator shall issue all permits, except that permits for tree trimming and tree removal may be issued by the district roadside manager in consultation with the residency administrator. The Commonwealth Transportation Commissioner or a designee shall approve all activities within limited access right-of-way prior to permit issuance. All permits shall be issued to the owner of the facility within highway rights-of-way or adjacent property owner in the case of entrance permits. Permits may be issued jointly to the owner and his contractor as agent. The applicant shall comply with all applicable federal, state, county and municipal requirements.

B. Applicant shall apply for a land use permit at the local VDOT residency responsible for the county where the work is to be performed. The applicant shall submit site plans or sketches for proposed installations within the right-of-way to VDOT for review, with studies necessary for approval. VDOT may require electronic submission of these documents. Where work is of a continuous nature along one route, or on several routes within one residency, it may be consolidated into one permit application. The applicant shall also submit any required certifications for staff performing or supervising the work, and certification that applicable stormwater management requirements are being met. The plans shall include the ultimate development and also any applicable engineering design requirements. VDOT retains the authority to deny or revoke a land use permit to ensure the safety, use, or maintenance of the highway right-of-way, or in cases where a law has been violated relative to the permitted activity.

C. The proposed installation granted by this permit shall be constructed exactly as shown on the permit or accompanying sketch. Distances from edge of pavement, existing and proposed right-of-way line, depths below existing and proposed grades, depths below ditch line or underground drainage structures, or other features shall be shown. Any existing utilities in relation to the permittee's work shall be shown. Location of poles, guys, pedestals, relief valves, vent pipes, etc. shall be shown. Height of wires or cables above the crown of the roadway shall be shown. Method of construction shall be indicated; i.e., plowing, trenching, boring, jacking, etc.

D. In the event of an emergency situation that requires immediate action to protect persons or property, the residency administrator may verbally authorize work within the right-of-way; however, application for a permit must be initiated as soon as the emergency is alleviated and within 48 hours of the end of the emergency situation.

E. The land use permit is not valid unless signed by the residency administrator or a designee.

F. The permittee shall secure and carry sufficient insurance to protect against liability for personal injury and property damage that may arise from the work performed under the authority of a land use permit and from the operation of the

permitted activity. Insurance must be obtained prior to start of permitted work and shall remain valid through the permit completion date. The residency administrator may require a valid certificate or letter of insurance from the issuing insurance agent or agency prior to issuing the land use permit.

G. VDOT and the Commonwealth shall be absolved from all responsibilities, damages and liabilities associated with granting the permit. All facilities shall be placed and maintained in a manner to preclude the possibility of damage within the highway right-of-way. VDOT will not be responsible for damage to the facility placed under permit as a result of future maintenance or construction activities performed by VDOT.

H. A copy of the land use permit and approved site plans or sketches shall be kept at the job site at all times and readily available for inspection when requested by authorized personnel. Strict adherence to the permit is required at all times. Any activity other than that described in the permit shall render the permit null and void. Any changes to the permit shall be coordinated and approved by the residency administrator prior to construction.

I. For permit work within the limits of a VDOT construction project, the permittee must obtain the contractor's consent in writing before the permit will be issued. The permittee shall schedule all permitted work within the limits of a VDOT construction project to avoid conflicts with contracted work.

J. Disturbances within the right-of-way shall be kept to a minimum during construction activities. Permit applications for proposed disturbances within the right-of-way that include disturbance on property directly adjacent to the right-of-way, in which the combined area of disturbance constitutes a land-disturbing activity as defined in § 10.1-560 of the Code of Virginia and 4 VAC 50-60 (Virginia Stormwater Management Program Permit Regulations) (see 24 VAC 30-151-760), must be accompanied by documented approval of erosion and sediment control plans and stormwater management plans, if applicable, from the corresponding jurisdictional local or state government plan approving authority.

K. Restoration shall be made in accordance with VDOT Road & Bridge Specifications, VDOT Road and Bridge Standards, Virginia Erosion and Sedimentation Control Handbook, a technical guide to 4 VAC 50-30 (Virginia Erosion and Sediment Control Regulations) and the Virginia Stormwater Management Handbook, 1st edition, Volumes 1 and 2 (effective 1999), a technical guide to 4 VAC 50-60 (Virginia Stormwater Management Program Permit Regulations) (see 24 VAC 30-151-760). The permittee shall:

1. Ensure compliance with 4 VAC 50-30 (Virginia Erosion and Sediment Control Regulations) and 4 VAC 50-60 (Virginia Stormwater Management Program Permit Regulations) (see 24 VAC 30-151-760).

2. Ensure copies of approved erosion and sediment control plans, stormwater management plans, if applicable, and all related non-VDOT issued permits are available for review and kept on permitted areas at all times.

3. Take all necessary precautions to ensure against siltation of adjacent properties, streams, etc. in accordance with VDOT's policies and standards and the Virginia Erosion and Sediment Control Handbook, 3rd edition, (effective 1992) and the Virginia Stormwater Management Manual (see 24 VAC 30-151-760).

4. Keep dusty conditions to a minimum by using VDOT-approved methods.

5. Cut pavement only as approved by the residency administrator. Pavement cuts, restoration and compaction efforts, to include all materials, shall be accomplished in accordance with VDOT Road & Bridge Specifications (see 24 VAC 30-151-760) and Form LUP-OC (1-2006).

6. Ensure that an individual certified by VDOT in erosion and sediment control is present whenever any land-disturbing activity governed by the permit is performed.

7. Stabilize all disturbed areas immediately upon the end of each day's work and reseed in accordance with VDOT Road and Bridge Specifications (see 24 VAC 30-151-760). Temporary erosion and sediment control measures shall be installed in areas not ready for permanent stabilization.

8. Ensure that no debris, mud, water, or other material is allowed on the highways. Written permission must be obtained from VDOT prior to placing excavated materials on the pavement. When so permitted, the pavement shall be cleaned only by approved VDOT methods.

L. Accurate "as built" plans and profiles of work completed under permit shall be furnished to VDOT upon request, unless waived by the residency administrator. For utility permits, the owner shall maintain records for the life of the facility that describe the utility usage, size, configuration, material, location, height or depth and special features such as encasement.

M. All work shall be performed in accordance with the Rules for Enforcement of the Underground Utility Damage Prevention Act (20 VAC 5-309) (see 24 VAC 30-151-760). For work within 1,000 feet of traffic signals or adjacent to other VDOT utilities, the permittee shall contact the local VDOT residency prior to excavation. VDOT shall receive notification on the business day preceding 48 hours before excavation.

N. Written permission must be obtained from the residency administrator prior to blocking or detouring traffic. Additionally, the permittee shall:

1. Employ safety measures such as certified flaggers, adequate lights and signs.

2. Conduct all permitted activities in accordance with the Manual on Uniform Traffic Control Devices for Streets and Highways (MUCTD) and special provisions (see 24 VAC 30-561 concerning adoption of this document) and the typical traffic control figures from the Virginia Work Area Protection Manual (filed as part of 24 VAC 30-310).

3. Plan construction and maintenance operations with regard to safety and minimum traffic interference.

4. Coordinate notification with all county or municipal officials.

5. Ensure that permitted work does not interfere with traffic during periods of peak flow on heavily traveled highways.

6. Plan work so that closure of intersecting streets, road approaches and other access points is held to a minimum and as noted and approved in the permit documents.

7. Maintain safe access to all entrances and normal shoulder slope of the roadway across the entire width of the entrance.

Failure to employ proper traffic control and construction standards mandated by the permit shall be cause for the residency administrator to remove the permittee from the right-of-way or revoke the permit, or both.

O. All construction activities shall conform to Occupational Safety & Health Administration (OSHA) requirements.

P. The permittee shall be responsible for any settlement in the backfill or pavement for a period of three years after the completion date of permit, and for the continuing maintenance of the facilities placed within the highway right-of-way.

Q. The permittee shall notify the nearest VDOT residency of involvement in any personal or vehicular accident immediately.

R. Stormwater management facilities or wetland mitigation sites shall not be located within VDOT rights-of-way unless the Commonwealth Transportation Board has agreed to participate in the use of a regional facility authorized by the local government. Stormwater management facilities or wetlands mitigation sites shall be designed and constructed to minimize impact within VDOT right-of-way. VDOT's share of participation in a regional facility will be the use of the right-of-way where the stormwater management facility or wetland mitigation site is located.

S. The VDOT residency or district office where the land use permit is obtained shall be notified 48 hours in advance of the start of the permitted work.

T. Upon completion of the work under permit, the permittee shall notify the residency administrator by letter giving the permit number, county, route and name of the party or parties to whom the permit was issued. The residency administrator shall promptly inspect the work covered under the permit and advise the permittee of any needed corrections.

**24 VAC 30-151-50. Violations of rules and regulations.**

A. Objects placed on, above, or under the right-of-way in violation of the general rules and regulations shall be removed within 10 calendar days of VDOT notification. Objects not removed within 10 calendar days shall be moved at the owner's expense. Objects requiring immediate removal for public safety, use, or maintenance of any highway shall be moved immediately at the owner's expense. The provisions of § 33.1-373 of the Code of Virginia shall govern the placement of advertising signs within the right-of-way.

B. The permittee will be civilly liable to the Commonwealth for expenses and damages incurred by VDOT as a result of violation of any of the preceding rules and regulations. Violators shall be guilty of a misdemeanor and, upon conviction, shall be punished as provided for in § 33.1-19 of the Code of Virginia.

**24 VAC 30-151-60. Authority of residency administrator.**

A. The residency administrator may suspend the work, wholly or in part, if the permittee fails to correct conditions that are unsafe for workers or the general public or to adequately carry out provisions of the permit. The residency administrator may also suspend work within the right-of-way for such periods as he may deem necessary because of weather or other conditions unsuitable for work or any other condition or reason deemed to be in the public interest. The residency administrator may delegate this authority.

B. Should the permittee fail to comply immediately with any order of the residency administrator made under the provisions of this section, the residency administrator may cause unacceptable authorized work to be removed and replaced and unauthorized work to be removed. The residency administrator may revoke the permit and restore the right-of-way. Any costs to restore the right-of-way upon revocation of a permit shall be borne by the permittee.

**24 VAC 30-151-70. Plan review and permit inspection.**

The residency administrator may assign a VDOT inspector, consultant inspector, or both, to inspect or monitor any work performed within the right-of-way. The absence of a VDOT inspector does not relieve the permittee of performing the work according to the provisions of the permit. The permittee may be responsible for the cost of site plan, sketch reviews and any other administrative functions, as well as all costs associated with an inspector and any equipment used.

**24 VAC 30-151-80. Permit time limits and cancellations.**

A. The permittee shall provide an estimate of the number of days needed to accomplish the work under permit. The residency administrator shall determine the actual time limit of all work being accomplished under permit. Weather

conditions and seasonal operations such as seeding, paving, etc., will be considered when determining a realistic time limit for work to be completed. Work shall begin within 30 days of permit issuance; otherwise, the permit may be cancelled.

B. Requests for extension of time and reinstatement of permits shall be made in writing to the residency administrator. If the request is made prior to the original expiration date an extension of time may be granted on the permit. Upon request by the permittee, the permit may be cancelled if no work has started. The original permit shall be returned to the issuing VDOT residency.

**24 VAC 30-151-90. Hours and days work authorized; holiday schedule.**

Normal hours for work under the authority of a permit are between the hours of 9:00 a.m. and 3:30 p.m. Monday through Friday. The residency administrator may authorize work on Saturday or Sunday.

No permitted work will be allowed from noon on the preceding weekday through the following state observed holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

If the observed holiday falls on a Monday, the permit will not be valid from noon on the preceding Friday through noon on Tuesday. The residency administrator will establish additional time restrictions or changes in working hours.

**24 VAC 30-151-100. Appeal.**

A. The district administrator is authorized to consider and rule on unresolved differences of opinion between the permittee and the residency administrator that pertain to the interpretation and application of the requirements of this chapter. The resolution of any appeals that involve limited access permits must have the concurrence of the Commonwealth Transportation Commissioner or a designee.

To initiate an appeal with the district administrator, the permittee must provide the district administrator and the residency administrator with a written request for such action. The written request shall describe any unresolved issue or issues. After reviewing all pertinent information, the district administrator will advise the permittee in writing regarding the decision of the appeal, with a copy to the residency administrator. The permittee may further appeal the district administrator's decision to the Commonwealth Transportation Commissioner or a designee. All correspondence requesting an appeal should include copies of all prior correspondence regarding the issue or issues with the county official and VDOT representatives.

The permit applicant may appeal denial or revocation of a permit in writing to the district administrator or a designee. All appeals must be made within 10 working days of receipt of written notification of denial or revocation, setting forth the grounds for the appeal.

B. Appeals on permits for any work within limited access rights-of-way shall be made to the Commonwealth Transportation Commissioner or a designee.

PART III.
DENIAL OR REVOCATION OF PERMITS.

**24 VAC 30-151-110. Denial; revocation; refusal to renew.**

A. A land use permit may be revoked upon written finding that the permittee violated the terms of the permit, which shall incorporate by reference these rules, as well as state and local laws and ordinances regulating activities within the right-of-way. Repeated violations may result in a permanent denial of the right to work within the right-of-way. A permit may also be revoked for misrepresentation of information on the application, fraud in obtaining a permit, alteration of a permit, unauthorized use of a permit, or violation of a water quality permit. Upon revocation, the permit shall be surrendered without consideration for refund of fees. Upon restoration of permit privileges a new land use permit shall be obtained prior to performing any work within the right-of-way.

B. Land use permits may be denied to any applicant or company, or both, for a period not to exceed six months when the applicant or company, or both, has been notified in writing by a VDOT designee that violations existed under a previously issued permit. Any person, firm, or corporation violating a water quality permit shall permanently be denied a land use permit. Furthermore, these violators may be subject to criminal prosecution as provided for by § 33.1-19 of the Code of Virginia.

PART IV.
ENTRANCES.

**24 VAC 30-151-120. Introduction to provisions governing entrances.**

VDOT's authority to regulate highway entrances is provided in §§ 33.1-197 and 33.1-198 of the Code of Virginia and its authority to make regulations concerning the use of highways generally is provided in § 33.1-12 (3) of the Code of Virginia. No entrance of any nature may be constructed within the right-of-way until the location has been approved by VDOT and a permit has been issued. The Commonwealth Transportation Board has the authority to designate highways as limited access and to extinguish access rights to those facilities as provided in § 33.1-58 of the Code of Virginia. No private or commercial entrances shall be permitted within limited access rights-of-way except as may be provided for by the regulation titled Change of Limited Access Control, 24 VAC 30-401 (see 24 VAC 30-760).

The design and construction of entrances shall comply with the specifications in this part and any additional conditions, restrictions, or modifications deemed necessary by the

residency administrator to preserve the safety, use and maintenance of the state highway system.

**24 VAC 30-151-130. General provisions governing entrances.**

A. VDOT shall not be obligated to grant more than one access point per parcel of record. If a parcel is served by more than one road in the state highway system, the residency administrator shall determine upon which road or roads the proposed access point or points are to be constructed. VDOT will provide reasonably convenient access to the parcel; VDOT is not obligated to provide the most convenient access, nor is VDOT obligated to provide the permit applicant's preferred entrance location or entrance design.

B. When two or more properties are to be served by the same entrance, the permittee shall ensure that there is a recorded agreement between the parties specifying the use and future maintenance. A copy of this recorded agreement shall be included in the entrance permit application submitted to the residency administrator.

C. The residency administrator may alter any proposed entrance location or design, whether private or commercial, to obtain the best possible sight distance or entrance spacing.

D. No less than minimum sight distance shall be obtained for any commercial entrance. Sight distances shall be measured in accordance with VDOT practices, and sight distance requirements shall conform to VDOT engineering standards as described in the Road Design Manual (see 24 VAC 30-151-760), except that the legal speed limit shall be used in lieu of design speed. In cases where the operating speed of the segment of highway is determined to be lower than the legal speed limit and, in the judgment of the residency administrator, will not create hazards for either a driver at a connection or on the highway, the operating speed may be used in lieu of the legal speed limit. VDOT may require that the vertical or horizontal alignment of the existing roadway be adjusted to accommodate certain design elements of a proposed entrance including, but not limited to, median crossovers, roundabouts, and traffic signals, where adjustment is deemed necessary. The cost of any work performed to adjust the horizontal or vertical alignment of the roadway to achieve required intersectional or stopping sight distance at a proposed entrance shall be borne by the permittee.

E. Only the Commonwealth Transportation Commissioner or a designee may waive the required sight distance, after a traffic engineering investigation has been performed. If a sight distance waiver is requested, the permittee shall furnish the residency administrator a traffic engineering investigation report, prepared by a professional engineer. The methodology and format of the report shall be determined by the residency administrator.

**24 VAC 30-151-140. Private entrances.**

A. The property owner shall identify the desired location of the private entrance with the assistance of a VDOT representative. The entrance should be placed at the location with the best possible sight distance. Slope grading or tree removal, or both, may be required to provide safe and convenient means of ingress and egress.

B. The property owner shall obtain a permit and, on shoulder and ditch section roads, shall be responsible for installing the entrance, unless the property owner requests VDOT to perform the stabilization of the shoulder and installation of the entrance pipe. In such cases, VDOT may install the private entrance pipe and will stabilize the shoulder in accordance with VDOT policies and engineering standards at the property owner’s expense. If VDOT installs these portions of the entrance, a cost estimate for the installation will be provided to the property owner; however, VDOT will bill the property owner the actual cost of installation. The property owner shall be responsible for all grading beyond the shoulder.

C. Grading and installation of an asphalt or concrete driveway from the edge of the pavement to the right-of-way line shall be the responsibility of the property owner.

D. VDOT will not install driveways, private entrances, or pipes for property owned and being developed for sale by developers, speculators or contractors.

E. Installation of an entrance on a curb and gutter street shall be the responsibility of the property owner.

F. In all cases, positive drainage away from the roadway must be achieved.

G. Maintenance of private entrances shall be by the owner of the entrance, except that VDOT shall maintain:

1. On shoulder section roadways, that portion of the entrance within the normal shoulder portion of the roadway.

2. On roadways with ditches, the drainage pipe at the entrance.

3. On roadways with curb, gutter, and sidewalk belonging to VDOT, that portion of the entrance that extends to the back of the sidewalk.

4. On roadways with curb, gutter, and sidewalk not belonging to VDOT, only to the flow line of the gutter pan.

**24 VAC 30-151-150. Commercial entrances – coordination with local governments.**

A. For all commercial entrances, the applicant shall coordinate with appropriate local government agencies to identify possible conflicts with local, state or federal regulation and plans, including but not limited to local zoning regulations, land use plans, transportation plans, access

management plans, overlay districts and planned urban developments.

B. If local governments have established site plan approval processes for developments, VDOT may not process and approve the permit prior to the local government's approval.

C. Some local governments charge a traffic impact fee based on the size of a development or the projected traffic generated by the proposed development. Such fees do not release the applicant from fees and improvements required by VDOT. When a local government requires improvements to the abutting state highway compatible with an ultimate transportation plan, VDOT may require additional improvements to assure the safety and capacity of the proposed entrances and to manage access points along the highway.

**24 VAC 30-151-160. Tenure of commercial entrances.**

A. The tenure of an entrance to any highway is not infinite, nor is the entrance meant to be transferred from one owner to another. Should the residency administrator determine that an entrance is substandard or that safety, use, or maintenance of the entrance has changed significantly enough to require correction, the necessary changes shall be made by the owner or the entrance may be closed at the direction of the residency administrator.

B. VDOT will maintain the entrance only within the normal shoulder of the roadway or to the flow line of the gutter pan. The owner shall maintain all other portions of the entrance, including entrance aprons and curb and gutter, culvert and drainage structures.

C. Reconstruction, relocation or upgrading, or a combination of these, may be required at owner's cost when a VDOT representative determines after review that one of the following conditions exists:

1. Safety. When the entrance has been found to be unsafe for public use in its present condition because of physical degradation of the entrance, increase in motor vehicle traffic, or some other condition.

2. Use. When traffic in and out of the entrance has changed significantly to require modifications or reconstruction, or both. Such changes may include, but are not limited to, changes in traffic volume or characteristics of the traffic.

3. Maintenance. When the entrance becomes unserviceable due to heavy equipment damage, reclamation by natural causes, or increased traffic volumes generated by development, etc.

D. Commercial entrances may be reviewed by the residency administrator periodically for substandard conditions as outlined in subsection C of this section. Commercial entrances should also be reviewed by the residency administrator when any of the following occur:

1. The property is being considered for sale.

2. The property is being considered for rezoning or other local legislative action.

3. The property is subject to a site plan review.

4. There is a change in commercial use either by the property owner or by a tenant.

5. Interparcel access becomes available.

These periodic reviews are necessary to provide both patron and other highway users with a safe means of travel.

**24 VAC 30-151-170. Access management /entrance location.**

A. As entrance location and design are reviewed, appropriate access management shall be utilized to ensure safety, integrity and functionality of the transportation system is maintained. As part of any commercial entrance permit review, the residency administrator will determine what improvements are needed to preserve the functionality of the highway, accommodate the proposed traffic and, if entrance design modifications are needed, to protect the transportation corridor. If the location of the entrance is within the limits of a local or VDOT approved access management plan, the plan should guide the residency administrator in determining the appropriate design and location of the entrance. Access management techniques include but are not limited to:

1. Restricting entrance locations. To prevent undue interference with free traffic movement and to preserve safety, entrances shall not be permitted within the functional areas of intersections, traffic circles, roundabouts, railroad grade crossings, interchanges or similar areas with sensitive traffic operations, on highways classified as principal arterial or minor arterial. The residency administrator may grant a waiver of this requirement after receipt of a traffic engineering study prepared by a professional engineer showing that highway operation and safety shall not be adversely impacted by the proposed entrance. Entrances at the above listed locations on highways classified as collector or local may be permitted at discretion of the residency administrator.

2. Shared entrances with adjacent properties. To reduce the number of access points to state highways, joint-use entrances are recommended for adjacent parcels if an agreement can be reached by the property owners. For a joint-use entrance to be approved by the residency administrator, a copy of the property owners' recorded agreement shall be submitted with the permit application.

3. Coordination of access points. The spacing of proposed access point or points in relation to existing or approved entrances and the use of the roadway shall be considered when determining the location of the proposed entrance. Access points on principal arterial and minor arterial

highways shall not be permitted within the functional area of adjacent entrances. The residency administrator may grant a waiver of this requirement after receipt of a traffic engineering study prepared by a professional engineer showing that highway operation and safety shall not be adversely impacted by the proposed entrance.

4. Encouraging interparcel connectivity. When commercial properties exist adjacent to the permittee's property, the permittee is encouraged to construct designated vehicular connections between his property and any or all of the adjacent commercial properties and to grant cross-access easements to any or all of these adjacent commercial properties in such a manner that affords access between the highway and these adjacent properties. Development sites under the same ownership or consolidated for the purposes of development and comprised of more than one building site shall provide interparcel connectivity, unless the residency administrator deems such connectivity unsafe or inappropriate.

5. Service or frontage roads. To limit connections to some highways and facilitate interparcel connections, the permittee shall construct service, frontage, or reverse frontage roads from the proposed entrance to adjacent property line or lines if the proposed development will cause traffic signal warrants to be met at the entrance and the entrance is on a highway classified as principal arterial or minor arterial. The residency administrator may grant a waiver of this requirement. The residency administrator may require the construction of service, frontage, or reverse frontage roads by the permittee on highways functionally classified as collector or local, or in cases where development traffic is not expected to cause traffic signal warrants to be met. At such time as a road serves three or more separately owned parcels, is constructed to VDOT standards, is in good condition, and if the board of supervisors of the county in which it is constructed requests it, the service, frontage, or reverse frontage road may be accepted into the appropriate system of state highways for maintenance. Service, frontage, or reverse frontage roads that are not dedicated to public use must be protected as easements. If a permit applicant cannot or does not wish to comply with this requirement, the entrance shall be limited to right-in right-out movements.

6. Traffic signal spacing. To promote the efficient progression of traffic on highways, commercial entrances that are expected to serve sufficient traffic volumes and movements to require signalization shall not be permitted if the spacing between the entrance and at least one adjacent signalized intersection is below VDOT signal spacing standards and guidelines. If sufficient spacing between adjacent traffic signals is not available, the entrance shall be limited to right-in right-out movements. The residency administrator may grant a waiver of this requirement after receipt of a traffic engineering study prepared by a professional engineer showing that highway operation and safety shall not be adversely impacted by the proposed entrance and its associated traffic signal.

7. Limiting entrance movement. to preserve the safety and function of certain highways, the residency administrator may require an entrance to be designed and constructed in such a manner as to physically prohibit certain traffic movements.

B. At the request of the residency administrator, the permit applicant shall furnish a traffic impact analysis that documents the effect of the proposed entrance and its related traffic upon the operation of the state highway system. The applicant or his agent shall obtain the requirements for the traffic impact analysis from the residency administrator prior to conducting the traffic impact analysis.

1. A professional engineer shall prepare the traffic impact analysis.

2. If the traffic impact analysis indicates that the proposed entrance will cause the state highway system to suffer an increase in delay or a reduction in capacity beyond acceptable levels established in the requirements of the traffic impact analysis, the applicant shall be required to submit a plan to mitigate these impacts and to bear the costs of any mitigation measures.

3. Any mitigation measures shall be approved by the residency administrator prior to permit approval. Mitigation measures may include but are not limited to:

a. The construction of additional lanes on the roadway;

b. Construction of auxiliary lanes or turning lanes;

c. Construction or removal of crossovers;

d. Installation, modification, or removal of traffic signals and related equipment;

e. Provisions to limit the traffic generated by development served by the proposed entrance;

f. Recommendations from adopted corridor studies or design studies and other access management practices and principles not otherwise mentioned herein; or

g. Dedication of additional right-of-way or easement, or both, for future road improvements.

4. If an applicant is unwilling or unable to mitigate the impacts identified in the traffic impact analysis, the residency administrator may deny the permit.

**24 VAC 30-151-180. Drive-in theaters.**

A drive-in theater is a specialized commercial entrance. In addition to the commercial entrance regulations set forth in this part, the conditions set forth in § 33.1-12 (15) of the Code of Virginia shall be satisfied in order to construct entrances to drive-in theaters.

**24 VAC 30-151-190. Temporary entrances (construction/logging entrances).**

Construction of temporary construction or logging entrances upon the state highway system shall be authorized by single use permit only. The permittee must contact the appropriate residency administrator for an on-site meeting to approve the location prior to installing an entrance or utilizing an existing entrance. The residency administrator shall also be contacted to arrange and conduct a final inspection prior to closing a temporary construction or logging entrance. In the event that adequate sight distance is not achieved, additional signage and flaggers shall be used to ensure safe ingress and egress.

Entrances shall be designed and operated in such a manner as to prevent mud and debris from being tracked from the site onto the highway's paved surface. If debris is tracked onto the highway, it shall be removed by the permittee immediately if it poses a threat to safety or, if it does not pose a threat to safety, as directed by the residency administrator.

The permittee must restore, at the permittee's cost, all disturbed highway rights-of-way, including, but not limited to, ditches, shoulders, roadside and pavement to their original condition when removing the entrance. All such restorations are subject to approval by the residency administrator.

**24 VAC 30-151-200. Access to public waters.**

VDOT may grant the use of portions of the highway right-of-way for access to public waters upon written request from the Executive Director of the Virginia Department of Game and Inland Fisheries to the Commonwealth Transportation Commissioner.

**24 VAC 30-151-210. Entrance design.**

A. All entrance design and construction shall comply with standards in the Road Design Manual (see 24 VAC 30-151-760), Road and Bridge Standards (see 24 VAC 30-151-760), Road and Bridge Specifications (see 24 VAC 30-151-760), and other VDOT engineering and construction standards as may be appropriate. Entrance design and construction shall comply with applicable guidelines and requirements of the Americans with Disabilities Act of 1990 (42 USC § 12101 et seq.).

B. In the event an entrance is proposed within the limits of a future planned roadway project that will ultimately change a highway, the permittee may be required to construct entrances compatible with the roadway's ultimate design.

C. All entrance design and construction shall consider pedestrian and bicycle users of the highway.

D. The residency administrator will determine the need for curb and gutter, sidewalks, or other features at the proposed entrance. Ordinances or entrance standards established by counties or cities that exceed those of VDOT, supersede those of VDOT.

E. It is essential that entrance and site design allow unimpeded movements of traffic entering or exiting the entrance. The permittee shall demonstrate to the satisfaction of the residency administrator that neither the entrance, nor the proposed traffic circulation patterns within the parcel, will compromise the safety, use or maintenance of the highway.

F. Sites accessed by a proposed entrance shall be designed so as to prevent on-site queues from impacting travel on the abutting highway. At the request of the residency administrator, the permit applicant shall furnish a report prepared by a professional engineer that documents the impact of expected on-site queues upon the function of the abutting highway during the peak hours of the site. The district administrator or designee may waive this requirement in exceptional circumstances after a review of the queue report.

PART V.
OCCUPANCY OF RIGHT-OF-WAY.

**24 VAC 30-151-220. Commercial use agreements.**

A. Where wider rights-of-way are acquired by VDOT for the ultimate development of a highway at such time as adequate funds are available for the construction of the highway, including such preliminary features as tree planting, the correction of existing drainage conditions, etc., the Commonwealth Transportation Commissioner does not consider it advisable to lease, rent, or otherwise grant permission for the use of any of the land so acquired except in extreme or emergency cases, and then only for a limited period.

When the land adjoining the highway is used for commercial purposes and where the existing road is located on the opposite side of the right-of-way, thereby placing the business from 65 feet (in the case of 110 feet right-of-way) to 100 feet or more (in the case of 160 feet right-of-way) away from the main traveled road, the owner of the business may continue to locate his driveways and pumps, in the case of a filling station, within the state right-of-way, provided that the driveways and pumps are at least as far from the edge of the existing pavement as existing driveways and pumps in evidence on the road are from the nearest edge of the pavement to their similar structures. No additional driveways or pumps may be constructed within the right-of-way. In such cases, agreements for "commercial uses" may be entered into for use of portions of the right-of-way for temporary or limited periods under the following policies and conditions:

1. Until such time as the Commonwealth Transportation Commissioner deems it necessary to use right-of-way acquired for future construction on a project for road purposes, agreements may be made with adjoining property owners for the temporary use of sections thereof. The use of this land shall be limited to provisions as set forth in the agreement, which shall cover commercial pursuits

consistent with similar operations common to the highway. These operations and special conditions may include gasoline pumps, but not gasoline tanks.

2. The area of right-of-way designated for use of the landowner must not be used for the storing of vehicles, except while the vehicles are being serviced at the gasoline pumps. The area must be kept in a clean and orderly condition at all times.

B. Agreements may be revoked for cause or as outlined above, either in whole or for any portion of the prescribed area that may be required for highway purposes, which may include one or more of the following:

1. The storage of road materials when other nearby suitable areas are not available;

2. The planting of trees and shrubs for permanent roadside effects;

3. The correction or improvement of drainage;

4. Development of wayside, parking or turnout areas; or

5. For other purposes as may be deemed necessary by the Commonwealth Transportation Commissioner.

C. Applications for agreements for commercial uses shall be made to the residency administrator. Agreements must be accompanied by a sketch showing the location of the roadway, shoulders, ditches and conditions existing within the right-of-way, together with description and plat of the area to be covered by it. The text of the application should describe the specific use for the site.

D. Agreements shall be issued only to owners of property adjoining the area to be used. Agreements may be made for terms not to exceed one year, subject to the cancellation terms in 24 VAC 30-151-220 B. VDOT shall not be responsible in any way for the policing of areas subject to commercial agreements. No structures are to be erected on areas subject to commercial agreements without written approval of the Commonwealth Transportation Commissioner.

**24 VAC 30-151-230. Agriculture use agreements.**

A. In cases where wider rights-of-way are acquired by VDOT for the ultimate development of a highway at such time as adequate funds are available for the construction of the same, including such preliminary features as tree planting, the correction of existing drainage conditions, etc., the Commonwealth Transportation Commissioner does not consider it advisable to lease, rent, or otherwise grant permission for the use of any of the land so acquired except in extreme or emergency cases, and then only for a limited period.

When this land is being used for agricultural purposes, which would necessitate the owner preparing other areas for the same use, agreements for agricultural uses may be entered into for use of portions of the right-of-way for temporary or limited periods.

B. Agreements for agricultural uses may be made with adjoining property owners, until such time as the Commonwealth Transportation Commissioner deems it necessary to use right-of-way acquired for future construction on a project for road purposes. Agricultural use is not permitted on limited access highways. The use of this land will be limited to provisions as set forth in the agreement, which, in general, will cover agricultural pursuits the same as those carried out on adjoining lands and thereby made an integral part of the agreement. Operations and special conditions covering such operations may include one or more of the following:

1. Grazing of cattle and other livestock – permitted provided the area is securely enclosed by appropriate fence to eliminate any possibility of animals getting outside of the enclosure.

2. Forage crops such as hay, cereals, etc. – permitted provided that their growth will not interfere with the safe and orderly movement of traffic on the highway, and that, after crops are harvested, the land is cleared, graded and seeded with cover crop in such a manner as to prevent erosion and present a neat and pleasing appearance.

3. Vegetable crops – permitted provided that its growth will not interfere with the safe and orderly movement of traffic on the highway, and that all plants will be removed promptly after crops are harvested and the land cleared, graded and seeded with cover crop in such a manner as to prevent erosion and present a neat and pleasing appearance.

4. Fruit trees – permitted to maintain existing fruit trees, provided that they are sprayed to control insects and diseases; fertilized and the area is kept generally clear of weeds, etc., but no guarantee of longevity may be expected.

5. Small fruits – permitted, but no guarantee of longevity may be expected.

6. Other uses – as may be specifically approved.

C. Agricultural use agreements will be subject to revocation for cause or as outlined above, either in whole or for any portion of the prescribed area that may be required for highway purposes, which may include one or more of the following:

1. Storage of road materials when other nearby suitable areas are not available;

2. The planting of trees and shrubs for permanent roadside effects;

3. The correction or improvement of drainage;

4. The development of wayside, parking or turnout areas; or

5. For other purposes as may be deemed necessary by the Commonwealth Transportation Commissioner.

D. Applications for agreements for agricultural uses shall be made to the residency administrator. Agreements must be accompanied by a sketch showing the location of the roadway, shoulders, ditches and conditions existing within the right-of-way, together with a description and plat of the area to be covered by it. The text of the application should describe in detail the specific use for which the area is to be utilized.

Agreements shall be issued only to owners of property adjoining the area to be used. Agreements may be made for terms not to exceed one year, subject to the cancellation terms in subsection C of this section. VDOT shall not be held responsible in any way for the policing of areas subject to agricultural use agreements. No structures are to be erected on areas subject to agricultural use agreements without written approval of the Commonwealth Transportation Commissioner.

**24 VAC 30-151-240. Dams.**

A. VDOT may permit dams, including dams for farm ponds, within the right-of-way when all of the following provisions are satisfied. For the purpose of this section, a roadway will be considered to occupy a dam if:

1. Any part of the fill for the roadway and the fill for the dam overlap; or

2. The area between the two embankments is filled in so that the downstream face of the dam is obscured; or

3. A closed drainage facility from a dam extends under a roadway fill.

B. Permittee responsibility. The permittee acknowledges that VDOT's liability is limited to the maintenance of the roadway and that VDOT has no responsibility or liability due to the presence of the dam, the maintenance of which shall remain the responsibility of the permittee.

C. Design review. A professional engineer shall certify that the hydraulic and structural design of any dam, as described above, is in accordance with current national and state engineering practice and that all pertinent provisions of the Road Design Manual (see 24 VAC 30-151-760) have been considered. Prior to approval of the permit, the hydraulic and structural design of a proposed dam shall be reviewed by VDOT and meet its requirements.

D. Supplemental, alternative access. To be permitted, a dam occupying a roadway must be supplemented by an appropriate alternative roadway facility for public ingress or egress, having suitable provisions that ensure perpetual maintenance.

E. Permits. All applicable federal and state permits associated with dams shall be secured and filed with the county prior to VDOT's approval of any permit for a dam.

**24 VAC 30-151-250. Railroad grade crossing or encroachments.**

Applications for permits to construct railroad tracks over, under, across or along the right-of-way of a state highway must be made by the railroad company or other company which will use the tracks. Permits shall not be issued to concerns contracting for such operations. All permit applications for highway grade crossings of secondary highways shall be accompanied by resolutions from the county board of supervisors, approving the crossings.

Sketches shall be submitted with the permit application, which show clearly the angle of crossing or location of the tracks with reference to the centerline of the road, the entrance onto the right-of-way, departure from the right-of-way, and width of the right-of-way of both railroad and highway. The grade line of the railroad must conform to the grade line of the highway and be so indicated on the sketch. Any necessary alteration in grade, due to crown of the highway, must be adjusted by the railroad company with the use of plant-mix-asphalt material, or as may be specified by the residency administrator.

**24 VAC 30-151-260. Railroad crossing permit requests from railroad companies.**

A. Operations by the railroad company shall conform to applicable statutes of the Code of Virginia in regard to construction and maintenance of the crossing surface, signing and other warning devices, blocking of crossing, etc.

B. In the event of future widening of the highway, the permittee shall lengthen the crossing surface, relocate signs and signals, etc., as may be necessary, at no expense to the Commonwealth.

C. Suitable construction bond shall be required when the construction work is to be performed by a contractor for the railroad.

**24 VAC 30-151-270. Railroad crossing permit requests by other companies.**

Where a person, firm or chartered company engaged in mining, manufacturing or lumber getting, as defined in § 33.1-211 of the Code of Virginia, applies directly for a permit to construct a tramway or railroad track across the right-of-way, a permit may be issued under the following conditions:

1. Operations by the permittee shall conform to applicable statutes of the Code of Virginia in regard to construction and maintenance of the crossing surface, signing and other warning devices, blocking of crossing, etc.

2. In the event of future widening of the highway, the permittee shall lengthen the crossing surface, relocate signs and signals, etc., as may be necessary, at no expense to the Commonwealth.

3. The permittee shall furnish a performance and indemnifying bond of such amounts as VDOT deems necessary and agree to continue the same in force so long as the crossing is in place.

4. Should the permittee in the future decide to dispose of the crossing to another party, VDOT shall be notified prior to such action, and proper arrangement shall then be made for the transfer.

**24 VAC 30-151-280. Springs and wells.**

In the acquiring of right-of-way, it is often necessary for VDOT to acquire lands where springs, wells and their facilities are located. It is the policy of VDOT to acquire these springs, wells and their facilities along with the land on which they are located. When so acquired, the landowner having previous use of the these springs, wells and their facilities may be granted a permit to use these springs, wells and their facilities until the Commonwealth Transportation Commissioner or a designee shall, by written notice, advise that the permit is terminated. The issuing of the permit shall in no way obligate VDOT to maintain the springs, wells or facilities.

**24 VAC 30-151-290. Public telephones.**

Public telephone booths may be allowed at rest areas and other locations as provided in 23 CFR 752.5 and allowed at other locations when definite needed is shown by VDOT. Telephone booths may be allowed when a definite need exists to serve the traveling public, such as:

1. At wayside areas, if well removed from access to off right-of-way public telephone stations.

2. At other isolated areas sufficiently removed from existing off right-of-way public telephone stations as to impair the safety and convenience of traffic, providing:

a. No private land is available or suitable for location of booth;

b. The location meets all safety requirements as to sight distance, access roads and parking; and

c. All costs incidental to providing turnout and parking area are borne by the telephone company.

PART VI.
UTILITIES.

**24 VAC 30-151-300. General provisions governing utilities.**

A. Overhead or underground utilities may be installed across any right-of-way by a utility under a permit. Requests for accommodations within the right-of-way shall be submitted to and reviewed by the residency administrator. These regulations govern all rights-of-way and apply to public and private utilities. These regulations also govern the location, design, methods and financial responsibility for installing, adjusting, accommodating and maintaining utilities.

B. Utility lines shall be located to minimize the need for later adjustments to accommodate future highway improvements and to allow servicing of the lines with minimum interference to highway traffic. Utility lines residing within the highway right-of-way shall conform to the type of highway and specific conditions for the highway section involved. Utility installations within the highway right-of-way and attachments to highway structures shall be of durable materials, designed for long service life and relatively free from the need for routine servicing and maintenance.

**24 VAC 30-151-310. Limited access highways – above and underground installations.**

A. Aboveground installations. New utilities shall not be installed parallel to the roadway within limited access right-of-way except in special cases or under resource sharing agreements with approval from the Commonwealth Transportation Commissioner. The installation shall not adversely affect the safety, design, construction, operation, maintenance and stability of the highway and may not be constructed or serviced by direct access from the through traffic roadways or connecting ramps. The accommodation shall not interfere with or impair the present use or future expansion of the highway. All aboveground mounted installations shall be located adjacent to the right-of-way line and in accordance with clear zone requirements. Overhead utilities may be installed on limited access highways as follows:

1. The Commonwealth Transportation Commissioner or a designee shall approve all permits for overhead utilities to be placed within limited access right-of-way prior to issuance by the residency administrator, except for perpendicular crossings if all work for the crossings takes place outside the limited access right-of-way.

2. Longitudinal overhead utilities may be installed by a Class G, Class P or Class T utility under an agreement that provides for a shared resource arrangement or the payment of appropriate compensation, or both, subject to VDOT's need for the shared resource. Perpendicular crossings by overhead utilities may be installed by either a Class G, Class P, or Class T utility under permit issued by the residency administrator.

3. The Commonwealth Transportation Commissioner may grant exception for a nonshared resource arrangement, under strictly controlled conditions. The utility owners must show that any alternative location would be contrary to the public interest. This determination would include an

evaluation of the direct and indirect environmental and economic effects that would result from the disapproval of the use of such right-of-way for the accommodation of such utility. Where practicable, utilities shall be located in a utility area established along the outer edge of the right-of-way. A utility access control line will be established between the proposed utility installation and the through roadway and ramps. Service connections to adjacent properties shall not be permitted from the controlled access right-of-way.

4. Line crossings shall be located on a line that is perpendicular to the highway alignment. Parallel installations shall be located on a uniform alignment as near as practicable to the-right-of-way line to provide a safe environment and space for future highway improvements and other utility installations, subject to the following conditions:

a. Overhead installations shall be placed with at least 21 feet of vertical clearance.

b. Installation of new parallel pole lines will not be allowed on new limited access highways or on limited access highways where parallel pole lines do not exist.

B. Underground utilities may be installed on limited access highways as follows:

1. For limited access right-of-way, new utilities shall not be installed parallel to the roadway except in special cases or under resource sharing agreements with approval from the Commonwealth Transportation Commissioner. The installation shall not adversely affect the safety, design, construction, operation, maintenance and stability of the highway and shall not be constructed or serviced by direct access from the through traffic roadways or connecting ramps. The accommodation shall not interfere with or impair the present use, or future expansion of, the highway.

2. Perpendicular crossings of underground utilities may be installed by either a Class G, Class P or Class T utility under permit issued by the residency administrator, provided all work takes place outside the limited access right-of-way

3. All underground utilities shall have a minimum of 36 inches of cover, unless conditions dictate otherwise.

4. Permits for all other underground installations within limited access right-of-way shall be approved by the Commonwealth Transportation Commissioner or a designee prior to issuance by the residency administrator.

5. Longitudinal underground utilities may be installed by a Class G, Class P or Class T utility under an agreement providing for a shared resource arrangement or the payment of appropriate compensation, or both, subject to VDOT's need for the shared resource and the availability of space within the right-of-way.

6. The proposed method for placing an underground facility requires approval from the residency administrator. All underground facilities shall be designed to support the load of the highway and any superimposed loads.

7. The Commonwealth Transportation Commissioner may grant an exception for a nonshared resource arrangement, under strictly controlled conditions. The utility owners must show that any alternative location would be contrary to the public interest. This determination would include an evaluation of the direct and indirect environmental and economic effects that would result from the disapproval of the use of such right-of-way for the accommodation of such utility. Where practicable, these utilities shall be located in a utility area established along the outer edge of the right-of-way. A utility access control line will be established between the proposed utility installation and the through roadway and ramps. Service connections to adjacent properties shall not be permitted from the controlled access right-of-way.

C. Encasements. Encasement pipe shall be utilized in accordance with 24 VAC 30-151-370.

**24 VAC 30-151-320. Limited access highways: communication towers and site installations.**

Communication tower structures and other types of surface mounted or underground utility facilities not associated with a longitudinal installation may be installed by a Class G, Class P or Class T utility under an agreement providing for a shared resource arrangement or the payment of appropriate compensation, or both. The Commonwealth Transportation Commissioner may grant an exception for a nonshared resource arrangement where the conditions outlined in 24 VAC 30-151-310 B 7 are demonstrated. The design for ground-mounted utility facilities shall be compatible with the visual quality of the highway section involved. Any aboveground structures shall meet current clear zone or applicable safety requirements.

**24 VAC 30-151-330. Nonlimited access highways: aboveground installations.**

Line crossings shall be located on a line that is perpendicular to the highway alignment. Parallel installations shall be located on a uniform alignment as near as practicable to the right-of-way line to provide a safe environment and space for future highway improvements and other utility installations.

1. Overhead longitudinal utilities may be installed on all nonlimited access highways, except in scenic areas as follows:

a. Overhead utilities may be installed by a Class G utility under permit.

b. Either a Class P or a Class T utility may install overhead utilities under an agreement providing for a

shared resource arrangement or the payment of appropriate compensation or both.

c The utility shall not be attached to a bridge or other structure unless the utility owners can demonstrate that the installation and maintenance methods will not require access from the roadway or interfere with roadway traffic.

d. All aboveground mounted installations shall be located adjacent to the right-of-way line and in accordance with clear zone requirements. Repairs and replacement of similar installations may be performed in existing locations under the existing permit providing the work shall not impede the traveled way. Additional poles, taller poles, or cross-arms require a separate permit.

2. Parallel installations of overhead lines within the right-of-way shall be limited to single-pole construction. Joint-use, single-pole construction will be encouraged at locations where more than one utility or type of facility is involved, especially where the right-of-way widths approach the minimum needed for safe operations or maintenance requirements, or where separate installations may require extensive removal or alteration of trees. Consideration will not be given to poles placed on a highway right-of-way of less than 40 feet.

3. Highway crossings should be grouped at one location whenever practical, and as nearly as possible to right angles to the center of the road.

4. Overhead installations shall be placed with at least 21 feet of vertical clearance. The residency administrator may approve vertical clearance less than 21 feet; however, no crossing shall be permitted with less than 18 feet of vertical clearance.

5. When crossing a median, all poles or other facilities shall be placed to maintain an adequate clear zone in each direction. Parallel pole lines may be placed on non-limited access right-of-way that is 110 feet in width or wider by a signed, comprehensive agreement between VDOT and the utility owner. In such cases, poles shall be located on the outer 15 feet of the right-of-way. Parallel pole line installation will not be allowed in the median.

**24 VAC 30-151-340. Nonlimited access highways: underground installations.**

Underground longitudinal utilities may be installed under permit on all nonlimited access highways, except in scenic areas, as follows:

1. Underground utilities may be installed by a Class G utility under permit.

2. Either a Class P or a Class T utility may install underground utilities under an agreement providing for a shared resource arrangement or the payment of appropriate compensation or both.

3. All underground utilities shall have a minimum of 36 inches of cover, unless conditions dictate otherwise.

4. A utility shall not be attached to a bridge or other structure unless the utility owners can demonstrate that the installation and maintenance methods will not require access from the roadway or interfere with roadway traffic.

5. The proposed method for placing an underground facility requires approval from the residency administrator. All underground facilities shall be designed to support the load of the highway and any superimposed loads. All pipelines and encasements shall be installed in accordance with 24 VAC 30-151-360 and 24 VAC 30-151-370.

**24 VAC 30-151-350. Nonlimited access highways: communication towers and site installations.**

Communication tower structures and other types of surface mounted or underground utility facilities not associated with a longitudinal installation on a nonlimited access highway may be installed by a Class G, Class P or Class T utility under permit.

**24 VAC 30-151-360. Pipelines.**

The permittee shall maintain minimum cover for any underground facility. Where pavement exists, the permittee shall bore, push, or jack and maintain a minimum cover of 36 inches, unless conditions dictate otherwise.

The vertical and horizontal clearance between a pipeline and a structure or other highway facility shall be sufficient to permit maintenance of the pipeline and facility. Parallel pipeline installations shall be kept out of the ditch line whenever possible. When no other alternative is available, the minimum depth of pipes shall be 36 inches with satisfactory compaction and restoration. These installations do not normally require encasement since they are usually located in the outer edge of the highway right-of-way.

The pipeline may not be constructed under the pavement or shoulders of a street, except for crossings. Pipelines may be constructed in the median or sidewalk areas if they do not conflict with other utilities, drainage facilities, or roadway features.

All water, gas, sewer, electrical, communications and any pressurized pipelines carrying hazardous material shall conform to all applicable industry codes, including materials, design and construction requirements. No asbestos cement conduit or pipe shall be used for any installation. The permittee may be required to certify this restriction has been met in writing if requested by VDOT.

Pipelines four inches in diameter or larger and no longer in use shall be cleaned of debris and plugged at open ends with

Class A3 concrete. The residency administrator may also require such pipes to be filled prior to being plugged.

**24 VAC 30-151-370. Encasements.**

Encasement pipe shall be required where it is necessary to avoid trenched construction, to protect carrier pipe from external loads or shock, or to convey leaking fluids or gases away from the areas directly beneath the traveled way. Encasement pipe shall be required if a utility has less than minimal cover, is near footings of bridges, utilities or other highway structures, crosses unstable ground, or is near other locations where hazardous conditions may exist. Encasement should be extended a suitable distance beyond the slope for side ditches and beyond the curb line in curbed sections. The residency administrator may require encasement pipe even if an installation meets industry standards for nonencasement. The residency administrator may approve directional bores without encasement on a case-by-case basis.

Limited access facility encasement pipes shall be installed from outside to outside of right-of-way line. All pipelines under pressure shall be encased where they cross the right-of-way. Encasement pipe for roadway crossings shall be extended completely through infield or median areas.

Casing pipe shall be sealed at the ends with approved material to prevent flowing water and debris from entering the annular space between the casing and the carrier. All necessary appurtenances such as vents and markers shall be included.

**24 VAC 30-151-380. Appurtenances.**

A. When vents are required they shall be located at the high end of casings less than 150 feet in length and generally at both ends of casings longer than 150 feet. Vent standpipes shall be on or beyond the right-of-way line to prevent interference with maintenance or pedestrian traffic.

B. A permit may be granted to install drains for any underground facility. Permittee shall ensure drains achieve positive drainage.

C. National uniform color codes for identification of utilities shall be used to place permanent markers.

D. Manholes shall be placed in the shoulders, utility strips, or other suitable locations. When no other alternative is available, consideration will be given to placement of manholes in the pavement surface. Manhole installations shall be minimized at street intersections. A manhole shall not be considered in the normal wheel path of driving lanes under any circumstances. Manholes shall be designed and located in such a manner that shall cause the least interference to other utilities and future highway expansion.

E. Manhole frames and covers, valve boxes, and other castings located within the paved roadway, shoulder, or sidewalk shall be constructed within a tolerance of ± 0.05 feet of the finished grade.

F. The permittee shall install shutoff valves, preferably automatic, in lines at or near the ends of structures and near unusual hazards, unless other sectionalizing devices within a reasonable distance can isolate hazardous segments.

**24 VAC 30-151-390. In-place permits for new subdivision streets.**

A. Prior to accepting a secondary street into the VDOT system, the public utility owner shall quitclaim its prior rights within the right-of-way to the Commonwealth in exchange for a permit for in-place utilities on new subdivision streets. The utility may continue to occupy such street in its existing condition and location. The public utility owner shall be responsible for the utility and resulting damages to persons and property. Should VDOT later require the public utility owner to alter, change, adjust, or relocate any utility, the non-betterment cost will be the responsibility of the Commonwealth.

B. Utilities without prior rights but located within the right-of-way of new subdivision streets shall obtain an in place permit to occupy that portion of the right-of-way.

**24 VAC 30-151-400. Utility adjustments in conjunction with a VDOT project.**

A permit is required for facilities relocated in conjunction with a VDOT project. For specific information, see the Right-of-Way Utilities Relocation Policies and Procedures Manual (see 24 VAC 30-151-760). Utilities may be placed within the highway right-of-way by permit, including adjustments and work performed in connection with utilities agreements. Utilities placed within the right-of-way shall conform to the requirements of this chapter. Should VDOT later require the public service corporation to alter, change, adjust, or relocate any utility, the nonbetterment cost will be the responsibility of the Commonwealth.

**24 VAC 30-151-410. Installations in scenic areas.**

Any new utility installations within the right-of-way or on other lands that were acquired or improved with federal-aid or direct federal highway funds, and are located within or adjacent to areas of scenic enhancement and natural beauty are discouraged. Such areas include public parks and recreational lands, wildlife and waterfowl refuges, historic sites, scenic strips, overlooks and scenic byways.

Any new utility installation in the above-mentioned areas shall be accordance with 23 CFR 645.209h.

**24 VAC 30-151-420. Roadway lighting facilities.**

A. A permit is required for any lighting that will be on or overhanging the right-of-way. Lighting on or overhanging the right-of-way is classified as roadway lighting or nonroadway lighting. Roadway lighting is lighting intended to improve visibility for users of the roadway. Nonroadway lighting is

lighting intended to improve visibility or to enhance safety for pedestrians or adjacent properties.

B. Design of roadway lighting facilities shall be based upon the specifications developed by the Illuminating Engineering Society in the manual, American National Standard Practice for Roadway Lighting (effective 2000) (see 24 VAC 30-151-760). An Informational Guide for Roadway Lighting by AASHTO (effective 1984) (see 24 VAC 30-151-760) may be used as a supplemental guide.

C. The permittee shall submit to the residency administrator two copies of scale drawings depicting lighting pole locations, mounting heights, pole and base type (breakaway or nonbreakaway), type and wattage of luminaries and arm lengths. The lighting shall be installed in accordance with VDOT's Road and Bridge Specifications (see 24 VAC 30-151-760). Nonroadway lighting may be allowed within the right-of-way, provided such lighting does not adversely affect the visibility of roadway users, and lighting supports and support locations do not compromise VDOT clear zone and safety standards.

**24 VAC 30-151-430. Attachments to bridge structures.**

A. Utilities may be located on highway grade separation structures across interstate, or other controlled access highways, over crossroads and across major streams or valleys only in extreme cases, and with approval of the district structure and bridge engineer.

B. Communication and electric power lines shall be insulated, grounded and installed in a conduit or pipe to manholes or poles at either end of the structure, whichever is applicable.

C. If a utility is placed on a structure, the installation shall be located beneath the structure's floor between the girders or beams, and at an elevation above the bottom flange of the beam. The utility shall not be attached to the outside of the exterior beam, parapets or sidewalks.

D. Water and sewer attachments shall follow general controls previously listed for providing encasement and allied mechanical protection. In addition, shut-off valves shall be provided outside the limits of the structure.

E. Utilities attached to structures crossing waterways may require a water quality permit.

F. Transmission natural gas and petroleum mains may not be attached to highway structures.

PART VII.
MISCELLANEOUS PROVISIONS.

**24 VAC 30-151-440. Miscellaneous permits.**

In accordance with 24 VAC 30-20-20, no use of any real property under the ownership, control or jurisdiction of VDOT shall be allowed until written permission is first obtained from VDOT. A permit is required for the uses of right-of-way described in this part.

**24 VAC 30-151-450. Banners and decorations.**

VDOT may issue permits to counties, towns and religious or civic organizations to hang banners or erect holiday decorations (such as lights) across state highways. Banners and decorations shall not remain in place more than 30 days and shall be a minimum of 21 feet above the center of the road. They shall not detract from, interfere with, or conflict with any existing highway signs or signals.

**24 VAC 30-151-460. Building movements.**

All building movements over 16 feet wide require the approval of the residency administrator after completion of the necessary investigative report (Form LUP-HM) (1-2006). All building movements shall be covered by a performance bond that is commensurate with the type of move requested. Applications for building movements shall be made through the VDOT residency where the move initiates.

**24 VAC 30-151-470. Bicycle and road races, parades and marches.**

Approval of such permit may be granted only under conditions that assure reasonable safety for all participants, spectators and other highway users, and will prevent unreasonable interference with traffic flow.

**24 VAC 30-151-480. Chutes and tipples (coal mines, gravel pits, etc.), pipes from planning mills.**

A permit is required for chutes, tipples or other structures to handle coal, gravel or other material. The permit surety shall be sufficient to restore the appearance of the right-of-way and to remove the structure should it become dangerous or when it is no longer being used. Advertising signs or the names of owners shall not be placed on chutes or tipples located on the right-of-way.

The applicant shall obtain written approval from the local officials prior to permit application for pipes from planning mills.

**24 VAC 30-151-490. Construction or reconstruction of roads, bridges, or other drainage structures.**

Construction or reconstruction of roads, bridges or other drainage structures may be permitted based upon evaluation, an engineering analysis provided by the applicant, and approval of the residency administrator. Approval by the county board of supervisors may also be necessary.

**24 VAC 30-151-500. Crest stage gauges, water level recorders.**

Permits may be issued to any governmental state agency to install hydrological study equipment.

**24 VAC 30-151-510. Emergency vehicle access.**

Signals may be permitted along and over streets or highways at fire stations to facilitate the safe and expeditious entry of emergency vehicles. These signals include warning beacons, traffic signals to allow direct access to a roadway and modifications to existing signals. Maintenance of these facilities is the responsibility of the permittee.

**24 VAC 30-151-520. Filming for movies.**

Movie filming may be permitted, but shall be coordinated through the Film Office of the Virginia Tourism Corporation.

**24 VAC 30-151-530. Flashing school signs.**

Flashing school signs may be placed under permit with the approval of the district traffic engineer.

**24 VAC 30-151-540. Grading on right-of-way.**

Grading that does not adversely affect the maintenance, safety and operations of vehicles on the highway may be permitted.

**24 VAC 30-151-550. Roadside memorials.**

A. Section 33.1-206.1 of the Code of Virginia directs the Commonwealth Transportation Board to establish regulations regarding the authorized location and removal of roadside memorials. Roadside memorials shall not be placed on state right-of-way without first obtaining a permit. At the site of fatal crashes or other fatal incidents, grieving families or friends often wish for a roadside memorial to be placed within the highway right-of-way. The following rules shall be followed in processing applications to place roadside memorials within the highway right-of-way:

1. Applications for a memorial shall be submitted to the residency administrator. The residency administrator will review, and if necessary, amend or reject any application.

2. If construction or major maintenance work is scheduled in the vicinity of the proposed memorial's location, the residency administrator may identify an acceptable location for the memorial beyond the limits of work, or the applicant may agree to postpone installation.

3. If the applicant requests an appeal to the residency administrator's decision regarding amendment or rejection of an application, this appeal will be forwarded to the district administrator.

4. Criteria used to review applications shall include, but not be limited to, the following factors:

a. Potential hazard of the proposed memorial to travelers, the bereaved, VDOT personnel, or others;

b. The effect on the proposed site's land use or aesthetics; installation or maintenance concerns; and

c. Circumstances surrounding the accident or incident.

5. Approval of a memorial does not give the applicant, family, or friends of the victim permission to park, stand, or loiter at the memorial site. It is illegal to park along the interstate system, and because of safety reasons and concerns for the public and friends and family of the deceased, parking, stopping, and standing of persons along any highway is not encouraged.

B. The following rules will be followed concerning roadside memorial participation:

1. Any human fatality that occurs on the state highway system is eligible for a memorial. Deaths of animals or pets are not eligible.

2. The applicant must provide a copy of the accident report or other form of information to the residency administrator so that the victim's name, date of fatality, and location of the accident can be verified. This information may be obtained by contacting the local or state police. The residency administrator may also require that the applicant supply a copy of the death certificate.

3. Only family members of the victim may apply for a memorial.

4. The applicant will confirm on the application that approval has been obtained from the immediate family of the victim and the adjacent property owner or owners to locate the memorial in the designated location. If any member of the immediate family objects in writing to the memorial, the application will be denied or the memorial will be removed if it has already been installed.

5. If the adjacent property owner objects in writing, the memorial will be relocated and the applicant will be notified.

6. Memorials will remain in place for two years from the date of installation, at which time the permit shall expire, and may not be renewed. The applicant or the family of the victim may request that the memorial be removed less than two years after installation.

7. The applicant shall be responsible for the fabrication of the memorial. VDOT will install, maintain, and remove the memorial, but the cost of these activities shall be paid by the applicant to VDOT.

C. Roadside memorial physical requirements.

1. The memorial shall be designed in accordance with the Outdoor Advertising Manual (see 24 VAC 30-151-760). The use of symbols, photographs, drawings, logos, advertising, or similar forms of medium is prohibited on or near the memorial.

2. Only one memorial per fatality shall be allowed.

3. VDOT reserves the right to install a group memorial in lieu of individual memorials to commemorate a major incident where multiple deaths have occurred.

4. The memorial shall be located as close as possible to the crash site, but location of the memorial may vary depending on the site and safety conditions.

a. Memorials shall be installed outside of the mowing limits and ditch line and as close to the right-of-way line as reasonably possible.

b. Memorials shall be located in such a manner as to avoid distractions to motorists or pose safety hazards to the traveling public.

c. Memorials shall not be installed in the median of any highway, on a bridge, or within 500 feet of any bridge approach.

d. Memorials shall not be permitted in a construction or maintenance work zone. VDOT reserves the right to temporarily remove or relocate a memorial at any time for highway maintenance or construction operations or activities.

e. If VDOT's right-of-way is insufficient for a memorial to be installed at the crash site, the residency administrator will locate a suitable location as close as possible to the incident vicinity to locate the memorial where sufficient right-of-way exists.

D. Removal. After the two-year term, the memorial shall be removed by VDOT personnel. The memorial nameplate will be returned to the applicant or the designated family member, if specified on the application. If the applicant does not wish to retain the nameplate, the nameplate will be reused, recycled, or disposed at VDOT's discretion.

**24 VAC 30-151-560. Mailboxes and newspaper boxes.**

Mailboxes and newspaper boxes may be placed within VDOT right-of-way without a permit; however, placement should not interfere with safety, maintenance and use of the roadway. Lightweight newspaper boxes may be mounted on the side of the support structure. Breakaway structures will be acceptable as a mailbox post. Breakaway structures are defined as a single four-inch by four-inch square or four-inch diameter wooden post or a standard strength, metal pipe post with no greater than a two-inch diameter.

**24 VAC 30-151-570. Miscellaneous signs.**

In cooperation with local, state and federal organizations, certain public service signs may be placed within the right-of-way without a permit. The residency administrator shall determine the appropriate location for the following signs.

1. Forestry. Authorized representatives of the National and State Forest Service may place forest fire warning signs within the right-of-way without a permit. Presumably, most forest fire warning signs will be placed near forest reservations or wooded areas. However, only a limited number of the small cardboard or metal signs should be allowed within the right-of-way within the forest reservations. The Department of Forestry may utilize other types of signs to more forcibly impress the public with the need for protecting forest areas. Sign placement shall be accomplished under an agreement, subject to the following conditions:

a. No highway sign should carry more than one message, no other signs shall appear on posts bearing highway signs;

b. No signs shall be erected that would restrict sight distance, or are close to highway warning and directional signs; and

c. Signs regarding forest fires should be placed by fire wardens at locations suitable to VDOT.

In all cases, the forest warden is to collaborate with the residency administrator in selecting the location for these signs.

2. Garden week. These signs are erected and removed by employees of VDOT. The appropriate committee of the Garden Club of Virginia will designate the gardens and places that are to be officially opened during Garden Week and notify the residency administrator accordingly, who will ensure the appropriate placement of these signs.

3. Roadside acknowledgement. These signs acknowledge the name and logo of businesses, organizations, communities or individuals participating in the landscape of a segment of the right-of-way in accordance with the Comprehensive Roadside Management Program, 24 VAC 30-121 (see 24 VAC 30-151-760). As the landscaping is accomplished under a land use permit, the signs are considered to be covered by that permit.

4. Rescue squad. These signs are erected and maintained by VDOT. The signs may be used on the approaches to the rescue squad headquarters as shown in the Virginia Supplement to the Manual on Uniform Traffic Control Devices, 24 VAC 30-310 (see 24 VAC 30-151-760).

5. Fire station. These signs are fabricated and maintained by VDOT. The signs may be used on the approaches to fire station headquarters as shown in the Virginia Supplement to the Manual on Uniform Traffic Control Devices (see 24 VAC 30-151-760).

6. Bird sanctuary. VDOT will fabricate and erect these signs, upon receipt of a request from a town or city, at the corporate limits of the town or city under the municipality name sign at the expense of the municipality as shown in the Virginia Supplement to the Manual on Uniform Traffic Control Devices (see 24 VAC 30-151-760). In order for a

municipality to be designated as a bird sanctuary, the municipality must pass a resolution to that effect.

7. Historical highway markers. Information regarding the historical highway marker program may be obtained from the Virginia Department of Historic Resources. Applications for historical highway markers shall be obtained from and submitted to the Virginia Department of Historic Resources.

**24 VAC 30-151-580. Ornamental posts, walls or other apparatus.**

Ornamental posts, walls or other apparatus that interfere with roadway safety, traffic capacity or maintenance shall not be permitted. Structures located outside the clear zone but within the right-of-way may be permitted as authorized by the residency administrator.

**24 VAC 30-151-590. Outdoor advertising adjacent to the right-of-way.**

Permits for outdoor advertising located off the right-of-way are obtained through the roadside management section at any VDOT district office or the Central Office Asset Management Division in accordance with § 33.1-351 of the Code of Virginia. Selective pruning permits for outdoor advertising shall be issued in accordance with § 33.1-371.1 of the Code of Virginia.

**24 VAC 30-151-600. Pedestrian and bicycle facilities.**

Construction of sidewalks, steps, curb ramps, shared use paths, pedestrian underpasses and overpasses within right-of-way may be permitted. VDOT shall maintain those facilities that meet the requirements of the Commonwealth Transportation Board's Policy for Integrating Bicycle and Pedestrian Accommodations. The maintenance of sidewalks, steps, curb ramps, shared use paths, pedestrian underpasses and overpasses not meeting these requirements shall be subject to permit requirements, and the permittee shall be responsible for maintenance of these facilities.

The construction of pedestrian or bicycle facilities parallel to and within the right-of-way of nonlimited access highways crossing limited access highways by bridge or underpass shall not be considered a break in limited access but shall require the approval of the Commonwealth Transportation Commissioner prior to issuance of a permit for such activity.

**24 VAC 30-151-610. Permits for certain overdimensional haulers and loaders.**

Permits for unladen, oversize and overweight, rubber-tired self-propelled haulers and loaders shall be issued in accordance with § 46.2-1149 of the Code of Virginia and shall be obtained at the local residency.

**24 VAC 30-151-620. Roadside management, landscaping.**

Placement and maintenance of plant materials by individuals or organizations may be allowed under permit in strict accordance with VDOT Road & Bridge Specifications (effective 2002) (see 24 VAC 30-151-760), VDOT Road and Bridge Standards (effective 2001) (see 24 VAC 30-151-760) and current VDOT policies. All planting and maintenance of vegetation within right-of-way, including tree planting, requires a permit and must be in accordance with provisions of the Vegetation Control Regulations on State Rights-of-Way, 24 VAC 30-200 (see 24 VAC 30-151-760). Tree pruning or removal may be allowed for maintenance purposes for utility facilities. See VDOT's Tree Trimming and Brush Cutting Policy (see 24 VAC 30-151-760) for further information.

All pesticide applicators shall possess Virginia Commercial Pesticide Applicator Category 6 Certification for Right-of-Way Pest Control activities, Category 5A Certification for Aquatic Pest Control activities, or Category 8 for Public Health Pest Control activities through the Department of Agricultural and Consumer Services. Pesticide activities shall comply with all applicable federal and state regulations.

The applicant shall maintain any altered roadside area in perpetuity. All related permit applications shall be accompanied by a corresponding maintenance agreement. If permit conditions, including the maintenance agreement, are violated at any time, VDOT reserves the right to reclaim such permitted areas to its original condition or otherwise establish turf in accordance with VDOT Road and Bridge Specifications. The costs of reclamation activities shall be paid for by the permittee.

**24 VAC 30-151-630. Shelters.**

School bus shelters, public transit shelters or share ride stations may be allowed under permit. Shelters shall be located in accordance with all clear zone requirements described in Appendix A-2 of VDOT's Road Design Manual (see 24 VAC 30-151-760).

**24 VAC 30-151-640. Trash containers and recycling sites.**

Trash receptacles may be allowed under permit, except on limited access highways, by locating them as close to the right-of-way line as possible. The site shall have a clearly defined entrance and exit. Appropriate screening and landscaping may be required.

The site shall be maintained in a neat condition and sprayed as needed to minimize flies, odors, etc. VDOT will remove improperly maintained receptacles from the right-of-way at the owner's expense.

The permittee shall secure written permission from the adjacent property owners prior to locating the receptacle within the state right-of-way.

**24 VAC 30-151-650. Test holes.**

Test holes may be excavated in the roadway or right-of-way for the purpose of geological surveys or studies, monitoring wells and for locating existing utilities within the right-of-way. A permit shall be required for test holes. All test holes shall be kept to the smallest size and number possible. A surety will be required to sufficiently restore the appearance of the right-of-way or to repair the pavement of the roadway. The permittee shall demonstrate to the satisfaction of the residency administrator that the location of the site will not compromise the safety, use or maintenance of the roadway.

**24 VAC 30-151-660. Special requests and other installations.**

Any special requests may be permitted upon review and approval by the Commonwealth Transportation Commissioner or a designee.

**24 VAC 30-151-670. Prohibited use of right-of-way.**

The following uses of the right-of-way are not allowed. No permit shall be issued for these uses.

1. Signs. No advertising signs shall be placed on the highway right-of-way nor overhang the right-of-way.

2. Vendors on right-of-way. Permits will not be issued to vendors for operation of business within state rights-of-way, except as may be allowed for waysides and rest areas under the Rules and Regulations for the Administration of Waysides and Rest Areas, 24 VAC 30-50. Vendors of newspapers and written materials enjoy constitutional protection under the First Amendment to place or operate their services within rights-of-way, provided they neither impede traffic nor impact the safety of the traveling public. Newspaper vending machine size, placement and location shall be as directed by the residency administrator for that area.

3. Dwellings. No private dwellings, garages, or similar structures shall be placed or constructed within the right-of-way, except as may be allowed under 24 VAC 30-151-220 and 24 VAC 30-151-230.

PART VIII.
HAZARDOUS MATERIALS.

**24 VAC 30-151-680. Hazardous materials, waste, or substances.**

In the event that the permittee, in pursuit of the activities allowed by the permit, encounters underground storage tanks, buried drums, petroleum-saturate soils, or other potentially hazardous materials, waste, or substances within the right-of-way, the permittee shall immediately cease all activities in the vicinity of such discovery and immediately notify the VDOT residency administrator. The permittee shall also immediately notify any local emergency response organizations, as appropriate. The permittee shall not attempt to remove any containers or wastes without VDOT concurrence. The residency administrator will take necessary actions to ensure that the materials/wastes/substances are managed in accordance with state and federal laws and regulations. The permittee shall not be allowed within the potentially contaminated area until the residency administrator obtains clearance from the district environmental section. The permittee shall abide by any conditional use restrictions developed by VDOT as a result of such discovery and, as necessary, to comply with state and federal laws and regulations. The permittee shall be solely responsible for properly managing any contaminated soil or groundwater, or both, that is not otherwise required under regulation to be remediated, but necessary to be removed in order to properly complete the proposed activities within the right-of-way.

**24 VAC 30-151-690. Permitted discharge to VDOT right-of-way.**

A. Permits to discharge to VDOT right-of-way may be issued upon written approval of the local public health department or the Virginia Department of Environmental Quality, or both, and this written approval shall be made part of the permit application. Discharges made to VDOT right-of-way pursuant to a Virginia Pollutant Discharge Elimination System (VPDES) Permit shall demonstrate prior to discharge that no feasible alternative discharge point exists. If discharge is made to VDOT right-of-way, the permittee shall notify the residency administrator of any instances where the regulated discharge limits are exceeded and take immediate corrective action to ensure future excursions are prevented, and any damage to VDOT property is remediated. Any discharges made pursuant to 9 VAC 25-120, General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges from Petroleum Contaminated Sites shall be prohibited from containing any water exhibiting visible oil sheen.

B. Any damages to VDOT property, regardless of authorization implied by any non-VDOT issued permit, shall be remedied or repaired immediately by the permittee.

PART IX.
FEES AND SURETY.

**24 VAC 30-151-700. General provisions for fees, surety and other compensation.**

Except as otherwise provided in this part, the permittee shall pay an application fee to cover the cost of permit processing, pay additive fees to offset the cost of plan review and inspection and provide surety to guarantee the satisfactory performance of the work under permit. Except as provided in 24 VAC 30-151-740, utilities within the right-of-way shall pay an annual accommodation fee as described in 24 VAC 30-151-730. In the event of extenuating circumstances, the

Commonwealth Transportation Commissioner or a designee may waive all or a portion of any of the fees or surety.

**24 VAC 30-151-710. Fees.**

A. Single use permit. A nonrefundable application fee shall be charged to offset the cost of reviewing and processing the permit application and inspecting the project work, in accordance with the requirements below:

1. The application fee for a single permit is $100.

2. Additive costs shall be applied as indicated below. The residency administrator will determine the total permit fees.

| Activity | Fee |
|---|---|
| Application for Permit | $100 |
| | |
| Additive Fees for: | |
| Private Entrances | none |
| Commercial Entrance | $150 for first entrance<br>$50 for each additional entrance |
| Street Connection | $150 for first connection<br>$50 for each additional connection |
| Logging entrance | $10 for each entrance |
| Temporary Construction Entrance | $10 for each entrance |
| Turn Lane | $10 per 100 linear feet |
| Crossover | $500 per crossover |
| Traffic Signal | $1,000 per signal |
| Reconstruction of Roadway | $10 per 100 linear feet |
| Curb and Gutter | $10 per 100 linear feet |
| Sidewalk | $10 per 100 linear feet |
| Tree Trimming (for outdoor advertising) | in accordance with § 33.1-371 of the Code of Virginia |
| Tree Trimming (all other activities) | $10 per acre or 100 feet of frontage |
| Landscaping | $10 per acre or 100 feet of frontage |
| Storm Sewer | $10 per 100 linear feet |
| Box Culvert or Bridge | $5 per linear foot of attachment |
| Drop Inlet | $10 per inlet |
| Paved Ditch | $10 per 100 linear feet |
| Under Drain or Cross Drain | $10 per crossing |
| Above-ground structure (including poles, pedestals, fire hydrants, towers, etc.) | $10 per structure |
| Pole Attachment | $10 per structure |
| Minor overhead guy | $10 per crossing |
| Additive guy and anchor | $10 per guy and anchor |
| Underground Utility | $10 per 100 linear feet |
| Overhead or Underground Crossing | $10 per crossing |
| Excavation Charge (including Test Bores and Emergency Opening) | $10 per opening |

3. Whenever the size of the utility facility to be installed in a longitudinal occupancy requires the use, including separation clearances, of more than a six-foot width of the right-of-way, the longitudinal fee shall be doubled.

4. Time extensions for existing permits shall incur a monetary charge equal to the application fee plus one-half the additive fees charged to the initial permit. Expired permits may be reinstated provided permit fees are paid as established by the residency administrator. Fees for reinstatement of expired permits shall equal the initial permit fee.

5. If a permit is cancelled prior to the beginning of work, the application fee and one-half of the additive fee will be retained as compensation for costs incurred by VDOT during plan review.

6. The residency administrator may establish an account to track plan review and inspection costs, and may bill the permittee not more often than every 30 days. If an account is established for these costs, the permittee shall be responsible for the nonrefundable application fee and the billed costs. When actual costs are billed, the residency administrator shall waive the additive fees above.

B. Residencywide permits. Residencywide permits, as defined in 24 VAC 30-151-30, are valid for a period of one year. The fee is $100 per residency and the permit is valid for work on the secondary and primary road systems.

C. In-place permits. In-place permits as defined in 24 VAC 30-151-190 and 24 VAC 30-151-390 shall be issued at no cost to the permittee.

**24 VAC 30-151-720. Surety.**

A. Performance surety. The permittee shall provide surety to guarantee the satisfactory performance of the work. Surety shall be based on the estimated cost of work to be performed within the right-of-way. Surety may be in the form of a check, cash, irrevocable letter of credit, insurance bond, or any other VDOT-approved method. Under no circumstances shall VDOT or any agency of the Commonwealth be named the escrow agent, nor shall funds deposited with VDOT as surety be subject to the payment of interest. The surety will be refunded or released upon completion of the work and inspection by VDOT subject to the provisions of § 2.2-1151.1 of the Code of Virginia. If a permit is cancelled prior to the beginning of work, the surety shall be refunded or released.

Should the permittee fail to complete the work to the satisfaction of the residency administrator, then all or whatever portion of the surety that is required to complete work covered by the permit or to restore the right-of-way to its original condition shall be retained by VDOT.

B. Continuous surety. Permittees installing, operating and maintaining facilities within the highway right-of-way shall secure and maintain a continuous bond. Governmental

customers may use a resolution in lieu of a continuous bond. The continuous surety shall be in an amount sufficient to restore the right-of-way in the event of damage or failure. The surety shall remain in full force as long as the work covered by the permit remains within the right-of-way. Private and commercial entrances do not require a continuous surety. All other installations may require a continuous surety as determined by the residency administrator.

**24 VAC 30-151-730. Accommodation fees.**

After initial installation, the Commonwealth Transportation Commissioner or a designee shall determine the annual compensation for the use of the right-of-way by a utility, except as provided in 24 VAC 30-151-740. The rates shall be established on the following basis:

1. Limited Access Crossings - $50 per crossing.

2. Limited Access Longitudinal Installation - $250 per mile annual use payment.

3. Communication Tower Sites (limited and nonlimited access):

a. $24,000 annual use payment for a communication tower site, and

b. $14,000 annual use payment for colocation on a tower site. This payment does not include equipment mounted to an existing wooden utility pole.

**24 VAC 30-151-740. Exceptions and provisions to the payment of fees and compensation.**

A. Pursuant to §§ 56-462 and 56-468.1 of the Code of Virginia, a certificated provider of telecommunication service shall collect and remit to VDOT a Public Right-of-Way Use Fee as full compensation for the use of the right-of-way by those utilities.

B. Pursuant to § 15.2-2108 of the Code of Virginia, a cable television operator shall not be charged an annual use payment for the use of public right-of-way in any locality in which the cable television operator is obligated to pay a franchise fee to such locality. The rates for the per mile annual use fee payment for use of right-of-way shall not apply to the applicable cable television facilities.

C. Whenever the size of the utility facility to be installed in a longitudinal occupancy requires the use, including separation clearances, of more than a six-foot width of the right-of-way, the longitudinal compensation requirement shall be doubled.

D. At VDOT's discretion, under the provisions of resource sharing as defined in 24 VAC 30-151-30, compensation for the use of the limited access right-of-way may be negotiated and agreed upon through one of the following methods: strictly barter, which includes provision of goods or services; cash only; or a combination of barter and cash. VDOT will ensure that the goods or services provided in any barter arrangement are equal to the monetary compensation amount established for the use and occupancy of the right-of-way.

E. Whenever a utility owner has provided, either through cash, goods or services, an initial installation payment for the use and occupancy of the right-of-way, either longitudinal, small site or communication tower, the agreement shall provide for partial reimbursement should the utility be required to relocate, adjust, or remove its facilities as a result of the construction of a transportation project. The agreement shall specify that for the first three years of an occupancy, the utility will be entitled to reimbursement for 100% of the applicable relocation, adjustment, or removal cost as defined in 23 CFR 645.117. For the succeeding three years, the utility will be entitled to reimbursement for 50% of the applicable relocation, adjustment, or removal cost as defined in 23 CFR 645.117. After the end of the sixth year, the utility will be responsible for the cost of all required relocations, adjustments or removals related to the transportation project construction.

**24 VAC 30-151-750. Land use permit application fee and additive fees, communication tower site fees, annual adjustments.**

A. VDOT shall have the option of adjusting the land use permit application fee and additive fees, in which case it shall compile information regarding its costs for the review of permit plans, the inspection of permit work and the administrative processing of the permits during the previous fiscal year, and report this information to the Commonwealth Transportation Commissioner by January 1 of each year VDOT wishes to exercise the option. The Commonwealth Transportation Commissioner may use the report findings to adjust the permit application fee and additive fees by not more than 25% of the fee structure in effect on July 1 of the previous calendar year, but not greater than the VDOT's average direct cost as established in the report.

B. If the Commonwealth Transportation Commissioner finds that a change in the permit application fee and additive fee structure is warranted, implementation of the change shall be made as follows:

1. Notice of the adjusted fee structure, including the report on which the adjustment is based or information about where the report may be viewed, will be published in The Virginia Register of Regulations in April of that year, and

2. The adjusted fee structure shall become effective on July 1 of that year.

C. VDOT shall have the option of adjusting the communication tower site annual use fee, in which case the VDOT Chief Appraiser shall prepare a report comparing the communication tower site annual use fee to market rates. The Commonwealth Transportation Commissioner may use the report findings to adjust the communication tower site annual use fee by not more than 25% of the fee structure in effect on

July 1 of the previous calendar year, but not greater than market rates.

D. If the Commonwealth Transportation Commissioner finds that a change in the communication tower site annual use fee structure is warranted, implementation of the change shall be made as follows:

1. Notice of the adjusted fee structure, including the report on which the adjustment is based or information about where the report may be viewed, will be published in The Virginia Register of Regulations in April of that year, and

2. The adjusted fee structure shall become effective on July 1 of that year.

PART X.
REFERENCE DOCUMENTS.

**24 VAC 30-151-760. Listing of documents (publications) incorporated by reference.**

Requests for information pertaining to the availability and cost of any of these publications should be directed to the address indicated below the specific document. Requests for documents available from VDOT may be obtained from the department's division and representative indicated; however, department documents may be available over the Internet at www.VirginiaDOT.org. Documents with a Virginia Administrative Code (VAC) number may be accessed from the Internet at: http://leg1.state.va.us/000/srr.htm.

A. Road Design Manual (effective January 1, 2005).

Location and Design Division (VDOT)
Location and Design Engineer
1401 E. Broad Street
Richmond, Virginia 23219

B. Road and Bridge Specifications (effective 2002).
Scheduling and Contract Division (VDOT)
State Contract Engineer
1401 E. Broad Street
Richmond, Virginia 23219

C. Road and Bridge Standards (effective February 1, 2001).

Location and Design Division (VDOT)
Location and Design Engineer
1401 E. Broad Street
Richmond, Virginia 23219

The following four documents may be obtained from the following address:

Department of Conservation and Recreation
Division of Soil and Water Conservation
Governor Street, Suite 206
Richmond, Virginia 23219

D. Virginia Erosion and Sediment Control Handbook, 3rd edition (effective 1992), a technical guide to The Virginia Erosion and Sediment Control Law and Regulations (4 VAC 50-30).

E. Virginia Erosion and Sediment Control Regulations, 4 VAC 50-30.

F. Virginia Stormwater Management Handbook, 1st edition, Volumes 1 and 2, (effective 1999), a technical guide to the Virginia Stormwater Management Program Permit Regulations (4 VAC 50-60).

G. Virginia Stormwater Management Program Permit Regulations (4 VAC 50-60).

H. VDOT Erosion and Sediment Control and Stormwater Management Program Specifications Manual (effective March 1, 2004).

Location and Design Division (VDOT)
Location and Design Engineer
1401 E. Broad Street
Richmond, Virginia 23219

I. The Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD) (effective December 22, 2003).

Federal Highway Administration
Superintendent of Documents
U.S. Government Printing Office
P.O. Box 371954
Pittsburgh, PA 15250-7954

J. Roadway Lighting, American National Standard Practice for Roadway Lighting

The Standard Practice Subcommittee of the IESNA Roadway Lighting Committee (effective 2000).

The Illuminating Engineering Society of North America
120 Wall Street
New York, NY 10005

K. An Informational Guide for Roadway Lighting.

American Association of State Highway and Transportation Officials (AASHTO)
444 North Capitol St. N.W., Suite 225
Washington, D.C. 20001

L. General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges from Petroleum Contaminated Sites, 9 VAC 25-120.

Regulatory Coordinator
State Water Control Board
P. O. Box 10009
Richmond, VA 23240

M. Rules for Enforcement of the Underground Utility Damage Prevention Act, 20 VAC 5-309.

State Corporation Commission
Department of Energy Regulation

P. O. Box 1197
Richmond, VA 23218

N. Right-of-Way Utilities Relocation Policies and Procedures Manual (effective November 2003).

State Right of Way Director (VDOT)
1401 E. Broad St.
Richmond, VA 23219

O. Change of Limited Access Control, 24 VAC 30-401.

P. Virginia Supplement to the Manual on Uniform Traffic Control Devices, 24 VAC 30-310 (includes the Virginia Work Area Protection Manual).

Traffic Engineering Division (VDOT)
1401 E. Broad St.
Richmond, VA 23219

The following six documents may be obtained from the following address:

Asset Management Director (VDOT)
Asset Management Division
1401 E. Broad St.
Richmond, VA 23219

Q. VDOT Tree Trimming and Brush Cutting Policy (effective December 18, 2001).

R. Rules and Regulations for the Administration of Waysides and Rest Areas, 24 VAC 30-50.

S. Comprehensive Roadside Management Program, 24 VAC 30-121.

T. Vegetation Control Regulations on State Rights-of-Way, 24 VAC 30-200.

U. Outdoor Advertising Manual (effective 2005).

V. General Rules and Regulations of the Commonwealth Transportation Board, 20 VAC 30-20.

NOTICE: The forms used in administering 24 VAC 30-150, Land Use Permit Manual, are not being published; however, the name of each form is listed below. The forms are available for public inspection at the Commonwealth Transportation Board, 1401 East Broad Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

LUP-A - Land Use Permit Application (1/05).

LUP-SP - Special Provisions (Notice of Permittee Liability) (1/05).

LUP-HM - House Movement Application (1/05).

LUP-CSB - Corporate Surety Bond (1/05).

LUP-LC - Irrevocable Letter of Credit Bank Agreement (1/05).

LUP-SB - Surety Bond (1/05).

LUP-OC - Special Provisions for Open Cuts (1/05).

LUP-IPP - In Place Permit for Subdivision Street Utility (1/05).

VA.R. Doc. No. R04-131; Filed June 14, 2007, 8:58 a.m.

## TITLE 4. CONSERVATION AND NATURAL RESOURCES

### DEPARTMENT OF MINES, MINERALS AND ENERGY

EDITOR'S NOTICE: The following form has been filed by the Department of Mines, Minerals and Energy. The form is available for public inspection at the Department of Mines, Minerals and Energy, 202 North Ninth Street, Richmond, Virginia 23219, at the department's Big Stone Gap office, 3405 Mountain Empire Road, Big Stone Gap, VA 24219, or the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219. Copies of the form may be obtained from David B. Spears, Department of Mines, Minerals and Energy, 202 North Ninth Street, Richmond, Virginia 23219, telephone (804) 692-3200.

FORM IMPLEMENTING ARTICLE 5 OF THE COAL MINE SAFETY ACT (§ 45.1-161.35 ET SEQ. OF THE CODE OF VIRGINIA).

Substance Abuse Reporting Form, DM-BCME-6 (eff. 6/07).

Virginia Department of Mines Minerals and Energy

**Board of Coal Mining Examiners**
**P.O. Drawer 900**
**Big Stone Gap, VA 24219**
**Phone (276) 523-8149 Fax (276) 523-8239**

**Note: Fax a copy of this form to the attention of Chairman, Board of Coal Mining Examiners.**
**Send the original to the address above or**
**Send form by e-mail to dmcertification@dmme.virginia.gov**

**Notice: DISCIPLINARY ACTIONS TAKEN AGAINST MINING CERTIFICATIONS AS THE RESULT OF THE SUBMISSION OF THIS INFORMATION WILL BE SHARED WITH OTHER RECIPROCATING COAL PROGRAM STATES AND FEDERAL MINING AGENCIES.**

# CONFIDENTIAL

## DIVISION OF MINES

## Substance Abuse Reporting Form

Date: Mine Index #:

Company:

Address:

City: State: County: ZIP:

Person Reporting: Title:

Phone number: e-mail address:

Substance Abuse Violator:

Certified Miner DM I.D. # Date of Birth:

Address:

City: State: ZIP:

Type of testing:

- ☐ pre-employment screening
- ☐ has been discharged for violation of our company's substance or alcohol abuse policies for the following reason:_____
- ☐ refused to submit to a test required by our company's substance or alcohol abuse policies.
- ☐ tested positive
- ☐ failed to complete an employee assistance program.

Duties of the operator. § 45.1-161.87.

- *The operator or his agent shall notify the Chief, on a form prescribed by the Chief, within seven days of any failure of a pre-employment substance abuse screening test. Notice shall result in the immediate temporary suspension of all certificates held by the applicant, pending hearing before the Board of Coal Mining Examiners.*
- *The operator or his agent shall notify the Chief, on a form prescribed by the Chief, within seven days of*
  - *(i) discharging a miner due to violation of the company's substance or alcohol abuse policies,*
  - *(ii) a miner testing positive for intoxication while on duty status, or*
  - *(iii) a miner testing positive as using any controlled substance without the prescription of a licensed prescriber. An operator having a substance abuse program shall not be required to notify the Chief under subdivision (iii) unless the miner having tested positive fails to complete the operator's substance abuse program. Notice shall result in the immediate temporary suspension of all certificates held by the applicant, pending hearing before the Board of Coal Mining Examiners.*
- *The provisions of this chapter shall not be construed to preclude an employer from developing or maintaining a drug and alcohol abuse policy, testing program, or substance abuse program that exceeds the minimum requirements set forth in this section.*

Form DM-BCME-6

EDITOR'S NOTICE: The following forms have been filed by the Department of Mines, Minerals and Energy. The forms are available for public inspection at the Department of Mines, Minerals and Energy, 202 North Ninth Street, Richmond, Virginia 23219, at the department's Big Stone Gap office, 3405 Mountain Empire Road, Big Stone Gap, VA 24219, or the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219. Copies of the forms may be obtained from Stephen A. Walz, Department of Mines, Minerals and Energy, 202 North Ninth Street, Richmond, Virginia 23219, telephone (804) 692-3200.

Title of Regulation: **4 VAC 25-130. Coal Surface Mining Reclamation Regulations.**

FORMS

Anniversary Notification, DMLR-PT-028 (eff. 9/99).

Change Order Justification, DMLR-AML-065 (eff. 8/99).

Ground Water Monitoring Report, DMLR-PT-101 (rev. 11/99).

Application for Exemption Determination (Extraction of Coal Incidental to the Extraction Of Other Minerals), DMLR-211 (rev. 4/96).

Applicant Violator System (AVS) Ownership Control Information, DMLR-AML-003 (rev. 1/95).

Consent for Right of Entry-Exploratory, DMLR-AML-122 (rev. 3/98).

Consent for Right of Entry-Construction, DMLR-AML-123 (rev. 3/98).

Consent for Right of Entry-Construction Lien Waiver, DMLR-AML-174 (rev. 3/91).

License for Performance-Acid Mine Drainage Investigations and Monitoring (Abandoned Mine Land Program), DMLR-AML-175c (11/96).

License for Performance-Acid Mine Drainage Reclamation and Construction (Abandoned Mine Land Program), DMLR-AML-176c, (rev. 12/96).

Consent for Right of Entry-Ingress/Egress, DMLR-AML-177 (rev. 3/98).

Application for Recertification: DMLR Endorsement/Blaster's Certification, DMLR-BCME-03 (rev. 5/05).

Application for DMLR Endorsement: Blaster's Certification (Coal Surface Mining Operation), DMLR-BCME-04 (rev. 5/05).

Geology and Hydrology Information Part A through E, DMLR-CP-186 (rev. 3/86).

Sediment and Pond Design Data Sheet, DMLR-CP-187 (rev. 12/85).

Notice of Temporary Cessation, DMLR-ENF-220 (rev. 2/96).

Application for Small Operator's Assistance, DMLR-OA-106 (rev. 12/85).

Lands Unsuitable Petition, DMLR-OA-131 (rev. 12/85).

Application for Permit for Coal Exploration and Reclamation Operations (which Remove More Than 250 Tons) and NPDES, DMLR-PS-062 (rev. 12/85).

Chapter 19-Statement for Third Party-Certificate of Deposit, DMLR-PS-093 (rev. 12/85).

Cognovit Note, Part I and II, DMLR-PS-095 (rev. 12/85).

Application-Coal Surface Mining Reclamation Fund, DMLR-PS-162 (rev. 7/89).

Application for Release of Bond-Estimated Cost, DMLR-PS-212 (rev. 3/88).

Application for Release of Bond-Reclamation Fund, DMLR-PS-213 (rev. 3/88).

Example-Waiver (300 Feet from Dwelling), DMLR-PT-223 (rev. 2/96).

Analysis, Premining vs Postmining Productivity Comparison (Hayland/Pasture Land Use), DMLR-PT-012 (eff. 8/03).

Surety Bond, DMLR-PT-013 (rev. 9/04).

Surety Bond-Federal Lands, DMLR-PT-013A (rev. 10/95).

Surety Bond Rider, DMLR-PT-013B (rev. 9/04).

Map Legend, DMLR-PT-017 (rev. 2/05).

Certificate of Deposit Example, DMLR-PT-026 (rev. 9/04).

Form Letter From Banks Issuing a CD for Mining on Federal Lands, DMLR-PT-026A (rev. 8/03).

Operator's Seeding Report, DMLR-PT-011 (rev. 3/06).

Request for Relinquishment, DMLR-PT-027 (rev. 4/96).

Water Supply Inventory List, DMLR-PT-030 (rev. 4/96).

Application for Permit for Coal Surface Mining and Reclamation Operations and National Pollutant Discharge Elimination Systems (NPDES), DMLR-PT-034 (rev. 2/99).

Request for DMLR Permit Data, DMLR-PT-034info (eff. 5/07).

Application for Permit: Coal Surface Mining and Reclamation Operations, DMLR-PT-034D (rev. 8/98).

Coal Exploration Notice, DMLR-PT-051 (rev. 11/98).

Well Construction Data Sheet, DMLR-WCD-034D (rev. 5/04).

Sediment Basin Design Data Sheet, DMLR-PT-086 (rev. 10/95).

Impoundment Construction and Annual Certification, DMLR-PT-092 (rev. 10/95).

Road Construction Certification, DMLR-PT-098 (rev. 10/95).

Ground Water Monitoring Report, DMLR-PT-101 (rev. 2/95).

Rainfall Monitoring Report, DMLR-PT-102 (rev. 8/98).

Pre-Blast Survey, DMLR-PT-104 (rev. 10/95).

Excess Spoil Fills and Refuse Embankments Construction Certification, DMLR-PT-105 (rev. 4/96).

Stage-Area Storage Computations, DMLR-PT-111 (rev. 10/95).

NPDES Discharge Monitoring Report, DMLR-PT-119 (rev. 2/95).

Water Monitoring Report-Electronic File/Printout Certification, DMLR-PT-119C (rev. 5/95; included in DMLR-PT-119).

Coal Surface Mining Reclamation Fund Application, DMLR-PT-162 (rev. 4/96).

Conditions-Coal Surface Mining Reclamation Fund, DMLR-PT-167 (rev. 10/95).

Coal Surface Mining Reclamation Fund Tax Reporting Form, DMLR-PT-178 (rev. 10/95).

Surface Water Monitoring Report, DMLR-PT-210 (rev. 8/98).

Application For Performance Bond Release, DMLR-PT-212 (rev. 4/96).

Public Notice: Application for Transfer, Assignment, or Sale of Permit Rights under Chapter 19 of Title 45.1 of the Code of Virginia, DMLR-PT-219 (8/96).

Public Notice: Application for Bond Reduction Under Chapter 19 of Title 45.1 of the Code of Virginia-Cost Estimate, Phase I, DMLR-PT-225 (rev. 4/96).

Public Notice: Application for Bond Reduction Under Chapter 19 of Title 45.1 of the Code of Virginia-Cost Estimate, Phase II, DMLR-PT-226 (rev. 4/96).

Public Notice: Application for Bond Reduction Under Chapter 19 of Title 45.1 of the Code of Virginia-Cost Estimate, Phase III, DMLR-PT-227 (rev. 4/96).

Public Notice: Application for Bond Reduction Under Chapter 19 of Title 45.1 of the Code of Virginia-Pool Bonding, Incremental Bond Reduction, DMLR-PT-228 (rev. 4/96).

Public Notice: Application for Bond Reduction Under Chapter 19 of Title 45.1 of the Code of Virginia-Pool Bonding, Entire Permit Bond Reduction, DMLR-PT-229 (rev. 9/95).

Public Notice: Application for Bond Reduction Under Chapter 19 of Title 45.1 of the Code of Virginia-Pool Bonding, Entire Permit Bond Release, DMLR-PT-230 (rev. 4/96).

Verification of Public Display of Application, DMLR-PT-236 (8/01).

Affidavit (Permit Application Information: Ownership and Control Information and Violation History Information), DMLR-PT-240 (rev. 12/98).

Stream Channel Diversion(s) Certification, DMLR-PT-233 (rev. 2/96).

Quarterly Acid-Base Monitoring Report, DMLR-PT-239 (rev. 6/95).

Affidavit (No Legal Change in a Company's Identity), DMLR-PT-250 (rev. 12/98).

Blasting Plan Data, DMLR-PT-103 (rev. 4/96).

Affidavit (Reclamation Fee Payment), DMLR-PT-244 (rev. 2/96).

Application-National Pollutant Discharge Elimination System (NPDES) Permit-Short Form C, DMLR-PT-128 (rev. 5/96).

National Pollutant Discharge Elimination System (NPDES) Short Form C-Instructions, DMLR-PT-128A (rev. 5/96).

Impoundment Inspection Report, DMLR-PT-251 (rev. 12/93).

Water Sample Tag, DMLR-TS-107 (rev. 3/83).

Surface Water Baseline Data Summary, DMLR-TS-114 (rev. 4/82).

Diversion Design Computation Sheet, DMLR-TS-120 (rev. 12/85).

Sediment Channel Design Data Sheet, DMLR-TS-127 (rev. 12/85).

Virginia Stream Survey, DMLR-TS-217 (rev. 1/87).

Line Transect-Forest Land Count, DMLR-PT-224 (rev. 2/96).

Applicant Violator System (AVS) Ownership & Control Information, DMLR-AML-003 (rev. 4/97).

Application for Permit Renewal Coal Surface Mining and Reclamation Operations, DMLR-PT-034R (eff. 6/97).

Application for Coal Exploration Permit and National Pollutant Discharge Elimination System Permit, DMLR-PT-062 (formerly DMLR-PS-062) (rev. 6/97).

Conditions-Coal Surface Mining Reclamation Fund, DMLR-PT-167 (rev. 10/95).

Vibration Observations, DMLR-ENF-032V (eff. 9/97).

Application for Small Operator Assistance, DMLR-PT-106 (formerly CP-106) (rev. 9/97).

Application-National Pollutant Discharge Elimination System Application Instructions, DMLR-PT-128 (rev. 9/97).

Blasting Plan Data, DMLR-PT-103 (rev. 10/97).

Request for Relinquishment, DMLR-PT-027 (rev. 1/98).

Written Findings, DMLR-PT-237 (rev. 1/98).

Irrevocable Standby Letter of Credit, DMLR-PT-255 (rev. 9/04).

Confirmation of Irrevocable Standby Letter of Credit, DMLR-PT-255A (eff. 8/03).

DMLR-AML-312, Affidavit (eff. 7/98).

**REQUEST FOR**
**DMLR PERMIT DATA**

Company/Consultant Requester: _____

Phone: _____ E-Mail: _____

**INFORMATION REQUESTED FROM**

Company Name: _____

Permit Number: _____ Repermit/Transfer from: _____

Transfer Media: ☐ E-Mail ☐ CD ☐ FTP ☐ Other (identify: _____ )

Notify by: ☐ E-Mail ☐ Phone

Need Program: ☐ Yes ☐ No

| Attachments: | |
|---|---|

| From – **DMLR-PT-034e** | | | | | |
|---|---|---|---|---|---|
| ☐ | AA | Acres Amendment | ☐ | SJ | Succession CSMO/NPDES |
| ☐ | NJ | New CSMO/NPDES | ☐ | SN | Succession NPDES |
| ☐ | NN | New NPDES | ☐ | TJ | Renewal CSMO/NPDES |
| ☐ | RA | Acres Revision | ☐ | TN | Renewal NPDES |
| ☐ | RJ | Repermit CSMO/NPDES | ☐ | MT | Mid-Term Review |
| ☐ | RN | Repermit NPDES | ☐ | CU | Cleanup |
| ☐ | RP | Plans Revision | ☐ | CR | Completion Report |
| ☐ | BR | Bond Reduction | ☐ | IF | Information Request |
| ☐ | PR | Permit Release | ☐ | XP | Coal Exploration Permit |
| ☐ | AC | Anniversary Correction | | | |

| From – **DMLR-PT-034o** | | | | | |
|---|---|---|---|---|---|
| ☐ | M | Modify Existing Operator | ☐ | UA | Update Address Information |
| ☐ | N | Add New Operator | ☐ | CL | Clean up |

| From – **DMLR-PT-034p** | | | | | |
|---|---|---|---|---|---|
| ☐ | M | Modify Existing Permittee | ☐ | VP | Viol/Permit History Update |
| ☐ | N | Add New Permittee | ☐ | CL | Clean up |
| ☐ | UA | Update Address Information | | | |

***DMLR Use Only***

Application Number _____ Sent on: _____
Company Code _____ E-Mailed to Inspector ___ on: _____
Contractor Code _____
Engineer Code _____

DMLR-PT-034info
Rev 05/07

## STATE CORPORATION COMMISSION

AT RICHMOND, JUNE 8, 2007

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. PUE-2007-00049

Ex Parte: In the matter of determining a recommended mix of programs, including demand side management (DSM), conservation, energy efficiency, load management, real-time pricing, and consumer education, to be implemented in the Commonwealth to cost-effectively achieve the energy policy goals set in § 67-102 of the Code of Virginia to reduce electric energy consumption

ORDER ESTABLISHING PROCEEDING

The General Assembly of Virginia enacted on April 4, 2007, Chapter 933 of the 2007 Acts of Assembly ("Chapter 933")[1] that, among other provisions, established:[2]

> That it is in the public interest, and is consistent with the energy policy goals in § 67-102 of the Code of Virginia, to promote cost-effective conservation of energy through fair and effective demand side management, conservation, energy efficiency, and load management programs, including consumer education. These programs may include activities by electric utilities, public or private organizations, or both electric utilities and public or private organizations. The Commonwealth shall have a stated goal of reducing the consumption of electric energy by retail customers through the implementation of such programs by the year 2022 by an amount equal to ten percent of the amount of electric energy consumed by retail customers in 2006.

The State Corporation Commission ("Commission") is now directed to establish a proceeding[3] to:

> (i) determine whether the ten percent electric energy consumption reduction goal can be achieved cost-effectively through the operation of such programs, and if not, determine the appropriate goal for the year 2022 relative to base year of 2006, (ii) identify the mix of programs that should be implemented in the Commonwealth to cost-effectively achieve the defined electric energy consumption reduction goal by 2022, including but not limited to demand side management, conservation, energy efficiency, load management, real-time pricing, and consumer education, (iii) develop a plan for the development and implementation of recommended programs, with incentives and alternative means of compliance to achieve such goals, (iv) determine the entity or entities that could most efficiently deploy and administer various elements of the plan, and (v) estimate the cost of attaining the energy consumption reduction goal.

Upon the conclusion of the above-described proceeding, the Commission is directed to submit its findings and recommendations to the Governor and General Assembly, on or before December 15, 2007 ("Commission's Report"). The Commission's Report shall include:

> recommendations for any additional legislation necessary to implement the plan to meet the energy consumption reduction goal. In developing a plan to meet the goal, the Commission may consider providing for a public benefit fund and shall consider the fair and reasonable allocation by customer class of the incremental costs of meeting the goal that are recovered in accordance with subdivision A 5 b of § 56-585.1 of the Code of Virginia.[4]

The Commission is of the opinion that the proceeding we are directed to establish should receive the input of the broadest range of persons and organizations having an interest in energy conservation within the Commonwealth. Accordingly, the Staff of the Commission ("Staff") should invite representatives of incumbent electric and gas utilities, competitive service providers ("CSPs"), retail customers, the Virginia Department of Mines, Minerals, and Energy ("DMME"), the Governor's Energy Council ("Council"), cooperative and municipal providers of electric and gas service in the Commonwealth, PJM Interconnection, environmental and consumer organizations, and any other interested persons to participate in a work group that will assist Staff in making the determinations called for in the Third Enactment Clause of Senate Bill 1416 and to develop recommendations to the Commission regarding the Commission's Report due on December 15, 2007.

We will not enlist specific members of the work group in this Order, other than to appoint the Director of the Division of Economics and Finance ("Director"), or his designee to call the work group into meeting and receive any written information, statements, or recommendations by interested persons to the work group. Based on our experience in related proceedings, the Commission is confident that a variety of interested persons having an interest in energy conservation will participate in the work group. The Commission will not limit the size of the work group. In order to promote maximum participation in the work group, we direct the Staff to provide copies of this Order by

[1] Chapter 933 (SB 1416) amends and reenacts §§ 56-233.1, 56-234.2, 56-235.2, 56-235.6, 56-249.6, 56-576 through 56-581, 56-582, 56-584, 56-585, 56-587, 56-589, 56-590, and 56-594 of the Code of Virginia; amends the Code of Virginia by adding sections numbered 56-585.1, 56-585.2, and 56-585.3; and repeals §§ 56-581.1 and 56-583 of the Code of Virginia, relating to the regulation of electric utility service.

[2] Third Enactment Clause of SB 1416.

[3] Id.

[4] Id.

electronic transmission or, when electronic transmission is not possible, by mail, to individuals, organizations, and companies, identified by Staff as potentially having an interest in this proceeding.

In order for the work group to organize in a timely fashion to assist the Staff, we find that all persons with an interest in this proceeding and desiring to participate in the work group should file with the Clerk of the Commission a letter expressing their intention to participate in the work group. The letter should include a complete mailing address, voice telephone number, facsimile telephone number (if available), and electronic mailing address (if available). If several interested persons are members of the same organization or employees of the same entity, they should designate in the letters one contact person. Interested persons are encouraged to transmit a copy of the letter filed with the Clerk, or other requested information, to econfin@scc.virginia.gov.[5]

In addition to the notice that Staff is directed to give of this proceeding, the Director or his designee should send a letter no later than June 15, 2007, to all interested persons outlining the scope of content and Staff's plan and process to complete its review. The letter should invite comments to the work group. Comments should be in written form and transmitted to the Director in the manner and by the date set forth in the Director's letter.

The Commission directs the Staff to review all written information received by the Director and prepare a report to the Commission to assist the Commission in fulfilling its reporting obligations to the Governor and General Assembly under the Third Enactment Clause of Senate Bill 1416. The Staff should file its report on or before November 9, 2007.

IT IS THEREFORE ORDERED THAT:

(1) This matter shall be docketed and assigned Case No. PUE-2007-00049.

(2) Within five (5) business days of the filing of this Order with the Clerk of the Commission, Staff shall transmit electronically or mail copies of this Order to interested persons and organizations as discussed in this Order.

(3) The Director shall send a letter on or before June 15, 2007, consistent with the findings above, inviting representatives of incumbent electric and gas utilities, CSPs, retail customers, DMME, the Council, electric cooperatives, and municipal providers of gas and electric service in the Commonwealth, PJM Interconnection, environmental and consumer organizations, and any other interested persons to participate in a work group to assist Staff.

(4) On or before June 15, 2007, the Commission Staff shall file with the Clerk a certificate of transmission or mailing, as required by Ordering Paragraph (2) of this Order, and shall include a list of names and addresses of persons to whom the Order was transmitted or mailed.

(5) On or before June 25, 2007, all persons who desire to participate in the work group shall file with the Clerk of the Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, a letter expressing their intention to participate in the work group. The letter shall include a complete mailing address, voice telephone number, facsimile telephone number (if available), and electronic mailing address (if available). If several interested persons are members of the same organization or employees of the same entity, they shall designate in the letters one contact person. Interested persons should also transmit a copy of the letter filed with the Clerk, or the requested information, to econfin@scc.virginia.gov.

(6) The Commission Staff shall post promptly upon receipt all written comments received by electronic transmission at econfin@scc.virginia.gov to the Division of Economics and Finance website: http://www.scc.virginia.gov/division/eaf/index.htm. The Commission Staff shall not be responsible for editing any posted document to remove information that may be deemed confidential.

(7) On or before November 9, 2007, the Commission Staff shall conduct an investigation, with input from a work group and other participants, and file with the Clerk of the Commission a Report presenting its findings and recommendations in response to the directives to the Commission contained in the Third Enactment Clause of SB 1416.

(8) This case is hereby continued generally.

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

## DEPARTMENT OF ENVIRONMENTAL QUALITY

### Total Maximum Daily Loads (TMDL) - Accomack County

The Department of Environmental Quality (DEQ), Virginia Department of Health (VDH) and the Department of Conservation and Recreation seek written and oral comments from interested persons on the development of total

[5] To allow broad and efficient dissemination of information received by the Director from the work group, we will request that all information be submitted, to the extent possible, in electronic form. This information will be posted on the Commission's Division of Economics and Finance website.

maximum daily loads (TMDL) for fecal coliform bacteria in eight shellfish propagation waters located in Accomack County, Virginia.

The impaired segments are located in the following VDH Growing Areas:

Growing Area 77, containing Deep Creek, Hunting Creek, and Bagwell Creek;

Growing Area 79, containing Chesconessex Creek;

Growing Area 97, containing Folly Creek; and

Growing Area 100, containing Swans Gut and Greenbackville Harbor.

The affected water body segments are identified in Virginia's 1998 303(d) TMDL Priority List and Report as impaired due to violations of the state's water quality standard for fecal coliform bacteria in shellfish waters. 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.

This is the first public meeting to provide information and solicit comments from citizens and local government on preparation of the draft reports of the fecal coliform TMDLs studies and is to be held on July 24, 2007, from 7 p.m. to 9 p.m. at the Accomack-Northampton Planning District Commission, 23372 Front Street, P.O. Box 417, Accomack, Virginia 23301.

The public comment period will begin on July 24, 2007, and end on August 24, 2007. Questions or information requests should be addressed to Chester Bigelow and should include the name, address, and telephone number of the person submitting the comments. Requests should be sent to Chester Bigelow, Department of Environmental Quality, 629 East Main Street, Richmond, VA 23240, telephone (804) 698-4554, FAX (804) 698-4116, or email ccbigelow@deq.virginia.gov.

### Studies to Restore Water Quality in Parts of Accotink Creek and Difficult Run

Announcement of total maximum daily load (TMDL) studies to restore water quality in parts of Accotink Creek and Difficult Run that have benthic and bacteria impairments.

Purpose of notice: The Virginia Department of Environmental Quality (DEQ) and the Virginia Department of Conservation and Recreation announce the first Technical Advisory Committee (TAC) meeting to introduce the Accotink Creek and Difficult Run TMDL studies.

Technical advisory committee meeting: Tuesday, July 17, 2007, 1:30 p.m. to 3:30 p.m., Fairfax County Government Center, 12000 Government Center Parkway, Conference Rooms 2 and 3, Fairfax, VA 22035.

Meeting description: This is the first meeting to introduce this project to the TAC. The purpose of the TAC will be to provide technical input and insight for the project, and to assist with stakeholder and public participation.

Description of study: Portions of Accotink Creek and Difficult Run have been identified as impaired on the Clean Water Act § 303(d) list for not supporting the primary contact recreation use due to elevated levels of bacteria, and the aquatic life use due to poor health in the benthic biological community. Virginia agencies are working to identify the sources of bacteria contamination and benthic stressors for these two stream segments. The impaired segment of Difficult Run is located in portions of the City of Fairfax and Fairfax County. The impaired segment of Accotink Creek is also located in portions of the City of Fairfax and Fairfax County. Below is a description of the impaired portions of Accotink Creek and Difficult Run that will be addressed in this study:

| Stream Name | Locality | Impair-ments | Area (miles) | Upstream Limit | Down-stream Limit |
|---|---|---|---|---|---|
| Accotink Creek | Fairfax County City of Fairfax | Fecal Coliform Bacteria Benthic | 7.35 | Confluence of Accotink Creek with Calamo Branch | Start of the tidal waters of Accotink Bay |
| Difficult Run | Fairfax County City of Fairfax | E. Coli Bacteria Benthic | 2.93 | Confluence of Difficult Run with Captain Hickory Run | Confluence of Difficult Run with the Potomac River |

During the study, DEQ will develop a total maximum daily load, or a TMDL, for each impaired stream segment, for each specific impaired use. A TMDL is the total amount of a pollutant a water body can receive and still meet water quality standards. To restore water quality, contamination levels have to be reduced to the TMDL allocated amount.

How to comment: The public comment period on the materials presented at the TAC Meeting will extend from July 17, 2007, to August 16, 2007. DEQ accepts written comments by email, fax, or postal mail. Written comments should include the name, address, and telephone number of the person commenting, and be received by DEQ during the comment period. Please send all comments to the contact listed below.

Contact for additional information: Katie Conaway, Department of Environmental Quality, 13901 Crown Court, Woodbridge, VA 22193, telephone (703) 583-3804, email mkconaway@deq.virginia.gov.

### Commonwealth of Virginia State Implementation Plan (SIP) - Fredericksburg Satellite Office

The Department of Environmental Quality (DEQ) will hold a public hearing on a proposed revision to the Commonwealth of Virginia State Implementation Plan (SIP). The hearing

will be held in the DEQ Fredericksburg Satellite Office, 806 Westwood Office Park, Fredericksburg, Virginia, at 1:30 p.m. on July 16, 2007, to accept testimony concerning the proposed revision. Using the procedures explained below, the DEQ will also accept written comments until July 16, 2007.

This notice is hereby given in accordance with the requirements of 40 CFR 51.102. The proposal will be submitted as a revision to the Commonwealth of Virginia SIP under § 110(a) of the federal Clean Air Act in accordance with 40 CFR 51.104.

On September 30, 2002, the State Air Pollution Control Board adopted an opacity variance (9 VAC 5 Chapter 220) for the rocket motor test operations at Atlantic Research Corporation's Orange County facility located at 7499 Pine Stake Road, Culpeper, Virginia 22701 (Registration No. 4074) from the standard for visible emissions in 9 VAC 5-50-80. In lieu of compliance with this standard, the variance required the facility to limit total particulate matter emissions from its rocket motor test operations to 714 pounds per hour. This variance was submitted to the U.S. Environmental Protection Agency (EPA) as a revision to the Virginia SIP on January 26, 2004. Subsequently, the facility was purchased by Aerojet Corporation.

The January 2004 SIP submittal contained a technical support document that provided a basis for proposed hourly limit for particulate matter emissions from the rocket motor testing operations. In conducting its administrative and technical review of the submittal, EPA determined that the technical support document did not provide adequate air dispersion modeling information. The company has provided the information necessary for EPA to complete its review and the SIP approval process. The document was reviewed by DEQ, which agrees with the company's modeling procedures and results. The proposed SIP revision consists of the additional air dispersion modeling information requested by EPA for the technical support document.

Comments must be submitted according to the procedures specified in the next paragraph to be considered in the formation of the final revisions; however, questions may be directed to Doug Stockman, Environmental Engineer Senior, DEQ Fredericksburg Satellite Office, 806 Westwood Office Park, Fredericksburg, VA, telephone (540) 899-4600, FAX (540) 899-4647, or email rdstockman@deq.virginia.gov.

All comments must be received by the department by 5 p.m., July 16, 2007, to be considered. It is preferred that all comments be provided in writing, along with any supporting documents or exhibits; however, oral comments will be accepted at the hearing. Comments may be submitted by mail, facsimile transmission, email, or by personal appearance at the hearing, and must be submitted to Doug Stockman, Environmental Engineer Senior, DEQ Fredericksburg Satellite Office, 806 Westwood Office Park, Fredericksburg, VA, telephone (540) 899-4600, FAX (540) 899-4647, or email rdstockman@deq.virginia.gov. Comments by facsimile transmission will be accepted only if followed by receipt of the original within one week. Comments by email will be accepted only if the name, address, and phone number of the commenter are included. All testimony, exhibits and documents received are matters of public record. The proposal and any supporting documents subject to this public hearing may be examined by the public at the DEQ Main Street Office, 8th Floor, 629 E. Main Street, Richmond, Virginia, (804) 698-4070, and the Fredericksburg Satellite Office, Department of Environmental Quality, 806 Westwood Office Park, Fredericksburg, Virginia, 540-899-4600 between 8:30 a.m. and 5 p.m. of each business day until the close of the public comment period. The documents may also be viewed at the following website: http://www.deq.virginia.gov/air/permitting/planotes.html.

### Total Maximum Daily Load (TMDL) - in Gloucester County

The Department of Environmental Quality (DEQ), Virginia Department of Health (VDH) and the Department of Conservation and Recreation seek written and oral comments from interested persons on the development of a total maximum daily load (TMDL) for fecal coliform bacteria in two shellfish propagation waters located in Gloucester County, Virginia.

The impaired segments are located in VDH Growing Area containing the Poropotank River and Morris Bay (VAT-F26E-14), and Adams Creeks (VAT-F26E-12), tributaries to the York River and Chesapeake Bay in Gloucester County, Virginia.

The affected water body segments are identified in Virginia's 1998 303(d) TMDL Priority List and Report as impaired due to violations of the state's water quality standard for fecal coliform bacteria in shellfish waters. 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.

This is the first public meeting to provide information and solicit participation of citizens and local government in the developing the draft report on the fecal coliform TMDLs. The meeting will be held on July 17, 2007, from 6 p.m. to 9 p.m. in the library of the Page Middle School, 5628 George Washington Memorial Highway, Gloucester, Virginia 23061. Directions can be obtained by calling Chester Bigelow at (804) 698-4554. The public comment period will begin on July 17, 2007, and end on August 17, 2007. Questions or information requests should be addressed to Chester Bigelow and should include the name, address, and telephone number of the person submitting the comments. Requests should be sent to Chester Bigelow, Department of Environmental

Quality, 629 East Main Street, Richmond, VA 23240, telephone (804) 698-4554, FAX (804) 698-4116, or email ccbigelow@deq.virginia.gov.

### Total Maximum Daily Load (TMDL) - Hogue Creek

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 a total maximum daily load (TMDL) for Hogue Creek in Frederick County. Hogue Creek was listed on the 2004 303(d) TMDL Priority List and Report as impaired due to violations of the state's water quality standard for bacteria. This impairment extends for 16.58 miles from the headwaters to the confluence with Back Creek.

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. DEQ has developed a bacteria TMDL to address the impairment on Hogue Creek and is soliciting public comment on the draft TMDL report. The draft report will be available for review and download from the DEQ website at http://gisweb.deq.virginia.gov/tmdlapp/tmdl_draft_reports.cfm beginning on or before July 11, 2007.

The final public meeting on the development of this TMDL will be held on Wednesday, July 11, 2007, 7 p.m. at the Gainesboro Fire Hall (upstairs meeting room), 221 Gainesboro Rd., Winchester, VA 22603.

The public comment period for the first public meeting will end on August 11, 2007. Written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to Robert Brent, Department of Environmental Quality, 4411 Early Road, P.O. Box 3000, Harrisonburg, VA 22801, telephone (540) 574-7848, FAX (540) 574-7878, or email rnbrent@deq.virginia.gov.

### Total Maximum Daily Load (TMDL) - Knox and Pawpaw Creeks

Purpose of notice: The Department of Environmental Quality (DEQ), and the Department of Conservation and Recreation seek written and oral comments from interested persons on the draft Implementation Plan for the Knox Creek and Pawpaw Creek total maximum daily load (TMDL) Reports for aquatic life (benthic) and recreational use (bacteria). Knox and Pawpaw Creeks are located in Buchanan County in Southwest Virginia. A public meeting for the purpose of reviewing the draft implementation plan for water quality improvements in the Knox and Pawpaw Creeks watersheds will be held on July 19, 2007, from 6:30 p.m. to 8 p.m.

Public comment period: July 19, 2007, to August 20, 2007.

Public meeting: Hurley Elementary and Middle School in Hurley, Virginia, on July 19, 2007, from 6:30 p.m. to 8 p.m.

Meeting description: This is the final public meeting on development of a watershed cleanup plan. The cleanup plan is being developed concurrently with the Total Maximum Daily Load Study to improve water quality.

Description of cleanup plan: DEQ has developed a total maximum daily load study, or a TMDL, for Knox Creek and Pawpaw Creek, contaminated streams in Buchanan County, Virginia. A TMDL is the total amount of a pollutant a stream can contain and still meet water quality standards. The stream has bacteria contamination that threatens human health and other contaminates that have harmed the aquatic life in the stream. To restore water quality, contamination levels need to be reduced to the recommended TMDL amounts. The cleanup plan will define ways to reduce contamination.

The Knox Creek "impaired" stream segment includes the entire stream length in Virginia, from its headwaters to the Kentucky state line, approximately 16.9 miles long. Knox Creek is impaired for failing to meet the aquatic life use based on violations of the general standard for aquatic organisms and failure to meet the recreational use because of fecal coliform bacteria violations.

Pawpaw Creek is impaired from the Kentucky state line to its confluence with Knox Creek, about 4.5 miles of stream reach. This stream is impaired due to failing to meet the aquatic life use based on violations of the general standard for aquatic organisms.

How to comment: DEQ accepts written comments by email, fax or postal mail. Written comments should include the name, address and telephone number of the person commenting and be received by DEQ during the comment period. DEQ also accepts written and oral comments at the public meeting announced in this notice. Information on implementation plans and how they are developed is available at the DEQ website www.deq.virginia.gov/tmdl.

Contact for additional information: Shelley D. Williams, Virginia Department of Environmental Quality, Southwest Regional Office, P.O. Box 1688, Abingdon, VA 24212-1688, telephone (276) 676-4845, FAX (276) 676-4899, or email sdwilliams@deq.virginia.gov.

### Total Maximum Daily Load (TMDL) - Lancaster County

The Department of Environmental Quality (DEQ), Virginia Department of Health (VDH) and the Department of Conservation and Recreation seek written and oral comments from interested persons on the development of a total maximum daily load (TMDL) for fecal coliform bacteria in 12 shellfish propagation waters located in Lancaster County, Virginia.

The impaired segments are located in the following watersheds:

VDH Shellfish Growing Area 20 - containing three TMDLs, Condemnation 20-41A W. Br. Carter Creek, Condemnation 20-41B Central Branch Carter Creek, Condemnation 20-41C E.Br. Carter Creek; and

VDH Shellfish Growing Area 21 - comprising Condemnation 21-132A W. Br. Corrotoman River, Condemnation 21-132B Senior Creek, Condemnation 21-58A Hills Creek, Creek Condemnation 21-58B Bells Creek, Condemnation 21-58C E. Br. Corrotoman River, Condemnation 21-205 Taylor Creek, Condemnation 21-198 Myer Creek, Condemnation 21-187A Ewells Point, and Condemnation 21-187B Millenbeck Creek.

The affected water body segments are identified in Virginia's 1998 303(d) TMDL Priority List and Report as impaired due to violations of the state's water quality standard for fecal coliform bacteria in shellfish waters. 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.

This is the second public meeting to provide information and solicit participation of citizens and local government in the review of the draft reports on fecal coliform TMDLs. The meeting will be held on July 16, 2007, from 6 p.m. to 8 p.m. in the General District Courtroom of the Lancaster County Courthouse, 8311 Mary Ball Road, Lancaster, Virginia. Copies of these reports may be obtained from the agency website at http://www.deq.virginia.gov/tmdl. Directions can be obtained by calling Chester Bigelow at (804) 698-4554. The public comment period will begin on July 16, 2007, and end on August 16, 2007. Questions or information requests should be addressed to Chester Bigelow and should include the name, address, and telephone number of the person submitting the comments. Requests should be sent to Chester Bigelow, Department of Environmental Quality, 629 East Main Street, Richmond, VA 23240, telephone (804) 698-4554, FAX (804) 698-4116, or email ccbigelow@deq.virginia.gov.

### Restore Water Quality in Lick Creek

Announcement of an effort to restore water quality in Lick Creek in Russell, Dickenson, and Wise Counties, Virginia.

Public meeting location: Dante Lives On Community Center, off Route 63 in Dante, Virginia, on July 16, 2007, from 7 p.m. to 9 p.m.

Purpose of notice: To seek public comment and announce a public meeting on a water quality improvement study by the Virginia Department of Environmental Quality, Department of Mines Minerals and Energy and the Department of Conservation and Recreation for Lick Creek in Southwest Virginia.

Meeting description: Final public meeting on a study to restore water quality.

Description of study: DEQ is working to identify sources of pollutants affecting the aquatic organisms and sources of bacteria contamination in the waters of Lick Creek. Lick Creek is in Russell County and flows along Route 63 to Clinch River near St. Paul, Virginia; tributaries are in Wise and Dickenson Counties. The "impaired" stream segments are estimated to be approximately 9.5 miles of Lick Creek, from the headwaters to the confluence with Clinch River, including Cigarette Hollow, Laurel Branch, and Right Fork. The stream is impaired for failing to meet the aquatic life use based on violations of the general standard for aquatic organisms and failure to meet the recreational use because of fecal coliform bacteria violations, additionally 2006 data indicates violation of the E. coli standard.

During the study, the pollutants impairing the aquatic community will be identified and total maximum daily loads, or TMDLs, developed for the impaired waters. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. DEQ will also determine the sources of bacteria contamination and develop a TMDL for bacteria. To restore water quality, contamination levels must be reduced to the TMDL amount.

How a decision is made: The development of a TMDL includes public meetings and a public comment period once the study report is drafted. After public comments have been considered and addressed, DEQ will submit the TMDL report to the U.S. Environmental Protection Agency for approval.

How to comment: DEQ accepts written comments by email, fax or postal mail. Written comments should include the name, address and telephone number of the person commenting and be received by DEQ during the comment period, July 16, 2007, to August 16, 2007. DEQ also accepts written and oral comments at the public meeting announced in this notice.

To review draft TMDL report: The draft TMDL report on the impaired waters is available after July 16, 2007 from the contact below or on the DEQ website at www.deq.virginia.gov/tmdl.

Contact for additional information: Shelley D. Williams, Department of Environmental Quality, Southwest Regional Office, Regional TMDL Coordinator, 355 Deadmore Street, P.O. Box 1688, Abingdon, VA 24212-1688, telephone (276) 676-4845, FAX (276) 676-4899, or email sdwilliams@deq.virginia.gov.

### Total Maximum Daily Load (TMDL) - Neabsco Creek

Announcement of a water quality study to develop a total maximum daily load (TMDL) for a bacteria impairment in the free-flowing portion of Neabsco Creek.

Purpose of notice: The Virginia Department of Environmental Quality (DEQ) and the Virginia Department of Conservation and Recreation announce the second Technical Advisory Committee (TAC) meeting for the Neabsco Creek TMDL study.

Technical advisory committee meeting: Wednesday, July 18, 2007, 10 a.m. to noon, Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Conference Rooms 1 and 2, Woodbridge, Virginia 22193.

Meeting description: The purpose of the TAC will be to provide technical input and insight for the project, and to assist with stakeholder and public participation during the TMDL study.

Description of study: Virginia agencies are working to identify sources of bacteria pollution in an 8.42 mile segment of free-flowing Neabsco Creek. The impaired stream segment is located completely in Prince William County.

| Stream Name | Locality | Impair-ment | Length (miles) | Upstream Limit | Downstream Limit |
|---|---|---|---|---|---|
| Neabsco Creek | Prince William County | Bacteria | 8.42 | Confluence with an unnamed tributary to Neabsco Creek, near Dale City and approxi-mately 0.4 rivermiles downstream from Route 784 (on the tributary) | Start of the tidal waters of Neabsco Bay (just downstream from the Route 1 Bridge Crossing) |

During the study, DEQ will develop a total maximum daily load, or a TMDL, for the impaired stream segment. A TMDL is the total amount of a pollutant a water body can receive and still meet water quality standards. To restore water quality, pollutant levels have to be reduced to the TMDL allocated amount.

How to comment: The public comment period on the materials presented at the TAC meeting, including draft allocation scenarios, will extend from July 18, 2007, to August 17, 2007. DEQ accepts written comments by email, fax, or postal mail. Written comments should include the name, address, and telephone number of the person commenting, and be received by DEQ during the comment period. Please send all comments to the contact listed below.

Contact for additional information: Katie Conaway, Virginia Department of Environmental Quality, 13901 Crown Court, Woodbridge, VA 22193, telephone (703) 583-3804, email mkconaway@deq.virginia.gov.

### Commonwealth of Virginia State Implementation Plan (SIP) - Southwest Regional Office

The Department of Environmental Quality (DEQ) will hold a public hearing on a proposed revision to the Commonwealth of Virginia State Implementation Plan (SIP). The hearing will be held in the DEQ Southwest Regional Office, 355 Deadmore Street, Abingdon, Virginia, at 6 p.m. on July 16, 2007, to accept testimony concerning the proposed revision. Using the procedures explained below, the department will also accept written comments not presented at the hearing until 5 p.m., July 16, 2007.

This notice is hereby given in accordance with the requirements of 40 CFR 51.102. The proposal will be submitted as a revision to the Commonwealth of Virginia SIP under § 110(a) of the federal Clean Air Act in accordance with 40 CFR 51.104.

The proposed revision consists of an ozone air quality maintenance plan to satisfy requirements of the Environmental Protection Agency (EPA) Phase I eight-hour Ozone implementation rule and § 110(a)(1) of the Clean Air Act for the White Top Mountain one-hour ozone nonattainment area. For the eight-hour ozone standard, the White Top Mountain area was designated attainment/unclassifiable on April 30, 2004 (69 FR 23942), effective June 15, 2004. The Phase I eight-hour ozone implementation rule, also published on April 30, 2004 (69 FR 23951), provides that the one-hour ozone National Ambient Air Quality Standard (NAAQS) would no longer apply for an area one year following the effective date of the area's designation for the eight-hour ozone NAAQS. The Phase I implementation rule stipulates anti-backsliding requirements for areas designated attainment or unclassifiable for the eight-hour ozone standard but were nonattainment under the one-hour ozone standard. It requires that these areas submit a 10-year maintenance plan that demonstrates that the area will continue to meet the NAAQS over the 10-year period of the plan.

All comments not presented at the hearing must be received by the department by 5 p.m., July 16, 2007, to be considered. It is preferred that all comments be provided in writing, along with any supporting documents or exhibits; however, oral comments will be accepted at the hearing. Comments may be submitted by mail, facsimile transmission, email, or by personal appearance at the hearing. Comments on the maintenance plan must be submitted to Doris A. McLeod, Air Quality Planner, Air Planning Programs, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4197, FAX (804) 698-4510, or email damcleod@deq.virginia.gov. Comments by facsimile transmission will be accepted only if followed

by receipt of the original within one week. Comments by email will be accepted only if the name, address, and phone number of the commenter are included. All testimony, exhibits and documents received are matters of public record. The proposal and any supporting documents subject to this public hearing may be examined by the public at the DEQ Main Street Office, 8th Floor, 629 East Main Street, Richmond, Virginia, (804) 698-4070 and the DEQ Southwest Regional Office, 355 Deadmore Street, Abingdon, Virginia (276) 676-4800, between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period. The documents may also be viewed at the following website: http://www.deq.virginia.gov/air/permitting/planotes.html.

### Notice of New Toxic Contaminants 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 some 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 2006. The routine fish and sediment monitoring in 2006 was performed at selected sites in the Rappahannock River basin drainage, the Roanoke River basin drainage, sites in the Blackwater River basin and the Nottoway River basins as well as some other smaller waterbodies elsewhere in Virginia. Contaminant concentration data for polychlorinated biphenyls (PCBs) in the fish samples collected in 2006 that have been received from the lab as of June 1, 2006, have been posted on the DEQ website at http://www.deq.virginia.gov/fishtissue/fishtissue.html.

The remaining data from the 2006 fish and sediment collections will be posted on this website in the near future, soon after receipt from the analytical lab.

For additional formation contact Alex Barron directly at (804) 698-4119, or email ambarron@deq.virginia.gov, or call toll free 1-800-592-5482 and request Mr. Barron.

## DEPARTMENT OF LABOR AND INDUSTRY

### Notice of Periodic Review of Regulation

Pursuant of Executive Order 36 (2006), the Department of Labor and Industry is conducting a periodic review and invites public comment on the following regulation.

16 VAC 15-10, Public Participation Guidelines.

The department will consider whether this existing regulation is essential to protecting public health, safety and welfare. The department welcomes specific comments on the performance and effectiveness of this regulation and also requests suggestions to improve the content and organization of the regulation to make it more understandable and useful.

The goals of this regulation are as follows:

1. To provide and publish a fair process for adopting regulations and gaining public participation in rule-making and public meetings.

2. To protect the public's health, safety, and welfare with the least possible cost and intrusiveness to citizens and businesses in the Commonwealth.

3. To ensure the public is informed of any new regulations or amendments to existing regulations and that the public has the opportunity to comment on the changes throughout the process.

Comments on this regulation are welcome. The comment period begins on July 9, 2007, and comments will be accepted until 5 p.m. on July 31, 2007. Comments may be mailed to Reba O'Connor, Virginia Department of Labor and Industry, Powers-Taylor Building, 13 South 13th Street, Richmond, Virginia 23219, or emailed to reba.oconnor@doli.virginia.gov. Commenters should include full name and mailing address.

Regulations may be viewed online at the Virginia Regulatory Town Hall site located at http:www.townhall.state.va.us.

### Notice of Periodic Review of Regulation

Pursuant of Executive Order 36 (2006), the Department of Labor and Industry is conducting a periodic review and invites public comment on the following regulation.

16 VAC 15-30, Virginia Rules and Regulations Declaring Hazardous Occupations

The department will consider whether this existing regulation is essential to protecting public health, safety and welfare. The department welcomes specific comments on the performance and effectiveness of this regulation and also requests suggestions to improve the content and organization of the regulation to make it more understandable and useful.

The goals of this regulation are as follows:

1. To protect the health, welfare, and safety of minors in the Commonwealth by prohibiting their employment in hazardous occupations.

2. To protect the public's health, safety, and welfare with the least possible cost and intrusiveness to citizens and businesses in the Commonwealth.

Comments on this regulation are welcome. The comment period begins on July 9, 2007, and comments will be accepted until 5 p.m. on July 31, 2007. Comments may be mailed to Reba O'Connor, Virginia Department of Labor and Industry, Powers-Taylor Building, 13 South 13th Street, Richmond, Virginia 23219, or emailed to reba.oconnor@doli.virginia.gov. Commenters should include full name and mailing address.

Regulations may be viewed online at the Virginia Regulatory Town Hall site located at http:www.townhall.state.va.us.

### Notice of Periodic Review of Regulation

Pursuant to Executive Order 36 (2006), the Department of Labor and Industry is conducting a periodic review and invites public comment on the following regulation.

16 VAC 15-40, Virginia Hours of Work for Minors

The department will consider whether this existing regulation is essential to protecting public health, safety and welfare. The department welcomes specific comments on the performance and effectiveness of this regulation and also requests suggestions to improve the content and organization of the regulation to make it more understandable and useful.

The goals of this regulation are as follows:

1. To protect the health, welfare, and safety of minors in the Commonwealth by establishing maximum limits on the hours of work which minors under age 16 are allowed to work.

2. To protect the public's health, safety, and welfare with the least possible cost and intrusiveness to citizens and businesses in the Commonwealth.

Comments on this regulation are welcome. The comment period begins July 9, 2007, and comments will be accepted until 5 p.m. on July 31, 2007. Comments may be mailed to Reba O'Connor, Virginia Department of Labor and Industry, Powers-Taylor Building, 13 South 13th Street, Richmond, VA 23219, or emailed to reba.oconnor@doli.virginia.gov. Commenters should include full name and mailing address.

Regulations may be viewed online at the Virginia Regulatory Townhall site located at http:www.townhall.state.va.us.

### Notice of Periodic Review of Regulation

Pursuant to Executive Order 36 (2006), the Department of Labor and Industry is conducting a periodic review and invites public comment on the following regulation.

16 VAC 15-50, Regulation Governing the Employment of Minors on Farms, in Gardens and in Orchards

The department will consider whether this existing regulation is essential to protecting public health, safety and welfare. The department welcomes specific comments on the performance and effectiveness of this regulation and also requests suggestions to improve the content and organization of the regulation to make it more understandable and useful.

The goals of this regulation are as follows:

1. To protect the health, welfare, and safety of minors in the Commonwealth by prohibiting the employment of minors under age 16 from working in hazardous occupations.

2. To protect the public's health, safety, and welfare with the least possible cost and intrusiveness to citizens and businesses in the Commonwealth.

Comments on this regulation are welcome. The comment period begins July 9, 2007, and comments will be accepted until 5 p.m. on July 31, 2007. Comments may be mailed to Reba O'Connor, Virginia Department of Labor and Industry, Powers-Taylor Building, 13 South 13th Street, Richmond, VA 23219, or emailed to reba.oconnor@doli.virginia.gov. Commenters should include full name and mailing address.

Regulations may be viewed online at the Virginia Regulatory Townhall site located at http:www.townhall.state.va.us.

## DEPARTMENT OF MINES, MINERALS AND ENERGY

### Notice of Periodic Review of Regulation

Pursuant to Executive Order 36 (2006), The Virginia Department of Mines, Minerals and Energy (DMME) is conducting a periodic review and invites public comment on the following regulation:

4 VAC 25-145, Regulations on the Eligibility of Certain Mining Operators to Perform Reclamation Projects

The department will consider whether this existing regulation is essential to protecting the health, safety and welfare of the public. The department welcomes specific comments on the performance and effectiveness of this regulation and also requests suggestions to improve the content and organization of the regulation to make it more understandable and useful.

The comment period for this review begins on July 9, 2007, and ends at 5 p.m. on July 31, 2007. Comments may be submitted to Ann McDavid, AML Contracting Coordinator, Division of Mined Land Reclamation, P.O Drawer 900, Big Stone Gap, Virginia 24219-0900 or email ann.mcdavid@dmme.virginia.gov.

Regulations may be viewed online at the Virginia Regulatory Town Hall site located at http://www.townhall.state.va.us, or copies will be sent upon request.

## DEPARTMENT OF TRANSPORTATION

### Solicitation of Public Comment Concerning Development of Schedule of Reimbursement for Real Estate Appraisals of Property Acquired by VDOT for Transportation Purposes

The Virginia Department of Transportation (VDOT) plans to develop a Schedule of Reimbursement in accordance with provisions set out in § 25.1-417.1 of Chapter 895 of the 2007 Acts of Assembly concerning real estate appraisals of property acquired by VDOT for transportation purposes.

Whenever the Department of Transportation and an owner disagree concerning the acquisition of private property and

the Department of Transportation lawfully files a Certificate of Deposit/Certificate of Take, if authorized to do so, or files a Petition in Condemnation, the owner shall be entitled to partial payment for the cost of preparation of one written self contained or summary appraisal report as referenced in and that complies with the requirements of the Uniform Standards of Professional Appraisal Practice at that time whenever (i) the offer by the Department of Transportation exceeds $250,000 or (ii) the owner contends, in a responsive pleading filed by the owner, or other written form, that just compensation for the land and interests described in said Certificate or Petition in Condemnation exceeds $250,000. The amount of payment depends on the type of appraisal provided and shall not exceed $10,000.

The amount of payment shall be based upon a schedule developed by the Department of Transportation, taking into consideration factors it deems appropriate including, but not limited to the type of acquisition-whole or partial; the complexity of the appraisal (residential, commercial, industrial, agricultural or other); the location of the property within the Commonwealth; the zoning of the property, or its reasonably probable and imminent potential for rezoning.

Chapter 895 also provides that VDOT shall promulgate the Schedule of Reimbursement described above by October 1, 2007 to become effective that day. Finally, under the provisions of Chapter 895, this schedule is not subject to the requirements of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia), but public participation must be utilized by VDOT to receive comments and suggestions before the VDOT adopts the schedule. No formal public hearing will be held concerning the schedule prior to its adoption by VDOT.

Agency Contact: Michael McCall, Chief Appraiser, Right of Way & Utilities Division, Virginia Department of Transportation, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-3029, FAX (804) 786-1706, or email michael.mccall@vdot.virginia.gov.

## STATE WATER CONTROL BOARD

### Proposed Consent Special Order - Bristow Manor Golf Club

Purpose of notice: To invite citizens to comment on a proposed consent order for a Waste Water Treatment Plant in Prince William County, Virginia.

Public comment period: July 10, 2007, through August 9, 2007.

Consent order description: The State Water Control Board proposes to issue a consent order to Bristow Manor Golf Club to address alleged violations of Virginia's regulations. The Bristow Manor Golf Club and Waste Water Treatment Plant which serves the Golf Club and approximately 22 residences is located in Bristow, Virginia, in Prince William County. The consent order describes a settlement to resolve permit violations of the Waste Water Treatment Plant.

How to comment: DEQ accepts comments from the public by email, fax, or postal mail. All comments must include the name, address, and telephone number of the person commenting and be received by DEQ within the comment period. The public may review the proposed consent order at the DEQ office named below or on the DEQ website at www.deq.virginia.gov.

Contact for public comments, document requests, and additional information: Stephanie Bellotti, Northern Virginia Regional Office, 13901 Crown Court, Woodbridge, VA 22193, telephone (703) 583-3857, FAX (703) 583-3841, or email sabellotti@deq.virginia.gov.

### Proposed Consent Special Order - Turman Sawmill, Inc.

Purpose of notice: To seek public comment on a proposed consent order from the Department of Environmental Quality for a facility in Carroll County, Virginia.

Public comment period: July 9, 2007, to August 8, 2007.

Consent order description: The State Water Control Board proposes to issue a consent order to Turman Sawmill, Inc., to address alleged violations of VPDES General Permit No. VAR050098 and of Virginia's regulations. The location of the facility where the alleged violations occurred is 555 Expansion Drive, Hillsville, Virginia. The consent order describes a settlement to resolve alleged violations of permit requirements, failure to register above-ground storage tanks and develop an oil discharge contingency plan, and the release of an unknown amount of oil (diesel fuel).

How to comment: DEQ accepts comments from the public by email, fax or postal mail. All comments must include the name, address and telephone number of the person commenting and be received by DEQ within the comment period. The public may review the proposed consent order at the DEQ office named below or on the DEQ website at www.deq.virginia.gov.

Contact for public comments, document requests and additional information: Dallas R. Sizemore, Department of Environmental Quality, Southwest Regional Office, P.O. Box 1688, Abingdon, VA 24212-1688 (the office is located at 355 Deadmore Street, Abingdon, VA), telephone (276) 676-4800, FAX (276) 676-4899, or email drsizemore@deq.virginia.gov.

## VIRGINIA CODE COMMISSION

### Elimination of the Calendar of Events Section

Effective July 1, 2007, the Calendar of Events section will no longer be published in the Virginia Register of Regulations.

Chapter 300 of the 2007 Acts of Assembly amended the Administrative Process Act by eliminating the requirement that all state agency meeting notices be published in the Virginia Register. In lieu of publication in the Virginia Register, the Virginia Freedom of Information Act was amended to require that agencies post meeting notices on the agency's website and on the Commonwealth Calendar maintained by the Virginia Information Technologies Agency. To access the Commonwealth Calendar, please visit the Commonwealth of Virginia's homepage at www.virginia.gov and click on the calendar on the right side of the screen. Public hearing information will still be published in the Register and can be found with the corresponding proposed regulation.

### Notice to State Agencies

**Mailing Address:** Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219.

### 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