



Virginia Register of Regulations

VOL. 24 ISS.9

PUBLISHED EVERY OTHER WEEK BY THE VIRGINIA CODE COMMISSION

JANUARY 7, 2008

TABLE OF CONTENTS

Register Information Page	1079
Publication Schedule and Deadlines	1080
Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed ..	1081
Petitions for Rulemaking	1094
Notices of Intended Regulatory Action	1095
Regulations	1096
2VAC5-210. Rules and Regulations Pertaining to Meat and Poultry Inspection Under the Virginia Meat and Poultry Products Inspection Act (Final)	1096
6VAC40-50. Regulations for the Approval of Marijuana Field Tests for Detection of Marijuana Plant Material (Final)	1103
9VAC20-60. Virginia Hazardous Waste Management Regulations (Final)	1104
9VAC25-120. General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges from Petroleum Contaminated Sites and Hydrostatic Tests (Final)	1107
9VAC25-196. General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Cooling Water Discharges (Final)	1123
9VAC25-210. Virginia Water Protection Permit Program Regulation (Final)	1132
9VAC25-660. Virginia Water Protection General Permit for Impacts Less Than One-Half of an Acre (Final)	1144
9VAC25-670. Virginia Water Protection General Permit for Facilities and Activities of Utility and Public Service Companies Regulated by the Federal Energy Regulatory Commission or the State Corporation Commission and Other Utility Line Activities (Final)	1156
9VAC25-680. Virginia Water Protection General Permit for Linear Transportation Projects (Final)	1170
9VAC25-690. Virginia Water Protection General Permit for Impacts from Development and Certain Mining Activities (Final)	1188
12VAC30-50. Amount, Duration, and Scope of Medical and Remedial Care Services (Proposed)	1203
12VAC30-60. Standards Established and Methods Used to Assure High Quality Care (Proposed)	1204
12VAC30-80. Methods and Standards for Establishing Payment Rates; Other Types of Care (Proposed)	1204
12VAC30-120. Waivered Services (Proposed)	1204
16VAC20-20. Regulations Governing the Administration of Apprenticeship Programs in the Commonwealth of Virginia (Proposed)	1218
18VAC5-21. Board of Accountancy Regulations (Proposed)	1224
18VAC135-60. Common Interest Community Management Information Fund Regulations (Final)	1230
22VAC40-470. Exemptions Applicable to Public Assistance Programs (Final)	1231
22VAC40-685. Virginia Energy Assistance Program -- Home Energy Assistance Program (Final)	1231
General Notices/Errata	1233

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.

Members of the Virginia Code Commission: **R. Steven Landes**, Chairman; **John S. Edwards**, Vice Chairman; **Ryan T. McDougle**; **Robert Hurt**; **Robert L. Calhoun**; **Frank S. Ferguson**; **E.M. Miller, Jr.**; **Thomas M. Moncure, Jr.**; **James F. Almand**; **S. Bernard Goodwyn**.

Staff of the Virginia Register: **Jane D. Chaffin**, Registrar of Regulations; **June T. Chandler**, Assistant Registrar.

PUBLICATION SCHEDULE AND DEADLINES

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

January 2007 through September 2008

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
24:9	December 18, 2007 (Tuesday)	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 2 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
24:19	May 7, 2008	May 26, 2008
24:20	May 21, 2008	June 9, 2008
INDEX 3 Volume 24		July 2008
24:21	June 4, 2008	June 23, 2008
24:22	June 18, 2008	July 7, 2008
24:23	July 2, 2008	July 21, 2008
24:24	July 16, 2008	August 4, 2008
24:25	July 30, 2008	August 18, 2008
24:26	August 13, 2008	September 1, 2008
FINAL INDEX Volume 24		October 2008
25:1	August 27, 2008	September 15, 2008
25:2	September 10, 2008	September 29, 2008
25:3	September 24, 2008	October 13, 2008
25:4	October 8, 2008	October 27, 2008
25:5	October 22, 2008	November 10, 2008
25:6	November 5, 2008	November 24, 2008
25:7	November 19, 2008	December 8, 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 2007 VAC Supplement includes final regulations published through *Virginia Register* Volume 23, Issue 21, dated June 25, 2007). Emergency regulations, if any, are listed, followed by the designation "emer," and errata pertaining to final regulations are listed. Proposed regulations are not listed here. The table lists the sections in numerical order and shows action taken, the volume, issue and page number where the section appeared, and the effective date of the section.

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
Title 1. Administration			
1 VAC 55-30-10 through 1 VAC 55-30-90	Added	23:26 VA.R. 4413-4416	10/3/07
1 VAC 55-30-10 through 1 VAC 55-30-90	Erratum	24:7 VA.R. 940	--
Title 2. Agriculture			
2 VAC 5-110 (Forms)	Amended	23:26 VA.R. 4452	--
2 VAC 5-580-10 through 2 VAC 5-580-310	Repealed	24:2 VA.R. 72	10/16/07
2 VAC 5-585-10 through 2 VAC 5-585-4070	Added	24:2 VA.R. 72-133	10/16/07
Title 3. Alcoholic Beverages			
3 VAC 5-50-40	Amended	23:25 VA.R. 4107	*
3 VAC 5-50-50	Amended	23:25 VA.R. 4108	*
3 VAC 5-50-80	Amended	23:25 VA.R. 4108	*
3 VAC 5-50-100	Amended	23:25 VA.R. 4108	*
3 VAC 5-50-130	Amended	23:25 VA.R. 4109	*
3 VAC 5-50-140	Amended	23:25 VA.R. 4110	*
Title 4. Conservation and Natural Resources			
4 VAC 5-36-50	Amended	24:6 VA.R. 638	1/1/08
4 VAC 5-36-60	Amended	24:6 VA.R. 644	1/1/08
4 VAC 5-36-70	Amended	24:6 VA.R. 645	1/1/08
4 VAC 5-36-90	Amended	24:6 VA.R. 647	1/1/08
4 VAC 5-36-100	Amended	24:6 VA.R. 649	1/1/08
4 VAC 5-36-110	Amended	24:6 VA.R. 654	1/1/08
4 VAC 5-36-120	Amended	24:6 VA.R. 655	1/1/08
4 VAC 5-36-130	Amended	24:6 VA.R. 656	1/1/08
4 VAC 5-36-140	Amended	24:6 VA.R. 657	1/1/08
4 VAC 5-36-150	Amended	24:6 VA.R. 659	1/1/08
4 VAC 5-36-200	Amended	24:6 VA.R. 662	1/1/08
4 VAC 5-36-210	Amended	24:6 VA.R. 670	1/1/08
4 VAC 5-36-220	Amended	24:6 VA.R. 675	1/1/08
4 VAC 15-200-10	Amended	24:6 VA.R. 676	10/26/07
4 VAC 15-270-40	Amended	24:6 VA.R. 676	7/1/08
4 VAC 15-270-80	Added	24:6 VA.R. 676	10/26/07
4 VAC 15-270-90	Added	24:6 VA.R. 677	1/1/08
4 VAC 20-20-50	Amended	24:5 VA.R. 555	11/1/07
4 VAC 20-252-90	Amended	24:4 VA.R. 471	10/1/07
4 VAC 20-252-100	Amended	24:4 VA.R. 471	10/1/07
4 VAC 20-260-10	Amended	24:4 VA.R. 472	10/1/07
4 VAC 20-260-20	Amended	24:4 VA.R. 472	10/1/07
4 VAC 20-260-30	Amended	24:4 VA.R. 473	10/1/07

* Objection to Fast-Track Rulemaking 24:1

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
4 VAC 20-260-35	Added	24:4 VA.R. 474	10/1/07
4 VAC 20-260-40	Amended	24:4 VA.R. 474	10/1/07
4 VAC 20-260-60	Amended	24:4 VA.R. 474	10/1/07
4 VAC 20-610-20	Amended	24:8 VA.R. 959	12/1/07
4 VAC 20-610-25	Added	24:8 VA.R. 959	12/1/07
4 VAC 20-610-30	Amended	24:8 VA.R. 960	12/1/07
4 VAC 20-610-50	Amended	24:8 VA.R. 961	12/1/07
4 VAC 20-610-60	Amended	24:8 VA.R. 961	12/1/07
4 VAC 20-620-40 emer	Amended	24:8 VA.R. 962	11/28/07-12/27/07
4 VAC 20-650-20	Amended	24:4 VA.R. 474	10/1/07
4 VAC 20-650-30	Amended	24:4 VA.R. 475	10/1/07
4 VAC 20-650-40	Amended	24:4 VA.R. 475	10/1/07
4 VAC 20-720-20	Amended	24:4 VA.R. 475	10/1/07
4 VAC 20-720-20	Erratum	24:5 VA.R. 621	--
4 VAC 20-720-40 through 4VAC20-720-80	Amended	24:4 VA.R. 478-480	10/1/07
4 VAC 20-720-95	Added	24:4 VA.R. 480	10/1/07
4 VAC 20-720-110	Amended	24:4 VA.R. 480	10/1/07
4 VAC 20-755-10	Amended	24:2 VA.R. 133	9/1/07
4 VAC 20-755-20	Amended	24:2 VA.R. 133	9/1/07
4 VAC 20-755-30	Amended	24:2 VA.R. 136	9/1/07
4 VAC 20-910-45	Amended	24:5 VA.R. 556	11/1/07
4 VAC 20-960-45	Amended	24:8 VA.R. 964	1/1/08
4 VAC 20-960-47	Amended	24:8 VA.R. 964	1/1/08
4 VAC 20-1040-20	Amended	24:8 VA.R. 964	1/1/08
4 VAC 20-1090-30	Amended	24:8 VA.R. 965	12/1/07
4 VAC 20-1120-20	Amended	23:23 VA.R. 3871	6/28/07
4 VAC 20-1130-10 through 4 VAC 20-1130-70	Added	24:8 VA.R. 968-970	12/1/07
4 VAC 25-20 (Forms)	Amended	23:24 VA.R. 3968	--
4 VAC 25-50-10 through 4 VAC 25-50-110	Repealed	23:22 VA.R. 3696	8/8/07
4 VAC 25-130-777.17	Amended	23:22 VA.R. 3696	8/8/07
Title 5. Corporations			
5 VAC 5-30-10	Amended	23:23 VA.R. 3872	7/1/07
5 VAC 5-30-20	Amended	23:23 VA.R. 3872	7/1/07
5 VAC 5-30-30	Amended	23:23 VA.R. 3873	7/1/07
5 VAC 5-30-40	Amended	23:23 VA.R. 3873	7/1/07
5 VAC 5-30-50	Amended	23:23 VA.R. 3874	7/1/07
5 VAC 5-30-60	Amended	23:23 VA.R. 3874	7/1/07
5 VAC 5-30-70	Amended	23:23 VA.R. 3875	7/1/07
Title 6. Criminal Justice and Corrections			
6 VAC 15-20-10 through 6 VAC 15-20-230	Amended	23:22 VA.R. 3697-3703	8/9/07
6 VAC 15-61-10 through 6 VAC 15-61-300	Repealed	24:8 VA.R. 970	1/24/08
6 VAC 15-62-10 through 6 VAC 15-62-120	Added	24:8 VA.R. 970-979	1/24/08
6 VAC 20-120-40	Amended	23:25 VA.R. 4177	9/19/07
6 VAC 35-20-37 emer	Amended	23:25 VA.R. 4178	8/1/07-7/31/08
6 VAC 35-180-10 through 6 VAC 35-180-170	Added	24:5 VA.R. 557-561	1/1/08
6 VAC 35-190-10 through 6VAC35-190-110	Added	24:2 VA.R. 137-139	10/31/07
6 VAC 40-50-10 through 6VAC40-50-80 emer	Added	23:23 VA.R. 3876	7/1/06-12/29/07
Title 8. Education			
8 VAC 20-21-10 through 8 VAC 20-21-730	Repealed	23:25 VA.R. 4179	9/21/07
8 VAC 20-22-10 through 8 VAC 20-22-760	Added	23:25 VA.R. 4179-4214	9/21/07
8 VAC 20-160-10	Amended	23:23 VA.R. 3876	8/27/07

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
8 VAC 20-160-20	Amended	23:23 VA.R. 3878	8/27/07
8 VAC 20-160-30	Amended	23:23 VA.R. 3878	8/27/07
8 VAC 20-160-40	Amended	23:23 VA.R. 3879	8/27/07
8 VAC 20-160-50	Amended	23:23 VA.R. 3879	8/27/07
8 VAC 20-160-60	Amended	23:23 VA.R. 3879	8/27/07
8 VAC 20-190-10	Repealed	24:5 VA.R. 562	1/1/08
8 VAC 20-500-10	Repealed	24:5 VA.R. 563	1/1/08
8 VAC 20-541-10 through 8 VAC 20-541-60	Repealed	23:25 VA.R. 4214	9/21/07
8 VAC 20-542-10 through 8 VAC 20-542-600	Added	23:25 VA.R. 4214-4270	9/21/07
8 VAC 35-60-10	Added	24:1 VA.R. 25	8/28/07
8 VAC 35-60-20	Added	24:1 VA.R. 25	8/28/07
8 VAC 35-60-30	Added	24:1 VA.R. 25	8/28/07
8 VAC 40-140-10 through 8 VAC 40-140-90	Added	23:22 VA.R. 3704-3706	7/1/07
Title 9. Environment			
9 VAC 5-20-203	Amended	24:5 VA.R. 564	12/12/07
9 VAC 5-20-204	Amended	24:5 VA.R. 565	12/12/07
9 VAC 5-40-20	Amended	24:5 VA.R. 566	12/12/07
9 VAC 5-50-20	Amended	24:5 VA.R. 570	12/12/07
9 VAC 5-50-400	Amended	24:5 VA.R. 573	12/12/07
9 VAC 5-50-410	Amended	24:5 VA.R. 573	12/12/07
9 VAC 5-60-60	Amended	24:5 VA.R. 579	12/12/07
9 VAC 5-60-90	Amended	24:5 VA.R. 579	12/12/07
9 VAC 5-60-92	Added	24:5 VA.R. 579	12/12/07
9 VAC 5-60-95	Amended	24:5 VA.R. 579	12/12/07
9 VAC 5-60-100	Amended	24:5 VA.R. 580	12/12/07
9 VAC 5-91-20	Amended	24:5 VA.R. 587	12/12/07
9 VAC 5-140-1061	Added	24:6 VA.R. 679	12/26/07
9 VAC 5-140-1062	Added	24:6 VA.R. 680	12/26/07
9 VAC 5-140-2061	Added	24:6 VA.R. 681	12/26/07
9 VAC 5-140-2062	Added	24:6 VA.R. 682	12/26/07
9 VAC 5-140-3061	Added	24:6 VA.R. 683	12/26/07
9 VAC 5-140-3062	Added	24:6 VA.R. 683	12/26/07
9 VAC 5-140-3400	Amended	24:5 VA.R. 594	12/12/07
9 VAC 20-130-10	Amended	24:4 VA.R. 480	11/28/07
9 VAC 20-130-40	Amended	24:4 VA.R. 484	11/28/07
9 VAC 20-130-60	Amended	24:4 VA.R. 484	11/28/07
9 VAC 20-130-70	Amended	24:4 VA.R. 484	11/28/07
9 VAC 20-130-90	Amended	24:4 VA.R. 485	11/28/07
9 VAC 20-130-110	Amended	24:4 VA.R. 485	11/28/07
9 VAC 20-130-120	Amended	24:4 VA.R. 486	11/28/07
9 VAC 20-130-120	Erratum	24:6 VA.R. 889	--
9 VAC 20-130-125	Added	24:4 VA.R. 488	11/28/07
9 VAC 20-130-125	Erratum	24:6 VA.R. 889	--
9 VAC 20-130-130	Amended	24:4 VA.R. 489	11/28/07
9 VAC 20-130-140	Repealed	24:4 VA.R. 489	11/28/07
9 VAC 20-130-150	Repealed	24:4 VA.R. 489	11/28/07
9 VAC 20-130-165	Amended	24:4 VA.R. 489	11/28/07
9 VAC 20-130-175 through 9VAC20-130-230	Amended	24:4 VA.R. 490-493	11/28/07
9 VAC 20-130-200	Erratum	24:6 VA.R. 889	--
9 VAC 25-20-10	Amended	24:6 VA.R. 701	1/1/08

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
9 VAC 25-20-20	Amended	24:6 VA.R. 702	1/1/08
9 VAC 25-20-30	Repealed	24:6 VA.R. 702	1/1/08
9 VAC 25-20-40	Amended	24:6 VA.R. 702	1/1/08
9 VAC 25-20-50	Amended	24:6 VA.R. 703	1/1/08
9 VAC 25-20-60	Amended	24:6 VA.R. 703	1/1/08
9 VAC 25-20-90	Amended	24:6 VA.R. 704	1/1/08
9 VAC 25-20-100	Amended	24:6 VA.R. 704	1/1/08
9 VAC 25-20-110	Amended	24:6 VA.R. 705	1/1/08
9 VAC 25-20-120	Amended	24:6 VA.R. 706	1/1/08
9 VAC 25-20-130	Amended	24:6 VA.R. 708	1/1/08
9 VAC 25-20-146	Added	24:6 VA.R. 708	1/1/08
9 VAC 25-20-147	Added	24:6 VA.R. 709	1/1/08
9 VAC 25-20-148	Added	24:6 VA.R. 709	1/1/08
9 VAC 25-20-149	Added	24:6 VA.R. 709	1/1/08
9 VAC 25-31-100	Amended	24:3 VA.R. 313	11/14/07
9 VAC 25-31-100	Amended	24:6 VA.R. 711	1/1/08
9 VAC 25-31-120	Amended	24:3 VA.R. 309	11/14/07
9 VAC 25-31-165	Amended	24:3 VA.R. 333	11/14/07
9 VAC 25-31-220	Amended	24:6 VA.R. 731	1/1/08
9 VAC 25-31-290	Amended	24:6 VA.R. 735	1/1/08
9 VAC 25-31-460	Amended	24:6 VA.R. 738	1/1/08
9 VAC 25-31-475	Added	24:6 VA.R. 738	1/1/08
9 VAC 25-31-485	Added	24:6 VA.R. 738	1/1/08
9 VAC 25-31-505	Added	24:6 VA.R. 739	1/1/08
9 VAC 25-32-40	Amended	24:6 VA.R. 739	1/1/08
9 VAC 25-32-60	Amended	24:6 VA.R. 739	1/1/08
9 VAC 25-32-80	Amended	24:6 VA.R. 740	1/1/08
9 VAC 25-32-100	Amended	24:6 VA.R. 743	1/1/08
9 VAC 25-32-140	Amended	24:6 VA.R. 743	1/1/08
9 VAC 25-32-210	Amended	24:6 VA.R. 744	1/1/08
9 VAC 25-32-220	Amended	24:6 VA.R. 745	1/1/08
9 VAC 25-32-240	Amended	24:6 VA.R. 745	1/1/08
9 VAC 25-32-300	Amended	24:6 VA.R. 745	1/1/08
9 VAC 25-32-310 through 9 VAC 25-32-760	Added	24:6 VA.R. 746-781	1/1/08
9 VAC 25-260-5	Amended	24:4 VA.R. 536	8/14/07
9 VAC 25-260-30	Amended	24:2 VA.R. 139	9/11/07
9 VAC 25-260-30	Amended	24:2 VA.R. 140	9/11/07
9 VAC 25-260-30	Amended	24:7 VA.R. 908	**
9 VAC 25-260-50	Amended	24:4 VA.R. 536	8/14/07
9 VAC 25-260-187	Added	24:4 VA.R. 536	8/14/07
9 VAC 25-260-310	Amended	24:4 VA.R. 536	8/14/07
9 VAC 25-260-480	Amended	24:4 VA.R. 536	8/14/07
9 VAC 25-720-50	Amended	23:23 VA.R. 3881	10/22/07
9 VAC 25-720-50	Amended	23:23 VA.R. 3888	10/22/07
9 VAC 25-720-50	Amended	23:23 VA.R. 3895	10/22/07
9 VAC 25-720-50	Amended	24:2 VA.R. 140	11/15/07
9 VAC 25-720-80	Amended	23:23 VA.R. 3901	10/22/07
9 VAC 25-720-90	Amended	24:2 VA.R. 147	11/15/07
9 VAC 25-790-10	Amended	24:6 VA.R. 784	1/1/08

** Effective upon filing notice of U.S. EPA approval with Registrar.

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
9 VAC 25-790-50	Amended	24:6 VA.R. 787	1/1/08
9 VAC 25-790-60	Amended	24:6 VA.R. 787	1/1/08
9 VAC 25-790-120	Amended	24:6 VA.R. 788	1/1/08
9 VAC 25-790-130	Amended	24:6 VA.R. 790	1/1/08
9 VAC 25-790-150	Amended	24:6 VA.R. 790	1/1/08
9 VAC 25-790-180	Amended	24:6 VA.R. 791	1/1/08
9 VAC 25-790-200	Amended	24:6 VA.R. 791	1/1/08
9 VAC 25-790-240	Amended	24:6 VA.R. 791	1/1/08
9 VAC 25-790-540	Amended	24:6 VA.R. 792	1/1/08
9 VAC 25-790-550	Amended	24:6 VA.R. 792	1/1/08
9 VAC 25-790-570	Amended	24:6 VA.R. 795	1/1/08
9 VAC 25-790-580	Amended	24:6 VA.R. 797	1/1/08
9 VAC 25-790-590	Amended	24:6 VA.R. 797	1/1/08
9 VAC 25-790-600	Amended	24:6 VA.R. 798	1/1/08
9 VAC 25-790-660	Amended	24:6 VA.R. 799	1/1/08
9 VAC 25-790-880	Amended	24:6 VA.R. 799	1/1/08
Title 11. Gaming			
11 VAC 10-45-10	Amended	24:5 VA.R. 595	12/12/07
11 VAC 10-45-25	Added	24:5 VA.R. 596	12/12/07
Title 12. Health			
12 VAC 5-31-2300 through 12VAC5-31-2970	Added	24:6 VA.R. 806-818	1/1/08
12 VAC 5-40-10 through 12VAC5-40-190	Repealed	24:6 VA.R. 806	1/1/08
12 VAC 5-90-80 emer	Amended	24:5 VA.R. 597	10/24/07-10/23/08
12 VAC 5-125-10 through 12 VAC 5-125-180	Added	23:23 VA.R. 3904-3919	9/1/07
12 VAC 5-421-10	Amended	24:2 VA.R. 149	10/16/07
12 VAC 5-421-90	Amended	24:2 VA.R. 157	10/16/07
12 VAC 5-421-100	Amended	24:2 VA.R. 157	10/16/07
12 VAC 5-421-120	Amended	24:2 VA.R. 158	10/16/07
12 VAC 5-421-140	Amended	24:2 VA.R. 158	10/16/07
12 VAC 5-421-160	Amended	24:2 VA.R. 159	10/16/07
12 VAC 5-421-170	Amended	24:2 VA.R. 159	10/16/07
12 VAC 5-421-180	Amended	24:2 VA.R. 159	10/16/07
12 VAC 5-421-190	Amended	24:2 VA.R. 159	10/16/07
12 VAC 5-421-200	Amended	24:2 VA.R. 160	10/16/07
12 VAC 5-421-230	Amended	24:2 VA.R. 160	10/16/07
12 VAC 5-421-250	Amended	24:2 VA.R. 160	10/16/07
12 VAC 5-421-270	Amended	24:2 VA.R. 160	10/16/07
12 VAC 5-421-295	Added	24:2 VA.R. 160	10/16/07
12 VAC 5-421-300	Amended	24:2 VA.R. 160	10/16/07
12 VAC 5-421-330	Amended	24:2 VA.R. 161	10/16/07
12 VAC 5-421-340	Amended	24:2 VA.R. 161	10/16/07
12 VAC 5-421-350	Amended	24:2 VA.R. 161	10/16/07
12 VAC 5-421-360	Amended	24:2 VA.R. 161	10/16/07
12 VAC 5-421-430	Amended	24:2 VA.R. 162	10/16/07
12 VAC 5-421-440	Amended	24:2 VA.R. 162	10/16/07
12 VAC 5-421-450	Amended	24:2 VA.R. 162	10/16/07
12 VAC 5-421-460	Added	24:2 VA.R. 162	10/16/07
12 VAC 5-421-500	Amended	24:2 VA.R. 162	10/16/07
12 VAC 5-421-520	Amended	24:2 VA.R. 163	10/16/07
12 VAC 5-421-530	Amended	24:2 VA.R. 163	10/16/07

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 5-421-550	Amended	24:2 VA.R. 163	10/16/07
12 VAC 5-421-560	Amended	24:2 VA.R. 163	10/16/07
12 VAC 5-421-570	Amended	24:2 VA.R. 163	10/16/07
12 VAC 5-421-580	Amended	24:2 VA.R. 163	10/16/07
12 VAC 5-421-590	Amended	24:2 VA.R. 164	10/16/07
12 VAC 5-421-600	Amended	24:2 VA.R. 164	10/16/07
12 VAC 5-421-620	Amended	24:2 VA.R. 164	10/16/07
12 VAC 5-421-670	Amended	24:2 VA.R. 164	10/16/07
12 VAC 5-421-680	Amended	24:2 VA.R. 164	10/16/07
12 VAC 5-421-700	Amended	24:2 VA.R. 164	10/16/07
12 VAC 5-421-720	Amended	24:2 VA.R. 166	10/16/07
12 VAC 5-421-760	Amended	24:2 VA.R. 166	10/16/07
12 VAC 5-421-765	Added	24:2 VA.R. 166	10/16/07
12 VAC 5-421-780	Amended	24:2 VA.R. 166	10/16/07
12 VAC 5-421-790	Amended	24:2 VA.R. 166	10/16/07
12 VAC 5-421-800	Amended	24:2 VA.R. 167	10/16/07
12 VAC 5-421-820	Amended	24:2 VA.R. 167	10/16/07
12 VAC 5-421-830	Amended	24:2 VA.R. 167	10/16/07
12 VAC 5-421-840	Amended	24:2 VA.R. 169	10/16/07
12 VAC 5-421-850	Amended	24:2 VA.R. 169	10/16/07
12 VAC 5-421-860	Amended	24:2 VA.R. 170	10/16/07
12 VAC 5-421-870	Amended	24:2 VA.R. 170	10/16/07
12 VAC 5-421-880	Added	24:2 VA.R. 171	10/16/07
12 VAC 5-421-890	Added	24:2 VA.R. 171	10/16/07
12 VAC 5-421-900	Added	24:2 VA.R. 171	10/16/07
12 VAC 5-421-910	Added	24:2 VA.R. 171	10/16/07
12 VAC 5-421-920	Added	24:2 VA.R. 171	10/16/07
12 VAC 5-421-930	Added	24:2 VA.R. 171	10/16/07
12 VAC 5-421-940	Amended	24:2 VA.R. 172	10/16/07
12 VAC 5-421-950	Amended	24:2 VA.R. 172	10/16/07
12 VAC 5-421-960	Amended	24:2 VA.R. 173	10/16/07
12 VAC 5-421-970	Amended	24:2 VA.R. 173	10/16/07
12 VAC 5-421-990	Amended	24:2 VA.R. 173	10/16/07
12 VAC 5-421-1000	Amended	24:2 VA.R. 173	10/16/07
12 VAC 5-421-1010	Amended	24:2 VA.R. 173	10/16/07
12 VAC 5-421-1020	Amended	24:2 VA.R. 173	10/16/07
12 VAC 5-421-1030	Amended	24:2 VA.R. 173	10/16/07
12 VAC 5-421-1040	Amended	24:2 VA.R. 173	10/16/07
12 VAC 5-421-1070	Amended	24:2 VA.R. 174	10/16/07
12 VAC 5-421-1090	Amended	24:2 VA.R. 174	10/16/07
12 VAC 5-421-1120	Amended	24:2 VA.R. 174	10/16/07
12 VAC 5-421-1200	Amended	24:2 VA.R. 174	10/16/07
12 VAC 5-421-1260	Amended	24:2 VA.R. 174	10/16/07
12 VAC 5-421-1270	Amended	24:2 VA.R. 174	10/16/07
12 VAC 5-421-1300	Amended	24:2 VA.R. 174	10/16/07
12 VAC 5-421-1310	Amended	24:2 VA.R. 174	10/16/07
12 VAC 5-421-1320	Amended	24:2 VA.R. 175	10/16/07
12 VAC 5-421-1330	Amended	24:2 VA.R. 175	10/16/07
12 VAC 5-421-1340	Amended	24:2 VA.R. 175	10/16/07
12 VAC 5-421-1350	Amended	24:2 VA.R. 175	10/16/07
12 VAC 5-421-1360	Amended	24:2 VA.R. 175	10/16/07

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 5-421-1370	Amended	24:2 VA.R. 176	10/16/07
12 VAC 5-421-1460	Amended	24:2 VA.R. 176	10/16/07
12 VAC 5-421-1510	Amended	24:2 VA.R. 176	10/16/07
12 VAC 5-421-1520	Amended	24:2 VA.R. 176	10/16/07
12 VAC 5-421-1530	Amended	24:2 VA.R. 177	10/16/07
12 VAC 5-421-1540	Amended	24:2 VA.R. 177	10/16/07
12 VAC 5-421-1620	Amended	24:2 VA.R. 177	10/16/07
12 VAC 5-421-1640	Amended	24:2 VA.R. 177	10/16/07
12 VAC 5-421-1660	Amended	24:2 VA.R. 177	10/16/07
12 VAC 5-421-1670	Amended	24:2 VA.R. 178	10/16/07
12 VAC 5-421-1680	Amended	24:2 VA.R. 178	10/16/07
12 VAC 5-421-1690	Amended	24:2 VA.R. 178	10/16/07
12 VAC 5-421-1700	Amended	24:2 VA.R. 178	10/16/07
12 VAC 5-421-1710	Amended	24:2 VA.R. 179	10/16/07
12 VAC 5-421-1720	Amended	24:2 VA.R. 179	10/16/07
12 VAC 5-421-1730	Amended	24:2 VA.R. 179	10/16/07
12 VAC 5-421-1750	Amended	24:2 VA.R. 179	10/16/07
12 VAC 5-421-1760	Amended	24:2 VA.R. 179	10/16/07
12 VAC 5-421-1780	Amended	24:2 VA.R. 179	10/16/07
12 VAC 5-421-1810	Amended	24:2 VA.R. 180	10/16/07
12 VAC 5-421-1820	Amended	24:2 VA.R. 180	10/16/07
12 VAC 5-421-1880	Amended	24:2 VA.R. 180	10/16/07
12 VAC 5-421-1890	Amended	24:2 VA.R. 180	10/16/07
12 VAC 5-421-1900	Amended	24:2 VA.R. 180	10/16/07
12 VAC 5-421-1960	Amended	24:2 VA.R. 181	10/16/07
12 VAC 5-421-2010	Amended	24:2 VA.R. 181	10/16/07
12 VAC 5-421-2080	Amended	24:2 VA.R. 181	10/16/07
12 VAC 5-421-2190	Amended	24:2 VA.R. 181	10/16/07
12 VAC 5-421-2200	Amended	24:2 VA.R. 181	10/16/07
12 VAC 5-421-2210	Amended	24:2 VA.R. 181	10/16/07
12 VAC 5-421-2270	Amended	24:2 VA.R. 181	10/16/07
12 VAC 5-421-2310	Amended	24:2 VA.R. 182	10/16/07
12 VAC 5-421-2320	Amended	24:2 VA.R. 182	10/16/07
12 VAC 5-421-2520	Amended	24:2 VA.R. 182	10/16/07
12 VAC 5-421-2630	Amended	24:2 VA.R. 182	10/16/07
12 VAC 5-421-2680	Amended	24:2 VA.R. 182	10/16/07
12 VAC 5-421-2710	Amended	24:2 VA.R. 182	10/16/07
12 VAC 5-421-2790	Amended	24:2 VA.R. 182	10/16/07
12 VAC 5-421-2810	Amended	24:2 VA.R. 182	10/16/07
12 VAC 5-421-2820	Amended	24:2 VA.R. 183	10/16/07
12 VAC 5-421-2840	Amended	24:2 VA.R. 183	10/16/07
12 VAC 5-421-2850	Amended	24:2 VA.R. 183	10/16/07
12 VAC 5-421-2870	Amended	24:2 VA.R. 183	10/16/07
12 VAC 5-421-2880	Amended	24:2 VA.R. 183	10/16/07
12 VAC 5-421-2930	Amended	24:2 VA.R. 183	10/16/07
12 VAC 5-421-2990	Amended	24:2 VA.R. 184	10/16/07
12 VAC 5-421-3040	Amended	24:2 VA.R. 184	10/16/07
12 VAC 5-421-3120	Amended	24:2 VA.R. 184	10/16/07
12 VAC 5-421-3200	Amended	24:2 VA.R. 184	10/16/07
12 VAC 5-421-3210	Amended	24:2 VA.R. 184	10/16/07

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 5-421-3230	Amended	24:2 VA.R. 184	10/16/07
12 VAC 5-421-3310	Amended	24:2 VA.R. 184	10/16/07
12 VAC 5-421-3370	Amended	24:2 VA.R. 185	10/16/07
12 VAC 5-421-3380	Amended	24:2 VA.R. 185	10/16/07
12 VAC 5-421-3450	Amended	24:2 VA.R. 185	10/16/07
12 VAC 5-421-3510	Amended	24:2 VA.R. 185	10/16/07
12 VAC 5-421-3560	Amended	24:2 VA.R. 185	10/16/07
12 VAC 5-421-3580	Amended	24:2 VA.R. 185	10/16/07
12 VAC 5-421-3590	Amended	24:2 VA.R. 186	10/16/07
12 VAC 5-421-3620	Amended	24:2 VA.R. 186	10/16/07
12 VAC 5-421-3660	Amended	24:2 VA.R. 186	10/16/07
12 VAC 5-421-3700	Amended	24:2 VA.R. 186	10/16/07
12 VAC 5-421-3750	Amended	24:2 VA.R. 187	10/16/07
12 VAC 5-421-3760	Amended	24:2 VA.R. 188	10/16/07
12 VAC 5-421-3800	Amended	24:2 VA.R. 188	10/16/07
12 VAC 5-421-3815	Added	24:2 VA.R. 188	10/16/07
12 VAC 5-421-3860	Amended	24:2 VA.R. 188	10/16/07
12 VAC 5-421-3900	Amended	24:2 VA.R. 188	10/16/07
12 VAC 5-421-3960	Amended	24:2 VA.R. 189	10/16/07
12 VAC 5-421-3970	Amended	24:2 VA.R. 189	10/16/07
12 VAC 5-421-4000	Amended	24:2 VA.R. 189	10/16/07
12 VAC 5-421-4035	Added	24:2 VA.R. 190	10/16/07
12 VAC 5-421-4050	Amended	24:2 VA.R. 191	10/16/07
12 VAC 5-421-4070	Amended	24:2 VA.R. 191	10/16/07
12 VAC 5-585-70	Amended	24:5 VA.R. 602	12/17/07
12 VAC 5-585-510	Amended	24:5 VA.R. 602	12/17/07
12 VAC 5-585-600	Amended	24:5 VA.R. 607	12/17/07
12 VAC 5-585-610	Amended	24:5 VA.R. 607	12/17/07
12 VAC 5-585-620	Amended	24:5 VA.R. 612	12/17/07
12 VAC 5-585-630	Amended	24:5 VA.R. 614	12/17/07
12 VAC 5-585-760 through 12 VAC 5-585-830	Added	23:25 VA.R. 4298-4301	10/1/07
12 VAC 30-10-820	Added	24:2 VA.R. 191	10/31/07
12 VAC 30-60-500 emer	Added	23:26 VA.R. 4427	8/8/07-8/7/08
12 VAC 30-80-40 emer	Amended	24:3 VA.R. 377	10/1/07-9/30/08
12 VAC 30-120	Erratum	23:24 VA.R. 4080	--
12 VAC 30-120-370 emer	Amended	23:24 VA.R. 4029	9/1/07-8/31/08
12 VAC 30-120-380 emer	Amended	23:24 VA.R. 4032	9/1/07-8/31/08
12 VAC 30-120-1500 through 12VAC30-120-1550	Added	24:6 VA.R. 819-829	12/26/07
12 VAC 30-135-100 through 12VAC30-135-360	Added	24:2 VA.R. 196-218	12/1/07
12 VAC 35-115-10 through 12 VAC 35-115-250	Amended	23:25 VA.R. 4301-4340	9/19/07
12 VAC 35-115-90	Erratum	24:6 VA.R. 889	--
12 VAC 35-115-145	Added	23:25 VA.R. 4329	9/19/07
12 VAC 35-115-146	Added	23:25 VA.R. 4330	9/19/07
12 VAC 35-115-160	Repealed	23:25 VA.R. 4332	9/19/07
Title 13. Housing			
13 VAC 5-31	Erratum	23:24 VA.R. 4079	--
13 VAC 5-91	Erratum	23:24 VA.R. 4080	--
13 VAC 5-112-340	Amended	24:8 VA.R. 979	1/23/08
13 VAC 10-40-20	Amended	24:7 VA.R. 911	11/13/07
13 VAC 10-40-60	Amended	24:7 VA.R. 914	11/13/07
13 VAC 10-40-80	Amended	24:7 VA.R. 915	11/13/07

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
13 VAC 10-40-100	Amended	24:7 VA.R. 916	11/13/07
13 VAC 10-40-110	Amended	24:7 VA.R. 917	11/13/07
13 VAC 10-40-120	Amended	24:7 VA.R. 917	11/13/07
13 VAC 10-40-130	Amended	24:7 VA.R. 917	11/13/07
13 VAC 10-40-170	Amended	24:7 VA.R. 920	11/13/07
13 VAC 10-40-190	Amended	24:7 VA.R. 920	11/13/07
13 VAC 10-40-210	Amended	24:7 VA.R. 921	11/13/07
13 VAC 10-40-230	Amended	24:7 VA.R. 921	11/13/07
Title 14. Insurance			
14 VAC 5-215-20	Amended	23:22 VA.R. 3768	7/1/07
14 VAC 5-215-30	Amended	23:22 VA.R. 3768	7/1/07
14 VAC 5-215-50	Amended	23:22 VA.R. 3769	7/1/07
14 VAC 5-215-60	Amended	23:22 VA.R. 3770	7/1/07
14 VAC 5-215-80	Amended	23:22 VA.R. 3770	7/1/07
14 VAC 5-420-10 through 14 VAC 5-420-60	Added	24:7 VA.R. 926-931	2/15/08
Title 16. Labor and Employment			
16 VAC 15-21-30	Amended	23:23 VA.R. 3933	8/23/07
16 VAC 25-90-1910.6	Amended	24:1 VA.R. 26	12/15/07
16 VAC 25-90-1910.66 Appendix D	Amended	24:1 VA.R. 26	12/15/07
16 VAC 25-90-1910.302 through 16 VAC 25-90-1910.308	Amended	24:1 VA.R. 26	12/15/07
16 VAC 25-90-1910.399 Subpart S Appendix A	Amended	24:1 VA.R. 26	12/15/07
Title 18. Professional and Occupational Licensing			
18 VAC 41-70-10 through 18 VAC 41-70-280	Added	23:25 VA.R. 4349-4359	9/20/07
18 VAC 50-30-10	Amended	24:3 VA.R. 416	11/15/07
18 VAC 50-30-40	Amended	24:3 VA.R. 418	11/15/07
18 VAC 50-30-90	Amended	24:3 VA.R. 419	11/15/07
18 VAC 50-30-100	Amended	24:3 VA.R. 419	11/15/07
18 VAC 50-30-120	Amended	24:3 VA.R. 419	11/15/07
18 VAC 50-30-130	Amended	24:3 VA.R. 420	11/15/07
18 VAC 50-30-190	Amended	24:3 VA.R. 421	11/15/07
18 VAC 50-30-200	Amended	24:3 VA.R. 422	11/15/07
18 VAC 50-30-220	Amended	24:3 VA.R. 422	11/15/07
18 VAC 60-20-17	Amended	24:3 VA.R. 424	11/29/07
18 VAC 60-20-71	Amended	23:23 VA.R. 3934	8/22/07
18 VAC 65-10-10 through 18VAC65-10-80	Amended	24:2 VA.R. 226-228	11/15/07
18 VAC 65-10-100	Amended	24:2 VA.R. 228	11/15/07
18 VAC 65-10-110	Amended	24:2 VA.R. 228	11/15/07
18 VAC 65-10-120	Amended	24:2 VA.R. 228	11/15/07
18 VAC 85-20-140	Amended	24:1 VA.R. 27	10/17/07
18 VAC 85-20-235	Amended	23:25 VA.R. 4360	9/20/07
18 VAC 85-20-235	Amended	23:25 VA.R. 4361	9/20/07
18 VAC 85-20-290	Amended	23:23 VA.R. 3934	8/22/07
18 VAC 85-20-400 through 18 VAC 85-20-420	Adding	23:25 VA.R. 4362-4363	9/20/07
18 VAC 85-40-61	Amended	24:1 VA.R. 28	10/17/07
18 VAC 85-40-61	Amended	24:1 VA.R. 29	10/18/07
18 VAC 85-40-65	Amended	24:1 VA.R. 28	10/17/07
18 VAC 85-50-58	Amended	24:1 VA.R. 29	10/18/07
18 VAC 85-80-72	Amended	24:1 VA.R. 29	10/18/07
18 VAC 85-101-152	Amended	24:1 VA.R. 30	10/18/07
18 VAC 85-110-155	Amended	24:1 VA.R. 30	10/18/07

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 85-120-130	Amended	24:2 VA.R. 229	10/31/07
18 VAC 90-20-30	Amended	23:25 VA.R. 4363	10/1/07
18 VAC 90-20-225	Added	23:25 VA.R. 4364	10/1/07
18 VAC 90-30-240	Added	24:3 VA.R. 427	11/29/07
18 VAC 90-40-100	Amended	24:6 VA.R. 831	1/11/08
18 VAC 90-60-100	Amended	24:3 VA.R. 429	11/29/07
18 VAC 95-10-10 through 18VAC95-10-80	Amended	24:2 VA.R. 231-232	11/15/07
18 VAC 95-10-100	Amended	24:2 VA.R. 232	11/15/07
18 VAC 95-10-110	Amended	24:2 VA.R. 232	11/15/07
18 VAC 95-10-120	Amended	24:2 VA.R. 232	11/15/07
18 VAC 95-30-10 through 18VAC95-30-210	Added	24:6 VA.R. 832-837	1/2/08
18 VAC 105-20-10	Amended	23:22 VA.R. 3791	9/24/07
18 VAC 110-20-10	Amended	24:8 VA.R. 983	1/23/08
18 VAC 110-20-180	Erratum	24:3 VA.R. 444	--
18 VAC 110-20-321	Added	24:8 VA.R. 986	1/23/08
18 VAC 110-20-411 through 18 VAC 110-20-416	Repealed	24:8 VA.R. 986-987	1/23/08
18 VAC 110-40-10 through 18VAC110-40-50	Amended	24:3 VA.R. 430-431	11/14/07
18 VAC 112-20-81 emer	Added	24:4 VA.R. 497	11/1/07-10/31/08
18 VAC 112-20-90 emer	Amended	24:4 VA.R. 497	11/1/07-10/31/08
18 VAC 112-20-130 emer	Amended	24:4 VA.R. 498	11/1/07-10/31/08
18 VAC 112-20-131 emer	Amended	24:4 VA.R. 498	11/1/07-10/31/08
18 VAC 112-20-150 emer	Amended	24:4 VA.R. 499	11/1/07-10/31/08
18 VAC 120-40-10	Amended	23:24 VA.R. 4038	9/5/07
18 VAC 120-40-15	Added	23:24 VA.R. 4039	9/5/07
18 VAC 120-40-20	Amended	23:24 VA.R. 4039	9/5/07
18 VAC 120-40-60	Repealed	24:3 VA.R. 433	12/29/07
18 VAC 120-40-80 through 18VAC120-40-360	Amended	23:24 VA.R. 4040-4052	9/5/07
18 VAC 120-40-221	Added	23:24 VA.R. 4043	9/5/07
18 VAC 120-40-222	Added	23:24 VA.R. 4043	9/5/07
18 VAC 120-40-295	Added	23:24 VA.R. 4048	9/5/07
18 VAC 120-40-342	Added	23:24 VA.R. 4050	9/5/07
18 VAC 120-40-370	Repealed	23:24 VA.R. 4052	9/5/07
18 VAC 120-40-380	Repealed	23:24 VA.R. 4052	9/5/07
18 VAC 120-40-385	Added	23:24 VA.R. 4052	9/5/07
18 VAC 120-40-390	Amended	23:24 VA.R. 4053	9/5/07
18 VAC 120-40-400	Repealed	23:24 VA.R. 4053	9/5/07
18 VAC 120-40-410	Amended	23:24 VA.R. 4053	9/5/07
18 VAC 120-40-411	Added	23:24 VA.R. 4053	9/5/07
18 VAC 120-40-411.1 through 18VAC120-40-411.21	Added	23:24 VA.R. 4054-4064	9/5/07
18 VAC 120-40-415	Added	23:24 VA.R. 4064	9/5/07
18 VAC 120-40-415.1	Added	23:24 VA.R. 4065	9/5/07
18 VAC 120-40-415.2	Added	23:24 VA.R. 4065	9/5/07
18 VAC 120-40-415.3	Added	23:24 VA.R. 4065	9/5/07
18 VAC 120-40-420	Amended	23:24 VA.R. 4066	9/5/07
18 VAC 120-40-430	Amended	23:24 VA.R. 4066	9/5/07
18 VAC 130-20-10	Amended	24:6 VA.R. 838	1/1/08
18 VAC 130-20-30	Amended	24:6 VA.R. 842	1/1/08
18 VAC 130-20-60	Amended	24:6 VA.R. 843	1/1/08
18 VAC 130-20-110	Amended	24:6 VA.R. 844	1/1/08
18 VAC 130-20-170	Amended	24:6 VA.R. 844	1/1/08
18 VAC 130-20-180	Amended	24:6 VA.R. 844	1/1/08

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 130-20-210	Amended	24:6 VA.R. 846	1/1/08
18 VAC 130-20-220	Amended	24:6 VA.R. 847	1/1/08
18 VAC 130-20-230	Amended	24:6 VA.R. 847	1/1/08
18 VAC 135-30 (Forms)	Amended	24:1 VA.R. 41	--
18 VAC 135-40 (Forms)	Amended	24:1 VA.R. 43	--
18 VAC 135-50-10	Amended	23:22 VA.R. 3794	9/22/07
18 VAC 135-50-20	Amended	23:22 VA.R. 3795	9/22/07
18 VAC 135-50-220	Amended	23:22 VA.R. 3795	9/22/07
18 VAC 135-50-400	Amended	23:22 VA.R. 3795	9/22/07
18 VAC 150-10-10	Amended	23:23 VA.R. 3937	10/7/07
18 VAC 150-10-20	Amended	23:23 VA.R. 3937	10/7/07
18 VAC 150-10-30	Amended	23:23 VA.R. 3937	10/7/07
18 VAC 150-10-40	Amended	23:23 VA.R. 3938	10/7/07
18 VAC 150-10-50	Amended	23:23 VA.R. 3938	10/7/07
18 VAC 150-10-60	Amended	23:23 VA.R. 3938	10/7/07
18 VAC 150-10-70	Amended	23:23 VA.R. 3938	10/7/07
18 VAC 150-10-80	Amended	23:23 VA.R. 3938	10/7/07
18 VAC 150-10-100	Amended	23:23 VA.R. 3939	10/7/07
18 VAC 150-10-110	Amended	23:23 VA.R. 3939	10/7/07
18 VAC 150-10-120	Amended	23:23 VA.R. 3939	10/7/07
18 VAC 150-20-30	Amended	24:3 VA.R. 436	11/29/07
18 VAC 150-20-100	Amended	24:3 VA.R. 436	11/29/07
18 VAC 150-20-140	Amended	24:3 VA.R. 437	11/29/07
18 VAC 150-20-220	Added	24:3 VA.R. 438	11/29/07
18 VAC 150-20-230	Added	24:3 VA.R. 438	11/29/07
18 VAC 150-20-240	Added	24:3 VA.R. 438	11/29/07
Title 19. Public Safety			
19 VAC 30-70-6	Amended	24:8 VA.R. 988	3/1/08
19 VAC 30-70-7	Amended	24:8 VA.R. 988	3/1/08
19 VAC 30-70-9	Amended	24:8 VA.R. 989	3/1/08
19 VAC 30-70-10	Amended	24:8 VA.R. 991	3/1/08
19 VAC 30-70-40	Amended	24:8 VA.R. 994	3/1/08
19 VAC 30-70-50	Amended	24:8 VA.R. 995	3/1/08
19 VAC 30-70-60	Amended	24:8 VA.R. 997	3/1/08
19 VAC 30-70-80	Amended	24:8 VA.R. 998	3/1/08
19 VAC 30-70-90	Amended	24:8 VA.R. 1001	3/1/08
19 VAC 30-70-110 through 19 VAC 30-70-660	Amended	24:8 VA.R. 1001-1070	3/1/08
19 VAC 30-170-15	Amended	24:2 VA.R. 233	10/1/07
19 VAC 30-170-50	Amended	24:2 VA.R. 233	10/1/07
Title 20. Public Utilities and Telecommunications			
20 VAC 5-417-10	Amended	24:4 VA.R. 513	10/9/07
20 VAC 5-417-50	Amended	24:4 VA.R. 513	10/9/07
Title 21. Securities and Retail Franchising			
21 VAC 5-10-40	Amended	23:23 VA.R. 3940	7/1/07
21 VAC 5-20-65	Added	23:23 VA.R. 3942	7/1/07
21 VAC 5-20-95	Added	23:23 VA.R. 3942	7/1/07
21 VAC 5-20-280	Amended	23:23 VA.R. 3943	7/1/07
21 VAC 5-20-330	Amended	23:23 VA.R. 3947	7/1/07
21 VAC 5-80-65	Added	23:23 VA.R. 3949	7/1/07
21 VAC 5-80-160	Amended	23:23 VA.R. 3950	7/1/07

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
21 VAC 5-80-200	Amended	23:23 VA.R. 3954	7/1/07
21 VAC 5-110	Erratum	23:24 VA.R. 4079	--
21 VAC 5-110-65	Added	23:23 VA.R. 3959	7/1/07
21 VAC 5-110-75	Added	23:23 VA.R. 3960	7/1/07
Title 22. Social Services			
22 VAC 40-35-10	Amended	23:23 VA.R. 3962	9/1/07
22 VAC 40-35-80	Amended	23:23 VA.R. 3965	9/1/07
22 VAC 40-35-90	Amended	23:23 VA.R. 3965	9/1/07
22 VAC 40-35-100	Amended	23:23 VA.R. 3966	9/1/07
22 VAC 40-41-10 through 22 VAC 40-41-50	Amended	23:22 VA.R. 3796-3799	9/1/07
22 VAC 40-41-55	Amended	23:22 VA.R. 3799	9/1/07
22 VAC 40-41-60	Amended	23:22 VA.R. 3799	9/1/07
22 VAC 40-72-55	Added	24:5 VA.R. 616	12/12/07
22 VAC 40-72-367	Added	24:5 VA.R. 616	12/12/07
22 VAC 40-72-930	Amended	24:1 VA.R. 38	11/1/07
22 VAC 40-72-960	Amended	24:1 VA.R. 39	11/1/07
22 VAC 40-375-10 through 22 VAC 40-375-60	Repealed	24:5 VA.R. 616	12/12/07
22 VAC 40-770-10 through 22 VAC 40-770-160	Repealed	24:2 VA.R. 234	11/1/07
22 VAC 40-771-10 through 22 VAC 40-771-160	Added	24:2 VA.R. 234-242	11/1/07
22 VAC 42-10-10 through 22VAC42-10-1000	Repealed	24:6 VA.R. 849	12/28/07
22 VAC 42-11-10 through 22VAC42-11-1090	Added	24:6 VA.R. 850-885	12/28/07
Title 23. Taxation			
23 VAC 10-210-485	Amended	23:24 VA.R. 4069	9/6/07
23 VAC 10-210-693 emer	Amended	23:25 VA.R. 4364	7/26/07-07/25/08
23 VAC 10-210-6041	Amended	23:24 VA.R. 4068	9/6/07
23 VAC 10-210-6042	Amended	23:24 VA.R. 4069	9/6/07
23 VAC 10-210-6043	Amended	23:24 VA.R. 4069	9/6/07
23 VAC 10-240-20 through 23 VAC 10-240-60	Repealed	23:25 VA.R. 4372-4373	10/04/07
23 VAC 10-240-100	Repealed	23:25 VA.R. 4373	10/04/07
23 VAC 10-240-130	Repealed	23:25 VA.R. 4373	10/04/07
23 VAC 10-240-140	Repealed	23:25 VA.R. 4373	10/04/07
23 VAC 10-240-150	Repealed	23:25 VA.R. 4373	10/04/07
23 VAC 10-240-200	Repealed	23:25 VA.R. 4373	10/04/07
23 VAC 10-240-210	Repealed	23:25 VA.R. 4373	10/04/07
23 VAC 10-240-240	Repealed	23:25 VA.R. 4373	10/04/07
23 VAC 10-240-270	Repealed	23:25 VA.R. 4373	10/04/07
23 VAC 10-240-280	Repealed	23:25 VA.R. 4373	10/04/07
23 VAC 10-240-300	Repealed	23:25 VA.R. 4374	10/04/07
23 VAC 10-240-310	Repealed	23:25 VA.R. 4374	10/04/07
23 VAC 10-240-330	Repealed	23:25 VA.R. 4374	10/04/07
23 VAC 10-240-340	Repealed	23:25 VA.R. 4374	10/04/07
23 VAC 10-240-360	Repealed	23:25 VA.R. 4374	10/04/07
23 VAC 10-240-380	Repealed	23:25 VA.R. 4374	10/04/07
23 VAC 10-240-400	Repealed	23:25 VA.R. 4375	10/04/07
23 VAC 10-240-420	Repealed	23:25 VA.R. 4375	10/04/07
23 VAC 10-240-430	Repealed	23:25 VA.R. 4375	10/04/07
23 VAC 10-240-450	Repealed	23:25 VA.R. 4375	10/04/07
23 VAC 10-240-460	Repealed	23:25 VA.R. 4375	10/04/07
Title 24. Transportation and Motor Vehicles			
24 VAC 20-120-10 through 24VAC20-120-180	Repealed	24:4 VA.R. 516	1/1/08
24 VAC 20-121-10 through 24 VAC 20-121-220	Adding	24:4 VA.R. 516-529	1/1/08

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
24 VAC 22-20-10	Amended	24:3 VA.R. 439	12/1/07
24 VAC 22-20-20	Amended	24:3 VA.R. 440	12/1/07
24 VAC 27-10-10 through 24VAC27-10-120	Added	23:24 VA.R. 4071-4075	9/20/07
24 VAC 30-45-10	Added	24:2 VA.R. 243	10/1/07
24 VAC 30-45-20	Added	24:2 VA.R. 243	10/1/07
24 VAC 30-45-30	Added	24:2 VA.R. 244	10/1/07
24 VAC 30-200-10	Amended	24:4 VA.R. 529	11/28/07
24 VAC 30-200-20	Amended	24:4 VA.R. 530	11/28/07
24 VAC 30-200-30	Amended	24:4 VA.R. 531	11/28/07
24 VAC 30-200-35	Added	24:4 VA.R. 532	11/28/07
24 VAC 30-200-40	Amended	24:4 VA.R. 533	11/28/07

PETITIONS FOR RULEMAKING

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF MEDICINE

Agency Decision

Title of Regulation: **18VAC85-20. Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry and Chiropractic.**

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

Name of Petitioner: Dr. Dale Tidaback.

Nature of Petitioner's Request: Reduce the cost and continuing education requirements for persons reactivating or reinstating a license.

Agency's Decision: Request granted.

Statement of Reasons for Decision: The board decided to consider reduction to the fee for reinstatement of licensure in the context of the total fee structure for consistency with the principles for fee development that the department has adopted to guide all boards.

Agency Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4621, FAX (804) 527-4426, or email william.harp@dhp.virginia.gov.

VA.R. Doc. No. R08-02; Filed December 10, 2007, 10:37 a.m.

BOARD OF PHARMACY

Agency Decision

Title of Regulation: **18VAC110-20. Regulations Governing the Practice of Pharmacy.**

Statutory Authority: §54.1-2400 and Chapters 33 (§54.1-3300 et seq.) and 34 (§54.1-3400 et seq.) of Title 54.1 of the Code of Virginia.

Name of Petitioner: Ken Dandurand on behalf of MedNovations, Inc.

Nature of Petitioner's Request: Amend regulations to allow a nonresident pharmacy (licensed by Virginia) to remotely process a prescription for a Virginia patient in long-term care or a hospital by pharmacists not licensed in Virginia but licensed in the state where the nonresident pharmacy is located.

Agency Decision: Request denied.

Statement of Reasons for Decision: The board has denied the petition because it believes a requirement for a Virginia pharmacist to be involved in the dispensing process is necessary for public protection and for accountability in a

case of prescription error. There are differences in statutes and regulations governing the practice of pharmacy, so pharmacists who provide prescription processing for hospitals and long-term care facilities from remote locations need to be familiar with Virginia requirements for a prescription. Obtaining a license in Virginia is not burdensome but it does require passage of a jurisprudence examination, assuring familiarity with Virginia laws and regulations.

The petitioner cited 18VAC110-20-276 on remote processing of a prescription for retail pharmacies, but subsection B of that section does require that "a pharmacist licensed in Virginia, whether at the remote pharmacy or the dispensing pharmacy, shall perform a check for accuracy on all processing done by the remote processor." The board believes patients in hospitals and nursing homes should have the same protection.

Agency Contact: Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Richmond, VA 23233, telephone (804) 367-4578, FAX (804) 527-4472, or email scotti.russell@dhp.virginia.gov.

VA.R. Doc. No. R08-01; Filed December 19, 2007, 2:01 p.m.

NOTICES OF INTENDED REGULATORY ACTION

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 State Air Pollution Control Board intends to consider amending **9VAC5-40, Existing Stationary Sources**, and adopting **9VAC5-45, Consumer and Commercial Products Regulation**. The purpose of the proposed action is adopt new standards and revise existing 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 and to extend applicability of some of those standards to the Richmond VOC Emissions Control Area. 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: §§10.1-1307 and 10.1-1308 of the Code of Virginia.

Public comments: Public comments may be submitted until 5 p.m. on February 6, 2008.

Agency Contact: Cindy M. Berndt, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone 804-698-4103, FAX 804-698-4510, or email cberndt@deq.virginia.gov.

VA.R. Doc. No. R08-1111; Filed December 18, 2007, 2:49 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

VIRGINIA BOARD FOR ASBESTOS, LEAD, AND HOME INSPECTORS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with §2.2-4007.01 of the Code of Virginia that the Virginia Board for Asbestos, Lead and Home Inspectors intends to consider amending the following regulations: **18VAC15-40, Virginia Certified Home Inspector Regulations**. The purpose of the proposed action is to conduct a general review of its regulation provisions including, but not limited to, the definitions, entry standards, experience requirements and standards of practice and to consider adding continuing professional education (CPE) requirements.

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

Statutory Authority: §§54.1-201 and 54.1-501 of the Code of Virginia.

Public comments: Public comments may be submitted until 5 p.m. on February 22, 2008.

Agency Contact: David Dick, Executive Director, Virginia Board for Asbestos, Lead, and Home Inspectors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone 804-367-8507, FAX 804-527-4297, or email david.dick@dpor.virginia.gov.

VA.R. Doc. No. R08-1010; Filed December 10, 2007, 8:09 a.m.

TITLE 22. SOCIAL SERVICES

DEPARTMENT OF REHABILITATIVE 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 Rehabilitative Services intends to consider amending the following regulations: **22VAC30-50, Policies and Procedures for Administering Commonwealth Neurotrauma Initiative Trust Fund**. The purpose of the proposed action is to promulgate amendments recommended by the Commonwealth Neurotrauma Initiative Trust Fund Advisory Board that (i) clarify that the Commonwealth Neurotrauma Initiative (CNI) Trust Fund is to be used for innovative research and treatment programs and is not to be used as a source for long-term funding and (ii) provide that the Commissioner of Rehabilitative Services can reallocate a limited amount of unexpended balances in the fund to fund new research in the area neurotrauma.

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

Statutory Authority: §§51.5-12.4 and 51.5-14 of the Code of Virginia.

Public comments: Public comments may be submitted until 5 p.m. on February 6, 2008.

Agency Contact: Vanessa S. Rakestraw, Policy Analyst, Department of Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, VA 23229, telephone 804-662-7612, FAX 804-662-7696, TTY 800-464-9950, or email vanessa.rakestraw@drs.virginia.gov.

VA.R. Doc. No. R08-843; Filed December 10, 2007, 11:58 a.m.

REGULATIONS

For information concerning the different types of regulations, see the Information Page.

Symbol Key

Roman type indicates existing text of regulations. Underscored language indicates proposed new text. Language that has been stricken indicates proposed text for deletion. Brackets are used in final regulations to indicate changes from the proposed regulation.

TITLE 2. AGRICULTURE

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from the Administrative Process Act in accordance with §2.2-4002 A 13 of the Code of Virginia, which excludes the Commissioner of Agriculture and Consumer Services and the Board of Agriculture and Consumer Services in promulgating regulations pursuant to §3.1-884.21:1, which includes (i) any regulation under the federal acts as it pertains to this article, amending it as necessary for intrastate applicability; and (ii) any regulation containing provisions no less stringent than those contained in federal regulation. The Department of Agriculture and Consumer Services will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **2VAC5-210. Rules and Regulations Pertaining to Meat and Poultry Inspection Under the Virginia Meat and Poultry Products Inspection Act (amending 2VAC5-210-30, 2VAC5-210-41).**

Statutory Authority: §3.1-884.21:1 of the Code of Virginia.

Effective Date: December 11, 2007.

Agency Contact: Richard. C. Hackenbracht, Program Manager, Department of Agriculture and Consumer Services, P. O. Box 1163, Richmond, VA 23218, telephone 804-786-4569, FAX 804-786-1003, TTY 800-828-1120, or email Richard.Hackenbracht@vdacs.virginia.gov.

Preamble:

The rules and regulations governing the meat and poultry inspection of the United States Department of Agriculture were adopted by reference in 2VAC5-210-10. Title 9, Chapter III, Subchapter C, §381.10, dated January 1, 2006, of the Federal Poultry Product Inspection Regulations provides for exemptions from the inspection requirements of the Poultry Products Inspection Act. Poultry operations may qualify for one of seven exemptions based on the amount of poultry products produced, the intended customers, and the type of operations being conducted.

Summary:

The amendment to 2VAC5-210-30, Subpart C Exemptions requires persons claiming exemption under §381.10 (5), (6) or (7) to apply for a permit of exemption annually. The types of poultry operations identified under these sections are allowed to sell and distribute up to 20,000 poultry per calendar year. Exemptions allowed under §381.10 (1), (2), (3), and (4) provide more stringent limitations in regard to the number of birds sold and their distribution in commerce. Poultry operations claiming exemption under these sections would not be required to apply for a permit. The permitting process will help identify poultry operations that may be involved when certain types of public health crisis arise such as foodborne diseases and poultry disease outbreaks.

2VAC5-210-30. Mandatory meat and poultry products inspection and voluntary inspection and certification.

The Commissioner of the Department of Agriculture and Consumer Services hereby adopts the following provisions of Chapter III of Title 9, Subchapter A of the Code of Federal Regulations (rev. January 1, 2007):

Subchapter A—Agency organization and terminology; mandatory meat and poultry products inspection and voluntary inspection and certification.

Part 302. Application of inspection and other requirements.

Part 303. Exemptions.

Any establishment, firm, person or corporation operating under Section 303.1(a)(2) of this subchapter is required to apply for and receive a permit of exemption in accordance with requirements set forth by the Commissioner of Agriculture and Consumer Services or his delegate.

Part 304. Application for inspection; grant or refusal of inspection.

Part 305. Official numbers; inauguration of inspection; withdrawal of inspection; reports of violation.

Part 306. Assignment and authorities of program employees.

Part 307. Facilities for inspection.

Part 309. Ante-mortem inspection.

Part 310. Post-mortem inspection.

Part 311. Disposal of diseased or otherwise adulterated carcasses and parts.

Part 312. Official marks, devices and certificates.

Part 313. Humane slaughter of livestock.

Part 314. Handling and disposal of condemned or other inedible products at official establishments.

Part 315. Rendering or other disposal of carcasses and parts passed for cooking.

Part 316. Marking products and their containers.

Part 317. Labeling, marking devices, and containers.

Part 318. Entry into official establishments; reinspection and preparation of products.

Part 319. Definitions and standards of identity or composition.

Part 320. Records, registration, and reports.

Part 325. Transportation.

Part 329. Detention; seizure and condemnation; criminal offenses.

Part 335. Rules of practice governing proceedings under the federal Meat Inspection Act.

Part 350. Special services relating to meat and other products.

Part 352. Exotic animals; voluntary inspection.

Part 354. Voluntary inspection of rabbits and edible products thereof.

Part 355. Certified products for dogs, cats, and other carnivora; inspection, certification, and identification as to class, quality, quantity, and condition.

Part 362. Voluntary poultry inspection regulations.

Part 381. Poultry products inspection regulations.

Subpart B. Administration; application of inspection and other requirements. Deleting Section 381.5-Publications.

Subpart C. Exemptions.

Any establishment, firm, person or corporation operating under §381.10 (5), (6) or (7) of this subchapter is required to apply for and receive a permit of exemption in accordance with requirements set forth by the Commissioner of Agriculture and Consumer Services or his delegate.

Subpart D. Application for inspection; grant or refusal of inspection.

Subpart E. Inauguration of inspection; official establishment numbers; separation of establishments and other requirements; withdrawal of inspection.

Subpart F. Assignment and authorities of program employees; appeals.

Subpart G. Facilities for inspection; overtime and holiday service; billing establishments.

Subpart H. Sanitation.

Subpart I. Operating procedures.

Subpart J. Ante-mortem inspection.

Subpart K. Post-mortem inspection; disposition of carcasses and parts.

Subpart L. Handling and disposal of condemned or other inedible products at official establishments.

Subpart M. Official marks, devices, and certificates; export certificates; certification procedures.

Except as otherwise required in this subchapter all referrals and instructions relative to export or import are deleted from adoption.

Subpart N. Labeling and containers.

Subpart O. Entry of articles into official establishments; processing inspection and other reinspections; processing requirements.

Subpart P. Definitions and standards of identity or

Subpart Q. Records, registration, and reports. composition.

Subpart S. Transportation; exportation; or sale of poultry or poultry products.

Subpart U. Detention; seizure and condemnation; criminal offenses.

Subpart X. Canning and canned products.

Subpart Y. Nutrition labeling.

Part 416. Sanitation.

Part 417. Hazard Analysis and Critical Control Point (~~haaccp~~) (HACCP) Systems.

2VAC5-210-41. Regulatory requirements.

The Commissioner of the Department of Agriculture and Consumer Services hereby adopts the following provisions of Chapter III of Title 9, Subchapter E of the Code of Federal Regulations (rev. January 1, 2007):

Subchapter E. Regulatory requirements under the federal Meat Inspection Act and the Poultry Products Inspection Act.

Part 424. Preparation and processing operations.

Part 430. Requirements for specific classes of product.

Part 441. Consumer protection standards: raw products.

Part 500. Rules of practice.

Regulations

NOTICE: The forms used in administering the above regulation are listed below. Any amended or added forms are reflected in the listing and are published following the listing.

FORMS

Application for Red Meat Permit of Exemption Under the Virginia Meat and Poultry Products Inspection Act, Form VDACS-03072, ~~eff. 4/06~~ (rev. 11/07).

Application for State Meat and Poultry Inspection, Form VDACS-03090, (eff. 2/06).

Application for Permit of Poultry Exemption Under the Virginia Meat and Poultry Products Inspection Act, Form VDACS-03072A (eff. 11/07).

~~Work Hours Agreement, Form VDACS-03091, eff. 12/96.~~

Establishment Hours of Operation, Form VDACS-03091 (eff. 11/07).

Application/Approval for Voluntary Reimbursable Inspection Service, Form VDACS-03140, (eff. 6/06).

APPLICATION FOR RED MEAT PERMIT OF EXEMPTION UNDER THE VIRGINIA MEAT AND POULTRY PRODUCTS INSPECTION ACT

TO: Program Manager
Office of Meat & Poultry Services
P.O. Box 1163
Richmond, VA 23219

Application is hereby submitted for a Permit of Exemption as provided by Section 303.1(a)(2) of the Rules and Regulations governing the Inspection of Meat in the State of Virginia.

The following information is submitted in support of this application:

- A. Name of Establishment:
B. Owner:
C. Address:
City/Town: VA Zip:
D. Telephone Number: () -

Type of Exemption Applied For: (Check those that apply)

- Exempt Slaughter of Livestock
- Exempt Processing of Meats
- Curing of Exempt Pork Products

RETAIL Yes () No ()

The undersigned acknowledges an understanding of the requirements for initial and renewal exemption permits as provided by Section 303.1 of the Rules and Regulations Governing the Inspection of Meat in the State of Virginia and agrees to comply with same.

AGREEMENT AND CERTIFICATION: If inspection is granted under this application, I (We) expressly agree to conform strictly to the Virginia Meat and Poultry Products Inspection Act and all regulations promulgated there under. I CERTIFY that all statement made herein are true to the best of my knowledge and belief.

This is an EQUAL OPPORTUNITY PROGRAM. VDACS & USDA prohibit discrimination in all of their programs and activities on the basis of race, color national origin, sex, religion, age, disability political beliefs, sexual orientation, and marital or family status in employment or in any program or activity conducted or funded by the two Departments. To file a complaint of discrimination, write or call: OMPS 102 Governor Street, Richmond, VA 23218 Phone 804/786-4569 (voice) or 800/828-1120 (TDD) or USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9410 (800) 795-3272 (voice) or (202) 720-6382 (TDD).

Signature Owner or Manager Date:

OFFICE USE ONLY
APPROVED: YES () NO () Date:
OMPS Regional Supervisor

NEW PERMIT NUMBER CITY/COUNTY CODE

DISTRIBUTION: Original to the Regional Supervisor, OMPS for approval and then forward to the Richmond Office.
VDACS - 03072 MPS (04/2006)(11/2007)

Regulations

APPLICATION FOR PERMIT OF POULTRY EXEMPTION UNDER THE
VIRGINIA MEAT AND POULTRY PRODUCTS INSPECTION ACT

TO: Program Manager
Office of Meat & Poultry Services
P.O. Box 1163
Richmond, VA 23219

Sir:

Application is hereby submitted for a Permit of Poultry Exemption as provided by Public Law 90-492 and Subpart C of the Rules and Regulations Governing the Inspection of Poultry and Poultry Products in the State of Virginia.

The following information is submitted in support of this application:

- A. Name of Establishment: _____
- B. Owner: _____
- C. Address: _____
City/Town: _____ VA Zip: _____
- D. Telephone Number: () _____
- E. Type of Exemption Applied For: (Check those that apply)
- Exempt "Producer Grower"
- Exempt "Producer Grower or Other Person"
- Exempt "Small Business Enterprise"

SEE BACK OF APPLICATION FOR EXPLANATION

The undersigned acknowledges an understanding of the requirements for exemption permits as provided by Public Law 90-492 and Subpart C of the Rules and Regulations Governing the Inspection of Poultry and Poultry Products in the State of Virginia, and agrees to comply with same.

AGREEMENT AND CERTIFICATION: If inspection is granted under this application, I (We) expressly agree to conform strictly to the Virginia Meat and Poultry Products Inspection Act. And all regulations promulgated there under. I CERTIFY that all statement made herein are true to the best of my knowledge and belief.

This is an EQUAL OPPORTUNITY PROGRAM. VDACS & USDA prohibit discrimination in all of their programs and activities on the basis of race, color national origin, sex, religion, age, disability political beliefs, sexual orientation, and marital or family status in employment or in any program or activity conducted or funded by the two Departments. To file a complaint of discrimination, write or call: OMPS 102 Governor Street, Richmond, VA 23218 Phone 804-786-4569 (voice) or USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9410 (800) 795-3272 (voice) or (202) 720-6382 (TDD).

Signature: _____ Date: _____
Owner or Manager

APPROVED: YES () NO () _____ DATE: _____
OIC, Enforcement Staff

DISTRIBUTION: Original and two (2) copies to the OIC, Enforcement Staff, OMPS for approval.

FOR RICHMOND OFFICE USE ONLY:

PERMIT NUMBER: _____ City/County Code: _____

EXEMPTION	Customer(s) that the exempted poultry may be sold to.	Limitations: 1. on amount poultry product under the exemption 2. 25% or less exempt sales to HRIs 3. calendar year total sales dollar limitation 4. Identification/labeling requirements	Type of operations exempt: 1. Slaughter, 2. Processing, 3. Cut-up only.
*Producer/Grower 20,000 bird limit	Slaughters & processes on his/her premises poultry for distribution by him/her to any person. The product may only be distributed in the State.	1 – Yes, may slaughter and process no more than 20,000 poultry in calendar year of their raising on their own premises. 2 – 25% HRI limitation does not apply 3 – Dollar limitation not applicable. 4 – The statement "Exempt P.L. 90-492", producer's name and address, and the permit number on product when it is distributed.	1. Slaughter & 2. Processing of poultry grower's raised poultry.
**Producer/Grower or Other Person (PGOP)	Slaughters & processes poultry for distribution to only household consumers, restaurants, hotels, or boarding houses. The exempt product may only be distributed in the State.	1 – Yes, no more than 20,000 poultry in calendar year. 2 & 3 – not applicable. 4 – The statement "Exempt P.L. 90-492", producer's name and address and the permit number are required on product when it is distributed. 5 – May not slaughter or process poultry at a facility used for slaughtering or processing by another person.	1. Slaughter 2. Processing of raised or purchased (live) poultry
***Small Enterprise	No restrictions on type of customer A small enterprise may not use or distribute products from, PGOP, Retail Dealer, or Retail Store exemptions. May cut-up poultry products derived from federally or state inspected and passed poultry carcasses The exempt product may only be distributed in the State.	1 – Yes no more than 20,000 poultry in a calendar year. 2 & 3 – not applicable. 4 – All the features of an official label when distributed, with the exceptions that the official inspection legend cannot be used, modification of the safe handling instructions and the nutrition facts are optional, provided, the labeling does not bear nutrition or health claims. 5 – May not slaughter or process poultry at a facility used for slaughtering or processing by another person.	1. Slaughter 3. Cut-up only

Regulations

VDACS Office of Meat & Poultry Services P.O. Box 1163, Richmond, VA 23218 Phone: (804) 786-4569 Fax: (804) 786-1003		DATE:	EST. NUMBER:
		PLANT NAME:	
Establishment Hours of Operation Approval is not valid until the request is approved by Program Manager. PLANT TELEPHONE NUMBER: _____		PLANT LOCATION:	REGION:
		NOTE: Specify daily clock hours of operations (first eight [8] hours) and lunch periods for all shift. Overtime is to be arranged with your Inspector in Charge. Requests for temporary changes in hours of operation must be approved by the Team Leader.	
PROCESSING	SHIFT 1	From: _____	To: _____
	SHIFT 2		
Lunch	SHIFT 1	From: _____	To: _____
	SHIFT 2		
Please reference 9 CFR Ch. III 307.4 and 381.37			
Days of operation: S <input type="checkbox"/> M <input type="checkbox"/> T <input type="checkbox"/> W <input type="checkbox"/> Th <input type="checkbox"/> F <input type="checkbox"/> S <input type="checkbox"/>			
SLAUGHTER	SHIFT 1	From: _____	To: _____
	SHIFT 2		
Lunch	SHIFT 1	From: _____	To: _____
	SHIFT 2		
Days of operation: S <input type="checkbox"/> M <input type="checkbox"/> T <input type="checkbox"/> W <input type="checkbox"/> Th <input type="checkbox"/> F <input type="checkbox"/> S <input type="checkbox"/>			
PRODUCTS HANDLED: _____ (POULTRY, CATTLE, SWINE, ETC.)			
RETAIL EXEMPT OPERATIONS YES <input type="checkbox"/> NO <input type="checkbox"/>			
IF YES, BRIEF DESCRIPTION: _____			
CUSTOM EXEMPT OPERATIONS YES <input type="checkbox"/> NO <input type="checkbox"/>			
IF YES, BRIEF DESCRIPTION: _____			
PLANT OFFICIAL'S NAME/TITLE _____		PLANT OFFICIAL'S SIGNATURE _____	
DATE COMPLETED BY PLANT OFFICIAL: _____		REQUEST IMPLEMENTATION DATE: _____	
TO BE COMPLETED BY OMPS/TEAM LEADER			
TEAM LEADER: _____		RECOMMENDATION: _____	
HEADQUARTER PLANT: _____		DATE: _____	
TO BE COMPLETED BY OMPS/REGIONAL SUPERVISOR			
REGIONAL SUPERVISOR: _____		RECOMMENDATION: _____	
		DATE: _____	
STAFFING CONCERNS/CONSIDERATIONS SHOULD BE ATTACHED			
TO BE COMPLETED BY OMPS/PROGRAM MANAGER			
<input type="checkbox"/> APPROVED These hours of operation are approved as requested with the understanding that any hours worked outside of the approved schedule may be considered Reimbursable Overtime (ROT) and will be paid by the plant.		<input type="checkbox"/> DISAPPROVED	
PROGRAM MANAGER _____		DATE _____	

Distribution: Plant Management; Regional Supervisor; Inspector in Charge

VDACS-03091 (11/2007)

VA.R. Doc. No. R08-882; Filed December 11, 2007, 2:00 p.m.

**TITLE 6. CRIMINAL JUSTICE AND
CORRECTIONS**

BOARD OF FORENSIC SCIENCE

Final Regulation

Title of Regulation: **6VAC40-50. Regulations for the Approval of Marijuana Field Tests for Detection of Marijuana Plant Material (adding 6VAC40-50-10 through 6VAC40-50-80).**

Statutory Authority: §§9.1-1110 and 19.2-188.1 of the Code of Virginia.

Effective Date: February 6, 2008.

Agency Contact: Michele M. Gowdy, Department Counsel, Department of Forensic Science, 700 North 5th Street, Richmond, VA 23219, telephone 804-786-6848, FAX 804-786-6857, or email michelle.gowdy@dfs.virginia.gov.

Summary:

Section 19.2-188.1 B of the Code of Virginia provides that the Department of Forensic Science shall approve marijuana field tests for use by law-enforcement officers to enable them to testify to the results obtained in any trial for a violation of §18.2-250.1 regarding whether or not any plant material, the identity of which is at issue, is marijuana. These new regulations establish the process of approval, approval authority, criteria for approval, notification methods, fee assessment, and publication procedures associated with marijuana field tests or marijuana field test kits submitted by manufacturers to the department.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

CHAPTER 50

**REGULATIONS FOR THE APPROVAL OF MARIJUANA
FIELD TESTS FOR DETECTION OF MARIJUANA
PLANT MATERIAL**

**Part I
Definitions**

6VAC40-50-10. Definitions.

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

"Agency" means any federal, state or local government law-enforcement organization in the Commonwealth.

"Approval authority" means the Director of the Department of Forensic Science or his designee.

"Department" means the Department of Forensic Science.

"List of approved marijuana field tests" means a list of Duquenois-Levine field tests approved by the department for use by law-enforcement agencies in the Commonwealth and periodically published by the department in the Virginia Register of Regulations in accordance with §19.2-188.1 B of the Code of Virginia.

"Manufacturer" means any entity that makes or assembles marijuana field tests or marijuana field test kits to be used by any law-enforcement officer or agency in the Commonwealth for the purpose of detecting marijuana plant material.

"Manufacturer's instructions and claims" means those testing procedures, requirements, instructions, precautions and proposed conclusions that are published by the manufacturer and supplied with the marijuana field tests or marijuana field test kits.

"Marijuana" means marijuana as defined in §18.2-247 of the Code of Virginia.

"Marijuana field test" means any Duquenois-Levine test unit used outside of a chemical laboratory environment to detect the presence of marijuana plant material.

"Marijuana field test kit" means a combination of individual marijuana field test units.

Part II

Process for Approval of Field Tests

6VAC40-50-20. Authority for approval.

Section 19.2-188.1 B of the Code of Virginia provides that the Department of Forensic Science shall approve marijuana field tests for use by law-enforcement officers to enable them to testify to the results obtained in any trial for a violation of §18.2-250.1 of the Code of Virginia regarding whether or not any plant material, the [identify identity] of which is at issue, is marijuana.

6VAC40-50-30. Request for approval.

A. Any manufacturer who wishes to have marijuana field tests or marijuana field test kits approved pursuant to this chapter shall submit a written request for approval to the department director at the following address:

Director
Department of Forensic Science
700 North Fifth Street
Richmond, VA 23219

B. Materials sufficient for at least 10 marijuana field tests shall be supplied by each manufacturer. The materials shall include all instructions, precautions, color charts, flow charts and the like which are provided with the marijuana field test or marijuana field test kit and that describe the use and interpretation of the tests.

Regulations

C. The manufacturer shall also include exact specifications as to the chemical composition of all chemicals or reagents used in the marijuana field tests. These shall include the volume or weight of the chemicals and the nature of their packaging. Material safety data sheets for each chemical or reagent shall be sufficient for this purpose.

D. This approval may require up to 90 days from the receipt of the written request and all needed materials from the manufacturer.

E. The department will use marijuana plant material to assess those marijuana field tests submitted for approval. In order to be approved, the marijuana field test must correctly and consistently react in a clearly observable fashion to the naked eye, and perform in accordance with manufacturer's instructions and claims.

6VAC40-50-40. Notice of approval.

The department will notify each manufacturer in writing of the approval or disapproval of each test for which approval was requested. Should any test not be approved, the manufacturer may resubmit their request for approval of that marijuana field test according to the previously outlined procedures at any time.

6VAC40-50-50. Maintenance of approved status.

The department may require that this approval be done as often as annually for routine purposes. If any modifications are made to an approved marijuana field test by the manufacturer, the department shall be notified in writing of the changes. If unreported modifications are discovered by the department, the department may require that all testing and approval be repeated for the particular manufacturers' approved marijuana field tests. The department shall notify the manufacturer in writing of this requirement. Any modified marijuana field test must be approved before it can be used in accordance with §19.2-188.1 B of the Code of Virginia. These changes shall include, but are not limited to [,] any chemical, procedural or instructional modifications made to the marijuana field test.

6VAC40-50-60. Publication.

Upon completion of such testing and in concurrence with the approval authority, the department will periodically publish a list of approved marijuana field tests in the General Notices section of the Virginia Register of Regulations. The department will also periodically publish the list on its website. The department may, in addition, provide copies of its approved list to any law-enforcement agency. The department may share any information or data developed from this testing with these agencies.

6VAC40-50-70. Liability.

A. The department assumes no liability as to the safety of these marijuana field tests or marijuana field test kits, any

chemicals contained therein or the procedures and instructions by which they are used.

B. The department further assumes no responsibility for any misuse or incorrect interpretation of results.

Part III

Fees

6VAC40-50-80. Fees.

Manufacturers will be charged a fee of \$50 for each marijuana field test for which individual approval is requested. The department will evaluate the manufacturers' request and notify them in writing of the amount due before testing begins. Manufacturers who wish to withdraw a request for approval shall immediately notify the department in writing [of the amount due before testing begins. Manufacturers who wish to withdraw a request for approval shall immediately notify the department in writing.] The department's assessment of the amount of payment required will be based upon a detailed evaluation of the manufacturer's request and that amount will be final. Approval will not be granted before full payment is made to the Treasurer of Virginia.

VA.R. Doc. No. R06-284; Filed December 13, 2007, 9:58 a.m.

TITLE 9. ENVIRONMENT

VIRGINIA WASTE MANAGEMENT BOARD

Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from the Administrative Process Act in accordance with §2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations provided such regulations do not differ materially from those required by federal law or regulation. The Virginia Waste Management Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **9VAC20-60. Virginia Hazardous Waste Management Regulations (amending 9VAC20-60-18).**

Statutory Authority: §10.1-1402 and Article 4 (§10.1-1426 et seq.) of Chapter 14 of Title 10.1 of the Code of Virginia; 42 USC §6921 et seq.; 40 CFR Parts 260-272.

Effective Date: February 6, 2008.

Agency Contact: Robert G. Wickline, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone 804-698-4213, or email rgwickline@deq.virginia.gov.

Summary:

The Hazardous Waste Management Regulations include requirements in the form of incorporated federal regulatory text at Title 40 of the Code of Federal Regulations. The federal regulatory text as it existed June 19, 2006, was specified as that incorporated. Immediate Final Rule 2007 addresses only 9VAC20-60-18, the section making the specification of the date of incorporated text. This section is altered by striking the previous prescribed date and adopting the new date of July 1, 2007, thus making it the new date of reference of all incorporated

federal regulatory text. The effective date of the incorporated text will be the effective date as published in the Federal Register notice or the effective date of this amendment, whichever is later. This action also provides regulations required by §10.1-1425.26 B of the Code of Virginia, which requires the board to promulgate regulations to encourage cathode ray tube and electronics recycling.

Changes to Federal Hazardous Waste Management

Regulations Between June 20, 2006 and June 30, 2007:

USEPA Checklist Number	Date(s) Final Federal Regulations Published	40 CFR Sections Affected by Federal Amendment(s)	Federal Rule Reference(s)	Summary of Changes
Delisting Outside Virginia	June 20, 2006	261	71 FR 35395	The Environmental Protection Agency (EPA) removed its final rule granting a petition by Tokusen U.S.A, Inc. to exclude (or delist) a certain F006 filter cake generated by its Conway, Arkansas Plant from the lists of hazardous wastes.
XL Program Outside Virginia	June 21, 2006	262	71 FR 35547	The EPA took direct final action to extend the expiration date of the New England University Laboratories XL Project (Labs XL Project) rule that EPA previously promulgated under the eXcellence and Leadership program (Project XL), allowing laboratories at certain universities in Massachusetts and Vermont to follow alternative RCRA generator requirements until April 15, 2009.
Corrections	July 14, 2006	260, 261, 262, 264, 265, 266, 267 268, 270, 271, 273, 279	71 FR 40153	EPA corrected errors in the hazardous waste and used oil regulations, which occurred as a result of printing omissions, typographical errors, misspellings, citations to paragraphs and other references that had been deleted or moved to new locations without correcting the citations, and similar mistakes appearing in numerous final rules published in the Federal Register. This final rule does not create new regulatory requirements.
Unknown	July 28, 2006	260, 261, 271	71 FR 42917	A cathode ray tube (CRT) is the glass video display component of an electronic device (usually a computer or television monitor). In this rule, the EPA amended its regulations under the Resource Conservation and Recovery Act (RCRA) to streamline management requirements for recycling of used CRTs and glass removed from CRTs. The amendments exclude these

Regulations

				materials from the RCRA definition of solid waste if certain conditions are met. This rule is intended to encourage recycling and reuse of used CRTs and CRT glass.
Delisting Outside Virginia	July 31, 2006	261	71 FR 43067	EPA took direct final action to codify a longstanding generator-specific delisting determination for brine purification muds (K071) generated by Olin Corporation at its facility in Charleston, Tennessee.
Delisting Outside Virginia	January 3, 2007	261	72 FR 43	EPA granted a petition by General Motors Corporation-Arlington Truck Assembly Plant to exclude (or delist) a wastewater treatment plant sludge generated in Arlington, TX from the lists of hazardous wastes.
Delisting Outside Virginia	February 1, 2007	261	72 FR 4645	EPA granted a petition by General Electric (GE), King of Prussia, Pennsylvania, to exclude (or delist) certain solid wastes that have been deposited and/or accumulated in two on-site drying beds and two on-site basins at GE's RCA del Caribe facility in Barceloneta, Puerto Rico from the lists of hazardous wastes contained in the regulations.
Delisting Outside Virginia	June 6, 2007	261	72 FR 31185	EPA granted a petition by the Ford Motor Company Kansas City Assembly Plant to exclude (or delist) a wastewater treatment plant sludge generated by Ford in Claycomo, Missouri, from the lists of hazardous wastes.
Corrections	June 29, 2007	273	72 FR 35666	In 40CFR Parts 266 to 299, USEPA revised (as of July 1, 2006) Sec. 273.9 to reinstate the definition of "On-site" to read as follows: " * * * On-site means the same or geographically contiguous property which may be divided by public or private right-of-way, provided that the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing as opposed to going along the right of way. Non-contiguous 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. * * * "

9VAC20-60-18. Applicability of incorporated references based on the dates on which they became effective.

Except as noted, when a regulation of the United States Environmental Protection Agency set forth in Title 40 of the Code of Federal Regulations is adopted herein and incorporated by reference, that regulation shall be as it exists and has been published as a final regulation in the Federal Register prior to July 1, ~~2006~~ 2007, with the effective date as published in the Federal Register notice or ~~August 23, 2006~~ February 6, 2008, whichever is later. ~~The final rules published in the Federal Register on June 20, 2006 (71 FR~~

~~35395), and June 21, 2006 (71 FR 35548), are not incorporated by reference as regulations of the board.~~

V.A.R. Doc. No. R08-1060; Filed December 18, 2007, 3:01 p.m.

STATE WATER CONTROL BOARD

Final Regulation

REGISTRAR'S NOTICE: The following regulation filed by the State Water Control Board is exempt from the Administrative Process Act in accordance with §2.2-4006 A 9 of the Code of Virginia, which exempts general permits

issued by the State Water Control Board pursuant to the State Water Control Law (§62.1-44.2 et seq.), Chapter 24 (§62.1-242 et seq.) of Title 62.1 and Chapter 25 (§62.1-254 et seq.) of Title 62.1 of the Code of Virginia if the board (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of §2.2-4007.01, (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit, (iii) provides notice and receives oral and written comment as provided in §2.2-4007.03, and (iv) conducts at least one public hearing on the proposed general permit.

Title of Regulation: **9VAC25-120. General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges from Petroleum Contaminated Sites and Hydrostatic Tests (amending 9VAC25-120-10, 9VAC25-120-20, 9VAC25-120-50, 9VAC25-120-60, 9VAC25-120-70, 9VAC25-120-80).**

Statutory Authority: §62.1-44.15 of the Code of Virginia; §402 of the Clean Water Act; 40 CFR Parts 122, 123 and 124.

Effective Date: February 6, 2008.

Agency Contact: James Barnett, State Lead Program Manager, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone 804-698-4289, FAX 804-698-4266, or email jsbarnett@deq.virginia.gov.

Summary:

This action reissues the existing VPDES general permit for petroleum contaminated sites and hydrostatic tests which expires on February 25, 2008. The general permit will establish limitations and monitoring requirements for point source discharges of wastewater from sites contaminated by petroleum products, chlorinated hydrocarbon solvents, and the hydrostatic testing of petroleum and natural gas storage tanks and pipelines. Changes have been made to the regulation since publication as proposed. The majority of the changes can be found in the various effluent limitations and monitoring requirements tables (9VAC25-120-80 A 1 through A 8).

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

CHAPTER 120
GENERAL VIRGINIA POLLUTANT DISCHARGE
ELIMINATION SYSTEM (VPDES) PERMIT
REGULATION FOR DISCHARGES FROM PETROLEUM
CONTAMINATED SITES, GROUNDWATER
REMEDICATION AND HYDROSTATIC TESTS

9VAC25-120-10. Definitions.

The words and terms used in this chapter shall have the meanings defined in the State Water Control Law and [~~9VAC25-31-10 et seq.~~ 9VAC25-31] (VPDES permit regulation) unless the context clearly indicates otherwise, except that for the purposes of this chapter:

"Central wastewater treatment facilities" means any facility that treats (for disposal, recycling, or recovery of materials) or recycles hazardous or nonhazardous waste, hazardous or nonhazardous industrial wastewater, or used material from offsite. This includes both a facility that treats waste received from off-site exclusively, and a facility that treats waste generated on-site as well as waste received from off site.

"Chlorinated hydrocarbon solvents" means solvents containing carbon, hydrogen, and chlorine atoms and the constituents resulting from the degradation of these chlorinated hydrocarbon solvents.

"Petroleum products" means petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents and used oils. "Petroleum products" does not include hazardous waste as defined by the Virginia Hazardous Waste Regulations (9VAC20-60).

9VAC25-120-20. Purpose.

This general permit regulation governs the discharge of wastewaters from sites contaminated by petroleum products, chlorinated hydrocarbon solvents, and the hydrostatic testing of petroleum and natural gas storage tanks and pipelines. These wastewaters may be discharged from the following activities: excavation dewatering, bailing purging groundwater monitoring wells, conducting aquifer tests to characterize site conditions, hydrostatic tests of natural gas and petroleum storage tanks or pipelines, hydrostatic tests of underground and above ground storage tanks, pumping contaminated groundwater to remove free product from the ground, or discharges resulting from another petroleum product or chlorinated hydrocarbon solvent cleanup activity approved by the department. Discharges not associated with petroleum-contaminated water, water contaminated by chlorinated hydrocarbon solvents, or hydrostatic tests are not covered under this general permit.

Regulations

9VAC25-120-50. Effective date of the permit.

This general permit will become effective on February 26, ~~2003~~ 2008. This general permit will expire five years from the effective date. This general permit is effective as to any covered owner upon compliance with all the provisions of 9VAC25-120-60 and the receipt of this general permit.

9VAC25-120-60. Authorization to discharge.

A. Any owner governed by this general permit is hereby authorized to discharge to surface waters within the Commonwealth of Virginia provided that the owner files and receives acceptance by the board of the registration statement of 9VAC25-120-70 and complies with the applicable effluent limitations and other requirements of 9VAC25-120-80, and provided that:

1. Individual permit. The owner has not been required to obtain an individual permit according to 9VAC25-31-170 B;
2. Prohibited discharge locations. The owner shall not be authorized by this general permit to discharge within five miles upstream of a public water supply intake or to state waters ~~designated as public water supplies~~ or specifically named in other board regulations or policies which prohibit such discharges; and
3. Central wastewater treatment facilities. The owner shall not be authorized by this general permit to discharge to surface waters where there are permitted central wastewater treatment facilities reasonably available, as determined by the board.

B. Receipt of this general permit does not relieve any owner of the responsibility to comply with any other appropriate federal, state or local statute, ordinance or regulation.

9VAC25-120-70. Registration statement.

The owner shall file a complete VPDES general permit registration statement for discharges from petroleum contaminated sites, ground water remediation, and hydrostatic tests. Any owner proposing a new discharge shall file a complete registration statement at least 30 days prior to the date planned for commencing operation of the new discharge. Any owner of an existing discharge covered by an individual VPDES permit who is proposing to be covered by this general permit shall file the registration statement at least 180 days prior to the expiration date of the individual VPDES permit. Any owner of an existing discharge not currently covered by a VPDES permit who is proposing to be covered by this general permit shall file a complete registration statement. The required registration statement shall contain the following information:

1. Legal name of facility;
2. Location of facility, address, and telephone number;

3. Facility owner name, address, and telephone number;
4. Nature of business conducted at the facility;
5. Type of petroleum or natural gas products causing or that caused the contamination;
6. Identification of activities that will result in a point source discharge from the contaminated site;
7. Whether a site characterization report for the site has been submitted to the Department of Environmental Quality;
8. Characterization or description of the wastewater or nature of contamination including analytical data;
9. The location of the discharge point and identification of the waterbody into which the discharge will occur;
- ~~9-~~ 10. The frequency with which the discharge will occur (i.e., daily, monthly, continuously);
- ~~10-~~ 11. An estimate of how long each discharge will last;
- ~~11-~~ 12. An estimate of the total volume of wastewater to be discharged;
- ~~12-~~ 13. An estimate of the flow rate of the discharge;
- ~~13-~~ 14. A diagram of the proposed wastewater treatment system identifying the individual treatment units;
- ~~14-~~ 15. A topographic map or other map that indicates the receiving waterbody name, the discharge point or points, the property boundaries, as well as springs, other surface waterbodies, drinking water wells, and public water supplies that are identified in the public record or are otherwise known to the applicant within a 1/2 mile radius of the proposed discharge or discharges.
- ~~15-~~ 16. Whether central wastewater facilities are available to the site, and if so, whether the option of discharging to the central wastewater facility has been evaluated and the results of that evaluation;
- ~~16-~~ 17. Whether the facility currently has a permit issued by the board, and if so, the permit number;
- ~~17-~~ 18. Any applicable pollution complaint number;
- ~~18-~~ 19. A statement as to whether the material being treated or discharged is certified as a hazardous waste under the Virginia Hazardous Waste Regulation (9VAC20-60);
- ~~19-~~ 20. The following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the

information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations. I do also hereby grant duly authorized agents of the Department of Environmental Quality, upon presentation of credentials, permission to enter the property for the purpose of determining the suitability of the general permit.

The registration statement shall be signed in accordance with 9VAC25-31-110.

9VAC25-120-80. General permit.

Any owner whose request for coverage under this general permit is accepted by the board shall comply with the requirements of the general permit and be subject to all requirements of 9VAC25-31-170 B of the VPDES permit regulation. Not all pages of Part I A of the general permit will apply to every permittee. The determination of which pages apply will be based on the type of contamination at the individual site and the nature of the waters receiving the discharge. Part I B and all pages of Part II apply to all permittees.

General Permit No.: VAG83

Effective Date: February 26, ~~2003~~ 2008

Expiration Date: February 25, ~~2008~~ 2013

**GENERAL VPDES PERMIT FOR DISCHARGES FROM
PETROLEUM CONTAMINATED SITES,
GROUNDWATER REMEDIATION, AND
HYDROSTATIC TESTS**

**AUTHORIZATION TO DISCHARGE UNDER THE
VIRGINIA POLLUTANT DISCHARGE ELIMINATION
SYSTEM PERMIT PROGRAM AND THE VIRGINIA
STATE WATER CONTROL LAW**

In compliance with the provisions of the Clean Water Act, as amended, the State Water Control Law and regulations

adopted pursuant thereto, the owner is authorized to discharge to surface waters at the locations identified in the accepted registration statement within the boundaries of the Commonwealth of Virginia, except to designated public water supplies or waters specifically named in other board regulations or policies which prohibit such discharges.

The authorized discharge shall be in accordance with this cover page, Part I - Effluent Limitations and Monitoring Requirements and Part II - Conditions Applicable to All VPDES Permits, as set forth herein.

If there is any conflict between the requirements of a Department of Environmental Quality approved cleanup plan and this permit, the requirements of this permit shall govern.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

1. GASOLINE CONTAMINATION -- FRESHWATER RECEIVING WATERS NOT LISTED AS PUBLIC WATER SUPPLIES.

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge to freshwater receiving waterbodies from outfall serial number XXXX. Samples taken in compliance with the monitoring requirements specified below shall be taken at the following location: outfall from the final treatment unit prior to mixing with any other waters.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Instantaneous Minimum	Instantaneous Maximum	Frequency	Sample Type
Flow (MGD)	NA	[NA <u>NL</u>]	1/Month	Estimate
Benzene (µg/l) ¹	NA	50 <u>50.0</u>	1/Month	Grab [*]
Toluene (µg/l) ¹	NA	475 <u>175.0</u>	1/Month	Grab [*]
Ethylbenzene (µg/l) ¹	NA	320 <u>320.0</u>	1/Month	Grab [*]
Total Xylenes (µg/l) ¹	NA	82 <u>33.0</u>	1/Month	Grab [*]
MTBE (methyl tert-butyl ether) (µg/l) ¹	NA	NL <u>1,840.0</u>	1/Month	Grab [*]
pH (standard units)	6.0	9.0	1/Month	Grab

Regulations

Total Recoverable Lead ($\mu\text{g/l}$) ²	NA	$e^{(1.273(\ln \text{hardness}))}$ 4.705 - [3.259 - 3.259]	1/Month	Grab ^{***}
Hardness (mg/l CaCO ₃) ²	NL	NA	1/Month	Grab ^{***}
Ethylene Dibromide ($\mu\text{g/l}$) ²	NA	5.3	1/Month	Grab
1,2 Dichloroethane ($\mu\text{g/l}$) ²	NA	990.0	1/Month	Grab
Ethanol ($\mu\text{g/l}$) ³	NA	4100.0	1/Month	Grab

NL = No limitation, monitoring required

NA = Not applicable

*Benzene ¹Benzene, Toluene, Ethylbenzene, Total Xylenes and MTBE shall be analyzed according to a current and appropriate EPA Wastewater Method 602 (40 CFR Part 136, 1996) or EPA SW 846 Method 8021B (1998).

**pH may be determined in the field using EPA Method 150.1 (EPA 600/4-87-020) or EPA SW 846 method 9040B.

***Monitoring ²Monitoring for this parameter is required only when contamination results from leaded fuel. Lead analysis shall be analyzed according to a current and appropriate EPA Wastewater Method (40 CFR Part 136, 1996) or EPA SW 846 method 9040B. The minimum hardness concentration that will be used to determine the lead effluent limit is 25 mg/l. 1,2 dichloroethane and EDB shall be analyzed by a current and appropriate EPA SW 846 Method or EPA Wastewater Method from 40 CFR Part 136 (1996).

³Monitoring for ethanol is only required for discharges of water contaminated by gasoline containing greater than 10% ethanol. Ethanol shall be analyzed according to EPA SW 846 Method 8015B or EPA SW 846 Method 8260B. Monitoring frequency shall be 1/month in the first year of permit coverage. If the first year results demonstrate full compliance with the effluent limitations, the permittee may request that the monitoring frequency for ethanol be reduced from monthly to 1/quarter. The written request shall be sent to the appropriate regional office for review. Upon written notification from the DEQ regional office, monitoring frequency shall be reduced to 1/quarter. Should the permittee be issued a warning letter related to violation of effluent limitations, a notice of violation, or be the subject of an active enforcement action, monitoring frequency for ethanol shall revert to 1/month, upon issuance of the letter or notice or initiation of the enforcement action and remain in effect until the permit's expiration date. Reports of quarterly monitoring shall be submitted to the DEQ regional office no later than the 10th day of April, July, October and January.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

2. GASOLINE CONTAMINATION -- FRESHWATER RECEIVING WATERS LISTED AS PUBLIC WATER SUPPLIES.

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge to freshwater receiving waterbodies from outfall serial number xxxx. Samples taken in compliance with the monitoring requirements specified below shall be taken at the following location: outfall from the final treatment unit prior to mixing with any other waters.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Instantaneous [<u>Maximum</u> <u>Minimum</u>]	Instantaneous [<u>Minimum</u> <u>Maximum</u>]	Frequency	Sample Type
Flow (MGD)	NA	NL	2/Month ⁴	Estimate
Benzene ($\mu\text{g/l}$) ¹	NA	12.0	2/Month ⁴	Grab
Toluene ($\mu\text{g/l}$) ¹	NA	175.0	2/Month ⁴	Grab

Ethylbenzene (µg/l) ¹	NA	320.0	2/Month ⁴	Grab
Total Xylenes (µg/l) ¹	NA	33.0	2/Month ⁴	Grab
MTBE (methyl tert-butyl ether) (µg/l) ¹	NA	15.0	2/Month ⁴	Grab
pH (standard units)	6.0	9.0	2/Month ⁴	Grab
Total Recoverable Lead (µg/l) ²	NA	Lower of $e^{\frac{1.273(\ln \text{hardness})}{3.259}}$ or 15	2/Month ⁴	Grab
Hardness (mg/l CaCO ₃) ²	NL	NL	2/Month ⁴	Grab
Ethylene Dibromide (µg/l) ²	NA	169	2/Month ⁴	Grab
1,2 Dichloroethane (µg/l) ²	NA	3.8	2/Month ⁴	Grab
Ethanol (µg/l) ³	NA	4100.0	2/Month [^{4.5}]	Grab

NL = No limitation, monitoring required

NA = Not applicable

¹Benzene, Toluene, Ethylbenzene, Total Xylenes and MTBE shall be analyzed according to a current and appropriate EPA Method (40 CFR [~~art~~ Part] 136, 1996) or EPA SW 846 Method 8021B (1998).

²Monitoring for this parameter is required only when contamination results from leaded fuel. Lead shall be analyzed according to a current and appropriate EPA Wastewater Method (40 CFR [Part] 136, 1996). The minimum hardness concentration that will be used to determine the lead effluent limit is 25 mg/l. EPA SW 846 Method 8011 or EPA Drinking Water Method 504.1 shall be used to analyze ethylene dibromide (EDB) in wastewaters discharged to public water supplies. 1,2 dichloroethane [~~and EDB~~] shall be analyzed by a current and appropriate EPA SW 846 Method or EPA Wastewater Method from 40 CFR Part 136 (1996).

³Monitoring for ethanol is only required for discharges of water contaminated by gasoline containing greater than 10% ethanol. Ethanol shall be analyzed according to EPA SW 846 Method 8015B or EPA SW 846 Method 8260B.

⁴Monitoring frequency shall be 2/month [~~in~~ for] the first year of permit coverage. If the first year results demonstrate full compliance with the effluent limitations, the permittee may request that the monitoring frequency be reduced from 2/month to 1/month. The written request shall be sent to the appropriate regional office for review. Upon written notification from the DEQ regional office, monitoring frequency shall be reduced to 1/month. Should the permittee be issued a warning letter related to violation of effluent limitations, a notice of violation, or be the subject of an active enforcement action, monitoring frequency [~~for ethanol~~] shall revert to 2/month, upon issuance of the letter or notice or initiation of the enforcement action and remain in effect until the permit's expiration date. [~~Reports of quarterly monitoring shall be submitted to the DEQ regional office no later than the 10th day of April, July, October and January.~~]

[⁵If the first year results demonstrate full compliance with the effluent limitations, the permittee may request that the monitoring frequency for ethanol be reduced from 2/month to 1/quarter. The written request shall be sent to the appropriate regional office for review. Upon written notification from the DEQ regional office, monitoring frequency shall be reduced to 1/quarter. Should the permittee be issued a warning letter related to violation of effluent limitations, a notice of violation, or be the subject of an active enforcement action, monitoring frequency shall revert to 2/month, upon issuance of the letter or notice or initiation of the enforcement action and remain in effect until the permit's expiration date. Reports of quarterly monitoring shall be submitted to the DEQ regional office no later than the 10th day of April, July, October, and January.]

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

~~2.~~ 3. CONTAMINATION BY PETROLEUM PRODUCTS OTHER THAN GASOLINE -- FRESHWATER RECEIVING WATERS NOT LISTED AS PUBLIC WATER SUPPLIES.

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge to freshwater receiving waterbodies from outfall serial number xxxx. Samples

Regulations

taken in compliance with the monitoring requirements specified below shall be taken at the following location: outfall from the final treatment unit prior to mixing with any other waters.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Instantaneous Minimum	Instantaneous Maximum	Frequency	Sample Type
Flow (MGD)	NA	NL	1/Month	Estimate
Naphthalene ($\mu\text{g/l}$) ¹	NA	62 10.0	1/Month	Grab [*]
Total Petroleum Hydrocarbons (mg/l) ²	NA	15 15.0	1/Month	Grab ^{**}
pH (standard units)	6.0	9.0	1/Month	Grab
Semi-volatile organics ^{***}	NA	NL	1/Year ^{****}	Grab
Volatile organics ^{***}	NA	NL	1/Year ^{****}	Grab
Dissolved metals ^{***}	NA	NL	1/Year ^{****}	Grab

NL = No limitation, monitoring required

NA = Not applicable

¹ Naphthalene shall be analyzed by one of the following methods: EPA Method 610 or 625 (40 CFR Part 136, 1996) or EPA SW 846 Method 8100 or 8270C (1998) a current and appropriate EPA Wastewater Method from 40 CFR Part [~~135~~ 136] (1996) or a current and appropriate EPA SW 846 Method.

² TPH shall be analyzed using the Wisconsin Department of Natural Resources modified Diesel Range Organics test method as specified in Wisconsin publication SW 141 (1995), or by EPA SW 846 Method SW 8015B (1996) for diesel range organics, or by EPA SW 846 Method 8270C (1998). If method 8270C is used, the lab must report the ~~combination~~ total of diesel range organics and polynuclear aromatic hydrocarbons.

³ pH may be determined in the field by EPA method 150.1 (EPA 600/4-87-020) or EPA SW 846 method 9040B.

⁴ Monitoring for these parameters is required only when contamination is from used oils. The permittee shall report concentrations of all compounds or elements detected by the following analytical methods: Semi-volatile organics according to EPA Method 1625 (40 CFR Part 136, 1996) or EPA SW 846 Method 8270C (1998); Volatile organics according to EPA Method 1624 (40 CFR Part 136, 1996) or EPA SW 846 Method 8260B (1998); Dissolved metals according to EPA Method 200.7 (40 CFR Part 136, 1996) or EPA SW 846 Method 6010B (1998) or other equivalent EPA 40 CFR Part 136 methods with comparable detection limits and target analyte specificity.

⁵ The first annual sample shall be collected within 72 hours of commencement of the discharge.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

4. CONTAMINATION BY PETROLEUM PRODUCTS OTHER THAN GASOLINE -- FRESHWATER RECEIVING WATERS LISTED AS PUBLIC WATER SUPPLIES.

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge to freshwater receiving waterbodies from outfall serial number xxxx. Samples taken in compliance with the monitoring requirements specified below shall be taken at the following location: outfall from the final treatment unit prior to mixing with any other waters.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Instantaneous [<u>Maximum</u> <u>Minimum</u>]	Instantaneous [<u>Minimum</u> <u>Maximum</u>]	Frequency	Sample Type
Flow (MGD)	NA	NL	2/Month ⁴	Estimate
Naphthalene (µg/l) ¹	NA	10.0	2/Month ⁴	Grab
Benzene (µg/l) ²	NA	12.0	2/Month ⁴	Grab
MTBE (methyl tert-butyl ether)(µg/l) ²	NA	15.0	2/Month ⁴	Grab
Total Petroleum Hydrocarbons (mg/l) ³	NA	15.0	2/Month ⁴	Grab
pH (standard units)	6.0	9.0	2/Month ⁴	Grab

NL = No limitation, monitoring required

NA = Not applicable

¹Naphthalene shall be analyzed by a current and appropriate EPA Wastewater Method from 40 CFR Part [~~135~~ 136] (1996) or a current and appropriate EPA SW 846 Method.

²Benzene and MTBE shall be analyzed according to a current and appropriate EPA Wastewater Method (40 CFR [Part] 136,1996) or EPA SW 846 Method.

³TPH shall be analyzed using EPA SW 846 Method 8015B for diesel range organics, or by EPA SW 846 Method 8270C. If Method 8270C is used, the lab must report the total of diesel range organics and polynuclear aromatic hydrocarbons.

⁴Monitoring frequency shall be 2/month [~~in~~ for] the first year of permit coverage. If the first year results demonstrate full compliance with the effluent limitations, the permittee may request that the monitoring frequency be reduced from 2/month to 1/month. The written request shall be sent to the appropriate regional office for review. Upon written notification from the DEQ regional office, monitoring frequency shall be reduced to 1/month. Should the permittee be issued a warning letter related to violation of effluent limitations, a notice of violation, or be the subject of an active enforcement action, monitoring frequency [~~for ethanol~~] shall revert to 2/month, upon issuance of the letter or notice or initiation of the enforcement action and remain in effect until the permit's expiration date. [~~Reports of quarterly monitoring shall be submitted to the DEQ regional office no later than the 10th day of April, July, October and January.~~]

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

3. 5. DISCHARGES OF HYDROSTATIC TEST WATERS -- ALL RECEIVING WATERS

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge to receiving waterbodies from outfall serial number xxxx. Samples taken in compliance with the monitoring requirements specified below shall be taken at the following location: Outfall from the final treatment unit prior to mixing with any other waters.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Instantaneous Minimum	Instantaneous Maximum	Frequency	Sample Type
Flow (MGD)	NA	NL	1/discharge	Estimate
pH (standard units) [‡]	6.0	9.0	1/discharge	Grab
Total Petroleum Hydrocarbons (TPH,	NA	15.0	1/discharge	Grab

Regulations

mg/l) ^{**1}				
Total Organic Carbon (TOC, mg/l)	NA	NL	1/discharge	Grab
Total Residual Chlorine (TRC, mg/l)	NA	0.011	1/discharge	Grab
Total Suspended Solids (TSS)	NA	NL	1/discharge	Grab

NL = No limitation, monitoring required

NA = Not applicable

^{*}pH may be determined in the field by EPA method 150.1 (EPA 600/4-87-020) or EPA SW 846 method 9040B.

^{**1}TPH shall be analyzed by the Wisconsin Department of Natural Resources modified Diesel Range Organics test method as specified in Wisconsin publication SW 141 (1995), or is the sum of individual gasoline range organics [and diesel range organics] or TPH-GRO and TPH-DRO to be measured by EPA SW 846 Method 8015B (1996) for gasoline and diesel range organics, or by EPA SW Method 846 Methods 8260B and 8270C (1998). If the combination of Methods 8260B and 8270C is used, the lab must report the combination total of gasoline range organics, diesel range organics and polynuclear aromatic hydrocarbons.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

4. 6. GASOLINE CONTAMINATION -- SALTWATER RECEIVING WATERS.

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge to saltwater receiving waterbodies from outfall serial number xxxx. Samples taken in compliance with the monitoring requirements specified below shall be taken at the following location: outfall from the final treatment unit prior to mixing with any other waters.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Instantaneous Minimum	Instantaneous Maximum	Frequency	Sample Type
Flow (MGD)	NA	NL	1/Month	Estimate
Benzene (µg/l) ¹	NA	50 <u>50.0</u>	1/Month	Grab [*]
Toluene (µg/l) ¹	NA	500 <u>500.0</u>	1/Month	Grab [*]
Ethylbenzene (µg/l) ¹	NA	4.3	1/Month	Grab [*]
Total Xylenes (µg/l) ¹	NA	74 <u>74.0</u>	1/Month	Grab [*]
MTBE (methyl tert-butyl ether) (µg/l) ¹	NA	440 <u>440.0</u>	1/Month	Grab [*]
pH (standard units)	6.0	9.0	1/Month	Grab
Total Recoverable Lead [*] (µg/l) ²	NA	8.5	1/Month	Grab ^{**}
Ethylene Dibromide (µg/l) ²	<u>NA</u>	<u>5.3</u>	<u>1/Month</u>	<u>Grab</u>
1,2 Dichloroethane (µg/l) ²	<u>NA</u>	<u>990.0</u>	<u>1/Month</u>	<u>Grab</u>
Ethanol (µg/l) ³	<u>NA</u>	<u>4100.0</u>	<u>1/Month</u> ³	<u>Grab</u>

NL = No limitation, monitoring required

NA = Not applicable

^{*1} Benzene, Toluene, Ethylbenzene, Total Xylenes and MTBE shall be analyzed according to a current and appropriate EPA Wastewater Method 602 (40 CFR Part 136, 1996) or EPA SW 846 Method 8021B (1998).

^{**} pH may be determined in the field using EPA Method 150.1 (EPA 600/4-87-020) or EPA SW 846 Method 9040B.

^{***2} Monitoring for this parameter is required only when contamination results from leaded fuel. Lead analysis shall be performed analyzed according to a current and appropriate EPA Wastewater Method 239.2 (40 CFR Part 136, 1996) or EPA SW 846 Method 7421 (1998). 1,2 dichloroethane and EDB (surface waters that are not public water supplies) should be analyzed by a current and appropriate EPA SW 846 Method or EPA Wastewater Method from 40 CFR Part 136 (1996).

³Monitoring for ethanol is only required for discharges of water contaminated by gasoline containing greater than 10% ethanol. Ethanol shall be analyzed according to EPA SW 846 Method 8015B or EPA SW 846 Method 8260B. Monitoring frequency shall be 1/month in the first year of permit coverage. If the first year results demonstrate full compliance with the effluent limitations, the permittee may request that the monitoring frequency be reduced from monthly to 1/quarter. The written request shall be sent to the appropriate regional office for review. Upon written notification from the DEQ regional office, monitoring frequency shall be reduced to 1/quarter. Should the permittee be issued a warning letter related to violation of effluent limitations, a notice of violation, or be the subject of an active enforcement action, monitoring frequency [~~for ethanol~~] shall revert to 1/month, upon issuance of the letter or notice or initiation of the enforcement action and remain in effect until the permit's expiration date. Reports of quarterly monitoring shall be submitted to the DEQ regional office no later than the 10th day of April, July, October and January.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

5. 7. CONTAMINATION BY PETROLEUM PRODUCTS OTHER THAN GASOLINE -- SALTWATER RECEIVING WATERS.

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge to saltwater receiving waterbodies from outfall serial number xxxx. Samples taken in compliance with the monitoring requirements specified below shall be taken at the following location: outfall from the final treatment unit prior to mixing with any other waters.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Instantaneous Minimum	Instantaneous Maximum	Frequency	Sample Type
Flow (MGD)	NA	NL	1/Month	Estimate
Naphthalene (µg/l) ¹	NA	23.5 <u>8.9</u>	1/Month	Grab [*]
Total Petroleum Hydrocarbons (mg/l) ²	NA	15 <u>15.0</u>	1/Month	Grab ^{**}
pH (standard units)	6.0	9.0	1/Month	Grab
Semi-volatile organics ^{***}	NA	NL	1/Year ^{****}	Grab
Volatile organics ^{***}	NA	NL	1/Year ^{****}	Grab
Dissolved metals ^{***}	NA	NL	1/Year ^{****}	Grab

NL = No limitation, monitoring required

NA = Not applicable

¹ Naphthalene shall be analyzed by one of the following methods: EPA 610 or 625 (40 a current and appropriate EPA Wastewater Method from 40 CFR Part 136 [; (] 1996) or a current and appropriate EPA SW 846 Methods 8100 or 8270C (1998) Method.

^{**2} TPH shall be analyzed using either the Wisconsin Department of Natural Resources modified Diesel Range Organics test method as specified in Wisconsin publication SW 141 (1995) or EPA SW 846 Method 8270C (1998). EPA SW 846 Method 8015B for diesel range organics or EPA SW 846 Method 8270C. If Method 8270C is used, the lab must report the combination total of diesel range organics and polynuclear [aromatic] hydrocarbons.

Regulations

*** pH may be determined in the field using EPA method 150.1 (EPA 600/4-87-020) or EPA SW 846 Method 9040B.

**** Monitoring for these parameters is required only when contamination is from used oils. The permittee shall report concentrations of all compounds or elements detected by the following analytical methods: Semi-volatile organics according to EPA Method 1625 (40 CFR Part 136, 1996) or EPA SW 846 Method 8270C (1998); Volatile organics according to EPA Method 1624 (40 CFR Part 136, 1996) or EPA SW 846 Method 8260B (1998); Dissolved metals according to EPA Method 200.7 (40 CFR Part 136, 1996) or EPA SW 846 Method 6010B (1995) or other equivalent EPA 40 CFR Part 136 methods with comparable detection limits and target analyte specificity.

***** The first annual sample shall be collected within 72 hours of commencement of the discharge.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

8. CONTAMINATION BY CHLORINATED HYDROCARBON SOLVENTS -- ALL RECEIVING WATERS.

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge to [freshwater] receiving waterbodies from outfall serial number xxxx. Samples taken in compliance with the monitoring requirements specified below shall be taken at the following location: outfall from the final treatment unit prior to mixing with any other waters.

Such discharges shall be limited and monitored by the permittee as specified below:

<u>EFFLUENT CHARACTERISTICS</u>	<u>DISCHARGE LIMITATIONS</u>		<u>MONITORING REQUIREMENTS</u>	
	<u>Instantaneous</u> [<u>Maximum</u> <u>Minimum</u>]	<u>Instantaneous</u> [<u>Minimum</u> <u>Maximum</u>]	<u>Frequency</u>	<u>Sample Type</u>
<u>Flow (MGD)</u>	<u>NA</u>	<u>NL</u>	<u>1/Month</u>	<u>Estimate</u>
<u>Chloroform (CAS # 67663), (µg/l)¹</u>	<u>NA</u>	<u>100.0</u>	<u>1/Month</u> <u>2/Month if public</u> <u>water supply²</u>	<u>Grab</u> <u>Grab</u>
<u>1,1 Dichloroethane (CAS # 75343)</u> <u>(µg/l)¹</u>	<u>NA</u>	<u>4.0</u>	<u>1/Month</u> <u>2/Month if public</u> <u>water supply²</u>	<u>Grab</u> <u>Grab</u>
<u>1,2 Dichloroethane (CAS # 107062)</u> <u>(µg/l)¹</u>	<u>NA</u>	<u>3.8</u>	<u>1/Month</u> <u>2/Month if public</u> <u>water supply²</u>	<u>Grab</u> <u>Grab</u>
<u>1,1 [Dichloroethane</u> <u>Dichloroethylene] (CAS # 75354)</u> <u>(µg/l)¹</u>	<u>NA</u>	<u>7.0</u>	<u>1/Month</u> <u>2/Month if public</u> <u>water supply²</u>	<u>Grab</u> <u>Grab</u>
<u>cis-1,2 Dichloroethylene (CAS #</u> <u>159592) (µg/l)¹</u>	<u>NA</u>	<u>70.0</u>	<u>1/Month</u> <u>2/Month if public</u> <u>water supply²</u>	<u>Grab</u> <u>Grab</u>
<u>trans 1,2 Dichloroethylene (CAS #</u> <u>156605) (µg/l)¹</u>	<u>NA</u>	<u>100.0</u>	<u>1/Month</u> <u>2/Month if public</u> <u>water supply²</u>	<u>Grab</u> <u>Grab</u>
<u>Methylene Chloride (CAS # 75092)</u> <u>(µg/l)¹</u>	<u>NA</u>	<u>5.0</u>	<u>1/Month</u> <u>2/Month if public</u> <u>water supply²</u>	<u>Grab</u> <u>Grab</u>

Regulations

<u>Tetrachloroethylene (CAS # 127184) (µg/l)¹</u>	<u>NA</u>	<u>5.0</u>	<u>1/Month</u> <u>2/Month if public water supply²</u>	<u>Grab</u> <u>Grab</u>
<u>1,1,1 Trichloroethane (CAS # 71556) (µg/l)¹</u>	<u>NA</u>	<u>112.0</u>	<u>1/Month</u> <u>2/Month if public water supply²</u>	<u>Grab</u> <u>Grab</u>
<u>1,1,2 Trichloroethane (CAS # 79005) (µg/l)¹</u>	<u>NA</u>	<u>5.0</u>	<u>1/Month</u> <u>2/Month if public water supply²</u>	<u>Grab</u> <u>Grab</u>
<u>Trichloroethylene (CAS # 79016) (µg/l)¹</u>	<u>NA</u>	<u>5.0</u>	<u>1/Month</u> <u>2/Month if public water supply²</u>	<u>Grab</u> <u>Grab</u>
<u>Vinyl Chloride (CAS # [79016 75014]) (µg/l)¹</u>	<u>NA</u>	<u>2.0</u>	<u>1/Month</u> <u>2/Month if public water supply²</u>	<u>Grab</u> <u>Grab</u>
<u>Carbon Tetrachloride (CAS # 56235) (µg/l)¹</u>	<u>NA</u>	<u>2.5</u>	<u>1/Month</u> <u>2/Month if public water supply²</u>	<u>Grab</u> <u>Grab</u>
<u>1,2 Dichlorobenzene (CAS # 95501) (µg/l)¹</u>	<u>NA</u>	<u>15.8</u>	<u>1/Month</u> <u>2/Month if public water supply²</u>	<u>Grab</u> <u>Grab</u>
<u>Chlorobenzene (CAS # 108907) (µg/l)¹</u>	<u>NA</u>	<u>3.0</u>	<u>1/Month</u> <u>2/Month if public water supply²</u>	<u>Grab</u> <u>Grab</u>
<u>Trichlorofluoromethane (CAS # 75694) (µg/l)¹</u>	<u>NA</u>	<u>5.0</u>	<u>1/Month</u> <u>2/Month if public water supply²</u>	<u>Grab</u> <u>Grab</u>
<u>Chloroethane (CAS # 75003) (µg/l)¹</u>	<u>NA</u>	<u>3.6</u>	<u>1/Month</u> <u>2/Month if public water supply²</u>	<u>Grab</u> <u>Grab</u>
<u>pH (standard units)</u>	<u>6.0</u>	<u>9.0</u>	<u>1/Month</u> <u>2/Month if public water supply²</u>	<u>Grab</u> <u>Grab</u>

NL = No limitation, monitoring required

NA = Not applicable

¹This constituent shall be analyzed by a current and appropriate gas chromatograph/mass spectroscopy method from EPA SW 846 or the EPA Wastewater Method series from 40 CFR Part [~~135~~ 136] (1996).

²Monitoring frequency shall be 2/month [~~is~~ for] the first year of permit coverage. If the first year results demonstrate full compliance with the effluent limitations, the permittee may request that the monitoring frequency be reduced from 2/month to 1/month. The written request shall be sent to the appropriate regional office for review. Upon written notification from the DEQ regional office, monitoring frequency shall be reduced to 1/month. Should the permittee be issued a warning letter related to violation of effluent limitations, a notice of violation, or be

Regulations

the subject of an active enforcement action, monitoring frequency [for ethanol] shall revert to 2/month, upon issuance of the letter or notice or initiation of the enforcement action and remain in effect until the permit's expiration date.

Part I

B. Special conditions.

1. There shall be no discharge of floating solids or visible foam in other than trace amounts.
2. The permittee shall sample each permitted outfall each calendar month in which a discharge occurs. When no discharge occurs from an outfall during a calendar month, the discharge monitoring report for that outfall shall be submitted indicating "No Discharge."
3. O & M Manual. If the permitted discharge is through a treatment works, within 30 days of coverage under this general permit, the permittee shall develop and maintain on site, an Operations and Maintenance (O & M) Manual for the treatment works permitted herein. This manual shall detail practices and procedures which will be followed to ensure compliance with the requirements of this permit. The permittee shall operate the treatment works in accordance with the O & M Manual. The manual shall be made available to the department upon request.
4. Operation schedule. The permittee shall construct, install and begin operating the treatment works described in the registration statement prior to discharging to surface waters. The permittee shall notify the department's regional office within five days after the completion of installation and commencement of operation.
5. Materials storage. Except as expressly authorized by this permit or another permit issued by the board, no product, materials, industrial wastes, or other wastes resulting from the purchase, sale, mining, extraction, transport, preparation, or storage of raw or intermediate materials, final product, by-product or wastes, shall be handled, disposed of, or stored so as to permit a discharge of such product, materials, industrial wastes, or other wastes to state waters.
6. If the permittee discharges to surface waters through a municipal separate storm sewer system, the permittee shall, within 30 days of coverage under this general permit, notify the owner of the municipal separate storm sewer system of the existence of the discharge and provide the following information: the name and location of the facility, a contact person and telephone number; the nature of the discharge; and the number of outfalls.
7. Termination of coverage. Provided that the department agrees that the discharge covered under this general permit is no longer needed, the permittee may request termination of coverage under the general permit, for the entire facility or for specific outfalls, by submitting a request for termination of coverage. This request for termination of coverage shall be sent to the department's regional office

with appropriate documentation or references to documentation already in the department's possession. Upon the permittee's receipt of the regional director's approval, coverage under this general permit will be terminated. Termination of coverage under this general permit does not relieve the permittee of responsibilities under other board regulations or directives.

Part II

Conditions Applicable To All VPDES Permits

A. Monitoring.

1. Samples and measurements taken as required by this permit shall be representative of the monitored activity.
2. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this permit.
3. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will ensure accuracy of measurements.

B. Records.

1. Records of monitoring information shall include:
 - a. The date, exact place, and time of sampling or measurements;
 - b. The individuals who performed the sampling or measurements;
 - c. The dates and times analyses were performed;
 - d. The individual or individuals who performed the analyses;
 - e. The analytical techniques or methods used; and
 - f. The results of such analyses.
2. Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years, the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation; copies of all reports required by this permit; and records of all data used to complete the registration statement for this permit for a period of at least three years from the date of the sample, measurement, report or request for coverage. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the board.

C. Reporting monitoring results.

1. The permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after monitoring takes place unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the department's regional office.

2. Monitoring results shall be reported on a Discharge Monitoring Report (DMR) or on forms provided, approved or specified by the department.

3. If the permittee monitors any pollutant specifically addressed by this permit more frequently than required by this permit using test procedures approved under 40 CFR Part 136 or using other test procedures approved by the U.S. Environmental Protection Agency or using procedures specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or reporting form specified by the department.

4. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this permit.

D. Duty to provide information. The permittee shall furnish to the department, within a reasonable time, any information which the board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The board may require the permittee to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from his discharge on the quality of state waters or such other information as may be necessary to accomplish the purposes of the State Water Control Law. The permittee shall also furnish to the department upon request copies of records required to be kept by this permit.

E. Compliance schedule reports. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

F. Unauthorized discharges. Except in compliance with this permit or another permit issued by the board, it shall be unlawful for any person to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or
2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, to animal or aquatic life, to the use of such waters for domestic or industrial consumption, for recreation, or for other uses.

G. Reports of unauthorized discharges. Any permittee who discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters in violation of Part II F or who discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of Part II F shall notify the department of the discharge immediately upon discovery of the discharge, but in no case later than 24 hours after the discovery. A written report of the unauthorized discharge shall be submitted to the department within five days of discovery of the discharge. The written report shall contain:

1. A description of the nature and location of the discharge;
2. The cause of the discharge;
3. The date on which the discharge occurred;
4. The length of time that the discharge continued;
5. The volume of the discharge;
6. If the discharge is continuing, how long it is expected to continue;
7. If the discharge is continuing, what the expected total volume of the discharge will be; and
8. Any steps planned or taken to reduce, eliminate and prevent a recurrence of the present discharge or any future discharges not authorized by this permit.

Discharges reportable to the department under the immediate reporting requirements of other regulations are exempted from this requirement.

H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge including a bypass or upset should occur from a treatment works and the discharge enters or could be expected to enter state waters, the permittee shall promptly notify, in no case later than 24 hours, the department by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse affects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit the report to the department ~~in writing~~ within five days of discovery of the discharge in accordance with Part II I 2. Unusual and extraordinary discharges include but are not limited to any discharge resulting from:

1. Unusual spillage of materials resulting directly or indirectly from processing operations;
2. Breakdown of processing or accessory equipment;
3. Failure or taking out of service some or all of the treatment works; and
4. Flooding or other acts of nature.

Regulations

I. Reports of noncompliance. The permittee shall report any noncompliance which may adversely affect state waters or may endanger public health as follows:

1. An oral report shall be provided within 24 hours from the time the permittee becomes aware of the circumstances. The following shall be included as information which shall be reported within 24 hours under this subsection:

- a. Any unanticipated bypass; and
- b. Any upset which causes a discharge to surface waters.

2. A written report shall be submitted within five days and shall contain:

- a. A description of the noncompliance and its cause;
- b. The period of noncompliance including exact dates and times and, if the noncompliance has not been corrected, the anticipated time it is expected to continue; and
- c. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

The board may waive the written report on a case-by-case basis for reports of noncompliance under Part II I if the oral report has been received within 24 hours and no adverse impact on state waters has been reported.

3. The permittee shall report all instances of noncompliance not reported under Part II I 1 or 2, in writing, at the time the next monitoring reports are submitted. The reports shall contain the information listed in Part II I 2.

NOTE: The immediate (within 24 hours) reports required in Part II G, H and I may be made to the department's regional office. Reports may be made by telephone or by FAX. For reports outside normal working hours, leave a message and this shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Services maintains a 24-hour telephone service at 1-800-468-8892.

J. Notice of planned changes.

1. The permittee shall give notice to the department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

- a. The permittee plans an alteration or addition to any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

(1) After promulgation of standards of performance under §306 of the Clean Water Act which are applicable to such source; or

(2) After proposal of standards of performance in accordance with §306 of the Clean Water Act which are applicable to such source, but only if the standards are promulgated in accordance with §306 of the Act within 120 days of their proposal;

b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations nor to notification requirements specified elsewhere in this permit; or

c. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

2. The permittee shall give advance notice to the department of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

K. Signatory requirements.

1. Registration statement. All registration statements shall be signed as follows:

a. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a public agency includes (i) the chief executive officer of the agency or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

2. Reports. All reports required by permits, and other information requested by the board shall be signed by a person described in Part II K 1, or by a duly authorized

representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described in Part II K 1;

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative thus may be either a named individual or any individual occupying a named position; and

c. The written authorization is submitted to the department.

3. Changes to authorization. If an authorization under Part II K 2 is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part II K 2 shall be submitted to the department prior to or together with any reports or information to be signed by an authorized representative.

4. Certification. Any person signing a document under Parts II K 1 or 2 shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to ensure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

L. Duty to comply. The permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the State Water Control Law and the Clean Water Act, except that noncompliance with certain provisions of this permit may constitute a violation of the State Water Control Law but not the Clean Water Act. Permit noncompliance is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

The permittee shall comply with effluent standards or prohibitions established under §307(a) of the Clean Water Act for toxic pollutants and with standards for sewage sludge use or disposal established under §405(d) of the Clean Water Act within the time provided in the regulations that establish

these standards or prohibitions or standards for sewage sludge use or disposal, even if this permit has not yet been modified to incorporate the requirement.

M. Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall submit a new registration statement at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the board. The board shall not grant permission for registration statements to be submitted later than the expiration date of the existing permit.

N. Effect of a permit. This permit does not convey any property rights in either real or personal property or any exclusive privileges, nor does it authorize any injury to private property or invasion of personal rights, or any infringement of federal, state or local law or regulations.

O. State law. Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any other state law or regulation or under authority preserved by §510 of the Clean Water Act. Except as provided in permit conditions on ~~bypass~~ "bypassing" (Part II U) and ~~upset~~ "upset" (Part II V), nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

P. Oil and hazardous substance liability. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Article 11 (§62.1-44.34:14 et seq.) of the State Water Control Law.

Q. Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by the permittee only when the operation is necessary to achieve compliance with the conditions of this permit.

R. Disposal of solids or sludges. Solids, sludges or other pollutants removed in the course of treatment or management of pollutants shall be disposed of in a manner so as to prevent any pollutant from such materials from entering state waters.

S. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable

Regulations

likelihood of adversely affecting human health or the environment.

T. Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

U. Bypass.

1. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to ~~ensure~~ assure efficient operation. These bypasses are not subject to the provisions of Part II U 2 and 3.

2. Notice.

a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, prior notice shall be submitted, if possible, at least 10 days before the date of the bypass.

b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in Part II I.

3. Prohibition of bypass.

a. Bypass is prohibited, and the board may take enforcement action against a permittee for bypass, unless:

(1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The permittee submitted notices as required under Part II U 2.

b. The board may approve an anticipated bypass, after considering its adverse effects, if the board determines that it will meet the three conditions listed above in Part II U 3 a.

V. Upset.

1. An upset constitutes an affirmative defense to an action brought for noncompliance with technology-based permit effluent limitations if the requirements of Part II V 2 are met. A determination made during administrative review of claims that noncompliance was caused by upset and before

an action for noncompliance is not a final administrative action subject to judicial review.

2. A permittee who wishes to establish the affirmative defense of upset shall demonstrate through properly signed, contemporaneous operating logs or other relevant evidence that:

a. An upset occurred and that the permittee can identify the cause or causes of the upset;

b. The permitted facility was at the time being properly operated;

c. The permittee submitted notice of the upset as required in Part II I; and

d. The permittee complied with any remedial measures required under Part II S.

3. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

W. Inspection and entry. The permittee shall allow the director or an authorized representative, upon presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted or where records must be kept under the conditions of this permit;

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

4. Sample or monitor at reasonable times, for the purposes of ensuring permit compliance or as otherwise authorized by the Clean Water Act and the State Water Control Law any substances or parameters at any location.

For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours, and whenever the facility is discharging. Nothing contained herein shall make an inspection unreasonable during an emergency.

X. Permit actions. Permits may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

Y. Transfer of permits.

1. Permits are not transferable to any person except after notice to the department. Except as provided in Part II Y 2,

a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued, or a minor modification made, to identify the new permittee and incorporate such other requirements as may be necessary under the State Water Control Law and the Clean Water Act.

2. As an alternative to transfers under Part II Y 1, this permit may be automatically transferred to a new permittee if:

- a. The current permittee notifies the department at least 30 days in advance of the proposed transfer of the title to the facility or property;
- b. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and
- c. The board does not notify the existing permittee and the proposed new permittee of its intent to modify or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part II Y 2 b.

Z. Severability. The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

DOCUMENTS INCORPORATED BY REFERENCE

~~Wisconsin Publication SW 141 (1995).~~

Method	Cite
150.1	EPA 600/4-87-020
200.7	EPA 600/R-94-111; 40 CFR 136, App D, 1996
239.2	EPA 600/4-79-020; 40 CFR 136, App D, 1996
602	40 CFR 136, 1996
610	40 CFR 136, 1996
625	40 CFR 136, 1996
1624	40 CFR 136, 1996
1625	40 CFR 136, 1996
6010B	EPA SW 846, Ch. 3.3, (1998)
7421	EPA SW 846, Ch. 3.3, (1998)
8015B	EPA SW 846, Ch. 4.3.1, (1998)
8021B	EPA SW 846, Ch. 4.3.1, (1998)
8100	EPA SW 846, Ch. 4.3.1, (1998)

- 8260B EPA SW 846, Ch. 4.3.2, (1998)
- 8270C EPA SW 846, Ch. 4.3.2, (1998)
- 9040B EPA SW 846, Ch. 8.2, (1998)

VA.R. Doc. No. R07-21; Filed December 18, 2007, 11:17 a.m.

Final Regulation

REGISTRAR'S NOTICE: The following regulation filed by the State Water Control Board is exempt from the Administrative Process Act in accordance with §2.2-4006 A 9 of the Code of Virginia, which exempts general permits issued by the State Water Control Board pursuant to the State Water Control Law (§62.1-44.2 et seq.), Chapter 24 (§62.1-242 et seq.) of Title 62.1 and Chapter 25 (§62.1-254 et seq.) of Title 62.1 of the Code of Virginia if the board (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of §2.2-4007.01, (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit, (iii) provides notice and receives oral and written comment as provided in §2.2-4007.03, and (iv) conducts at least one public hearing on the proposed general permit.

Title of Regulation: **9VAC25-196. General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Cooling Water Discharges (amending 9VAC25-196-20, 9VAC25-196-40, 9VAC25-196-60, 9VAC25-196-70).**

Statutory Authority: §62.1-44.15 of the Code of Virginia; §402 of the Clean Water Act; 40 CFR Parts 122, 123 and 124.

Effective Date: February 6, 2008.

Agency Contact: Burton R. Tuxford, Department of Environmental Quality, P.O. Box 1105, 629 East Main Street, Richmond, VA 23218, telephone 804-698-4086, FAX 804-698-4032, or email brtuxford@deq.virginia.gov.

Summary:

This regulation reissues the existing VPDES cooling water general permit that expires on March 1, 2008. The general permit establishes limitations and monitoring requirements for point source discharges of noncontact cooling water. The significant changes to the regulation are as follows:

1. The title of the regulation is "General Virginia Pollutant Discharge Elimination System (VPDES) Permit For Noncontact Cooling Water Discharges of 50,000 Gallons Per Day or Less" to indicate the coverage restrictions.

2. The Registration Statement item #6 and permit Special Condition item #3 require either an engineering analysis or a technical evaluation of the active ingredients of the

Regulations

chemical additives proposed to be used to determine the concentration in the discharge. Previously the regulation only required an estimate of the concentration in the discharge.

3. Footnote #3 of the permit Part I, Effluent Limitations and Monitoring Requirements section clarifies that the ammonia monitoring only applies where the source of the cooling water is disinfected using chloramines.

4. Permit Special Condition item #7 is added to allow a permittee to apply for reduced monitoring if they have a geothermal system using groundwater and no chemical additives, and their monitoring data shows they are in full compliance with their effluent limitations. The department must authorize the reduced monitoring, and any subsequent enforcement action will require the permittee to resume the full permit monitoring requirements.

CHAPTER 196

GENERAL VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM (VPDES) PERMIT FOR NONCONTACT COOLING WATER DISCHARGES OF 50,000 GALLONS PER DAY OR LESS

9VAC25-196-20. Purpose.

This general permit regulation governs ~~the~~ point source ~~discharge~~ discharges of noncontact cooling water of 50,000 gallons per day or less to surface waters.

9VAC25-196-40. Effective date of the permit.

This general permit will become effective on March 2, ~~2003~~ 2008. This general permit will expire five years from the effective date. This general permit is effective as to any covered owner upon compliance with all the provisions of 9VAC25-196-50 and the receipt of this general permit.

9VAC25-196-60. Registration statement.

The owner shall file a complete general VPDES permit registration statement for cooling water discharges. Any owner proposing a new discharge shall file a complete registration statement at least 30 days prior to the date planned for commencing operation of the new discharge. Any owner of an existing discharge covered by an individual VPDES permit who is proposing to be covered by this general permit shall file the registration statement at least 180 days prior to the expiration date of the individual VPDES permit. Any owner of an existing discharge not currently covered by a VPDES permit who is proposing to be covered by this general permit shall file a complete registration statement. The required registration statement shall contain the following information:

1. Facility name and address, owner name and mailing address and telephone number;
2. Operator name, mailing address, and telephone number if different from owner;

3. Does the facility currently have a VPDES permit? Permit Number if yes;

4. Listing of point source discharges that are not composed entirely of cooling water;

5. Listing of type and size (tons) of cooling equipment or noncontact cooling water processes;

6. The following information if any chemical or nonchemical treatment, or both, is employed in each of the cooling water systems:

a. Description of the chemical or nonchemical treatment, or both, to be employed and its purpose; ~~For~~ for chemical additives other than chlorine, provide the information prescribed in subdivisions 6 b, c, and d below, e and f;

b. Name and manufacturer of each additive used;

c. List of active ingredients and percent composition;

d. Proposed schedule and quantity of chemical usage, and ~~estimate of either an engineering analysis, or a technical evaluation of the active ingredients, to determine~~ the concentration in the discharge;

e. Available aquatic toxicity information for each proposed additive used; and

f. Any other information such as product or constituent degradation, fate, transport, synergies, bioavailability, etc., that will aid the board with the toxicity evaluation of the discharge.

7. Description of any type of treatment or retention being provided to the wastewater before discharge (i.e. retention ponds, settling ponds, etc.)

8. A schematic drawing of the cooling water equipment that shows the source of the cooling water, its flow through the facility, and each cooling water discharge point.

9. For cooling waters with a direct discharge to surface waters, a topographic map extending to at least one mile beyond the property boundary. The map must show the outline of the facility and the location of each of its existing and proposed intake and discharge points, and must include all springs, rivers and other surface water bodies.

10. The following discharge information:

a. A listing of all cooling water discharges by a unique number;

b. The source of cooling water for each discharge;

c. An estimate of the maximum daily flow in gallons per day for each discharge;

d. The name of the waterbody receiving direct discharge or discharge through the municipal separate storm sewer system;

e. The duration and frequency of the discharge for each separate discharge point; continuous, intermittent, or seasonal;

f. The name and contact information of the owner of the municipal separate storm sewer system that receives the discharge, if applicable.

11. The following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations.

The registration statement shall be signed in accordance with 9VAC25-31-110.

9VAC25-196-70. General permit.

Any owner whose registration statement is accepted by the board will receive the following permit and shall comply with the requirements therein and be subject to all requirements of 9VAC25-31.

General Permit No: VAG25

Effective Date: March 2, ~~2003~~ 2008

Expiration Date: March 1, ~~2008~~ 2013

GENERAL PERMIT FOR NONCONTACT COOLING WATER DISCHARGES OF 50,000 GALLONS PER DAY OR LESS

AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM AND THE VIRGINIA STATE WATER CONTROL LAW

In compliance with the provisions of the Clean Water Act, as amended, and pursuant to the State Water Control Law and regulations adopted pursuant thereto, owners of noncontact cooling water discharges of 50,000 gallons per day or less are authorized to discharge to surface waters within the boundaries of the Commonwealth of Virginia, except Class V stockable trout waters, Class VI natural trout waters, and those specifically named in board regulations or policies which prohibit such discharges. Chlorine or any other halogen compounds shall not be used for disinfection or other treatment purposes, including biocide applications, for any discharges to waters containing endangered or threatened species as identified in 9VAC25-260-110 C of the Water Quality Standards.

The authorized discharge shall be in accordance with this cover page, Part I—Effluent Limitations and Monitoring Requirements, and Part II—Conditions Applicable to all VPDES Permits, as set forth herein.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

During the period beginning on the permit's effective date and lasting until the permit's expiration date, the permittee is authorized to discharge [~~non contact~~ noncontact] cooling water. Samples taken in compliance with the monitoring requirements specified below shall be taken at the following location(s): outfall(s): _____.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Maximum	Minimum	Frequency	Sample Type
Flow (MGD)	0.05	NA	1/3 Months	Estimate
Temperature (°C)	⁽¹⁾	NA	1/3 Months	Immersion Stabilization
pH (SU)	9 ⁽²⁾	6 ⁽²⁾	1/3 Months	Grab
Ammonia-N ⁽³⁾ (mg/l)	NL	NA	1/3 Months	Grab
Total Residual Chlorine ⁽³⁾ (mg/l)	Nondetectable	NA	1/3 Months	Grab
Hardness (mg/l CaCO ₃)	NL	NA	1/3 Months	Grab
Total Dissolved Copper ⁽⁴⁾ (µg/l)	NL	NA	1/3 Months	Grab
Total Dissolved Zinc ⁽⁴⁾ (µg/l)	NL	NA	1/3 Months	Grab

Regulations

Total Dissolved Silver ^{(4), (5)} (µg/l)	NL	NA	1/3 Months	Grab
Total Phosphorus ⁽⁶⁾ (mg/l)	NL	NA	1/3 Months	Grab

NL = No limitation, monitoring required

NA = Not applicable

⁽¹⁾ The effluent temperature shall not exceed a maximum 32°C for discharges to nontidal coastal and piedmont waters, or 31°C for mountain and upper piedmont waters. No maximum temperature limit, only monitoring, applies to discharges to estuarine waters.

The effluent shall not cause an increase in temperature of the receiving stream of more than 3°C above the natural water temperature. The effluent shall not cause the temperature in the receiving stream to change more than 2°C per hour. Natural temperature is defined as that temperature of a body of water (measured as the arithmetic average over one hour) due solely to natural conditions without the influence of any point-source discharge.

⁽²⁾ Where the Water Quality Standards (~~9VAC25-260-5 et seq.~~) (9VAC25-260) establish alternate standards for pH in the waters receiving the discharge, those standards shall be the maximum and minimum effluent limitations.

⁽³⁾ Chlorine limitation of nondetectable (<0.1 mg/l) and chlorine ~~and ammonia~~ monitoring only ~~apply~~ applies to outfalls directly discharging to surface waters where the source of cooling water is chlorinated ~~or contains chloramines~~. Ammonia monitoring only applies where the source of cooling water is disinfected using chloramines.

⁽⁴⁾ A specific analysis is not specified for these materials. An appropriate analysis shall be selected from the following list of EPA methods to achieve a quantification level that is less than the target level for the material under consideration:

Material	EPA Method	Target Level (µg/l)
Copper	220.1, 220.2, 200.7, 200.8, 200.9, 1638, 1640	9.2
Zinc	289.1, 289.2, 200.7, 200.8, 1638, 1639	65.0
Silver	272.1, 272.2, 200.7, 200.8, 200.9, 1638	1.2

Quality control/assurance information shall be submitted to document that the required quantification level has been attained.

⁽⁵⁾ Silver monitoring is only required where Cu/Ag anode is used.

⁽⁶⁾ Phosphorous monitoring is only required where additive containing phosphorous is used.

B. Special conditions.

1. There shall be no discharge of floating solids or visible foam in other than trace amounts.

2. No discharges other than cooling water, as defined, are permitted under this general permit.

3. The use of any chemical additives not identified in the registration statement, except chlorine, without prior approval is prohibited under this general permit. Prior approval shall be obtained from the DEQ before any changes are made to the chemical and/or nonchemical treatment technology employed in the cooling water system. Requests for approval of the change shall be made in writing and shall include the following information:

a. Describe the chemical and/or nonchemical treatment to be employed and its purpose; if chemical additives are used, provide the information prescribed in subdivisions 3 b, c, d ~~and~~ e and f;

b. Provide the name and manufacturer of each additive used;

c. Provide a list of active ingredients and percentage of composition;

d. Give the proposed schedule and quantity of chemical usage, and ~~estimate~~ provide either an engineering analysis, or a technical evaluation of the active ingredients, to determine the concentration in the discharge; ~~and~~

e. Attach available aquatic toxicity information for each additive proposed for use; and

f. Attach any other information such as product or constituent degradation, fate, transport, synergies, bioavailability, etc., that will aid the board with the toxicity evaluation for the discharge.

4. Where cooling water is discharged through a municipal storm sewer system to surface waters, the permittee shall, within 30 days of coverage under this general permit, notify the owner of the municipal separate storm sewer system of the existence of the discharge and provide the following information: the name of the facility, a contact person and phone number, nature of the discharge, number of the outfalls, and the location of the discharge. A copy of such notification shall be provided to the department.

5. The permittee shall at all times properly operate and maintain all cooling water systems. Inspection shall be conducted for each cooling water unit by the plant personnel at least once per year with reports maintained on site.

6. The permittee shall notify the department as soon as they know or have reason to believe:

a. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in this permit, if that discharge will exceed the highest of the following notification levels:

- (1) One hundred micrograms per liter (100 µg/l);
- (2) Two hundred micrograms per liter (200 µg/l) for acrolein and acrylonitrile; 500 micrograms per liter (500 µg/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;
- (3) Five times the maximum concentration value reported for that pollutant in the permit application; or
- (4) The level established by the board in accordance with 9VAC25-31-220 F.

b. That any activity has occurred or will occur which would result in any discharge, on a nonroutine or infrequent basis, of a toxic pollutant which is not limited in this permit, if that discharge will exceed the highest of the following notification levels:

- (1) Five hundred micrograms per liter (500 µg/l);
- (2) One milligram per liter (1 mg/l) for antimony;
- (3) Ten times the maximum concentration value reported for that pollutant in the permit application; or
- (4) The level established by the board in accordance with 9VAC25-31-220 F.

7. Geothermal systems using groundwater and no chemical additives. Geothermal systems using groundwater and no chemical additives may be eligible for reduced monitoring requirements.

If a geothermal system was covered by the previous cooling water general permit, and the monitoring results from the previous permit term demonstrate full compliance with the effluent limitations, the permittee may request authorization from the department to reduce the monitoring to once in the first monitoring quarter of the first year of this permit term.

Owners of new geothermal systems, and previously unpermitted geothermal systems that receive coverage under this permit shall submit monitoring results to the department for the first four monitoring quarters after

coverage begins. If the monitoring results demonstrate full compliance with the effluent limitations, the permittee may request authorization from the department to suspend monitoring for the remainder of the permit term.

Should the permittee be issued a warning letter related to violation of effluent limitations, a notice of violation, or be the subject of an active enforcement action, upon issuance of the letter or notice, or initiation of the enforcement action the monitoring frequency shall revert to 1/3 months and remain in effect until the permit's expiration date.

Part II

~~Condition~~ Conditions Applicable to All VPDES Permits

A. Monitoring.

1. Samples and measurements taken as required by this permit shall be representative of the monitored activity.
2. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this permit.
3. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will ensure accuracy of measurements.

B. Records.

1. Records of monitoring information shall include:
 - a. The date, exact place and time of sampling or measurements;
 - b. The individual(s) who performed the sampling or measurements;
 - c. The date(s) and time(s) analyses were performed;
 - d. The individual(s) who performed the analyses;
 - e. The analytical techniques or methods used; and
 - f. The results of such analyses.

2. Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years, the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the registration statement for this permit, for a period of at least three years from the date of the sample, measurement, report or request for coverage. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated

Regulations

activity or regarding control standards applicable to the permittee or as requested by the board.

C. Reporting monitoring results.

1. The permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after monitoring takes place, unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the department's regional office.

2. Monitoring results shall be reported on a Discharge Monitoring Report (DMR) or on forms provided, approved or specified by the department.

3. If the permittee monitors any pollutant specifically addressed by this permit more frequently than required by this permit using test procedures approved under 40 CFR Part 136 or using other test procedures approved by the U.S. Environmental Protection Agency or using procedures specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or reporting form specified by the department.

4. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this permit.

D. Duty to provide information. The permittee shall furnish to the department, within a reasonable time, any information which the board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The board may require the permittee to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of the State Water Control Law. The permittee shall also furnish to the department upon request copies of records required to be kept by this permit.

E. Compliance schedule reports. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

F. Unauthorized discharges. Except in compliance with this permit or another permit issued by the board, it shall be unlawful for any person to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or
2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, to animal or aquatic life, to the use of

such waters for domestic or industrial consumption, for recreation, or for other uses.

G. Reports of unauthorized discharges. Any permittee who discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters in violation of Part II F, or who discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of Part II F, shall notify the department of the discharge immediately upon discovery of the discharge, but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the department within five days of discovery of the discharge. The written report shall contain:

1. A description of the nature and location of the discharge;
2. The cause of the discharge;
3. The date on which the discharge occurred;
4. The length of time that the discharge continued;
5. The volume of the discharge;
6. If the discharge is continuing, how long it is expected to continue;
7. If the discharge is continuing, what the expected total volume of the discharge will be; and
8. Any steps planned or taken to reduce, eliminate and prevent a recurrence of the present discharge or any future discharges not authorized by this permit.

Discharges reportable to the department under the immediate reporting requirements of other regulations are exempted from this requirement.

H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge including a bypass or upset should occur from a treatment works and the discharge enters or could be expected to enter state waters, the permittee shall promptly notify, in no case later than 24 hours, the department by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse effects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the department within five days of discovery of the discharge in accordance with Part II I 2. Unusual and extraordinary discharges include but are not limited to any discharge resulting from:

1. Unusual spillage of materials resulting directly or indirectly from processing operations;
2. Breakdown of processing or accessory equipment;
3. Failure or taking out of service some or all of the treatment works; and
4. Flooding or other acts of nature.

I. Reports of noncompliance. The permittee shall report any noncompliance which may adversely affect state waters or may endanger public health.

1. An oral report shall be provided within 24 hours from the time the permittee becomes aware of the circumstances. The following shall be included as information which shall be reported within 24 hours under this subsection:

- a. Any unanticipated bypass; and
- b. Any upset which causes a discharge to surface waters.

2. A written report shall be submitted within five days and shall contain:

- a. A description of the noncompliance and its cause;
- b. The period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and
- c. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

The board may waive the written report on a case-by-case basis for reports of noncompliance under Part II I if the oral report has been received within 24 hours and no adverse impact on state waters has been reported.

3. The permittee shall report all instances of noncompliance not reported under Part II I 1 or 2, in writing, at the time the next monitoring reports are submitted. The reports shall contain the information listed in Part II I 2.

NOTE: The immediate (within 24 hours) reports required in Parts II G, H and I may be made to the department's regional office by telephone or by fax. For reports outside normal working hours, leave a message and this shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Services maintains a 24-hour telephone service at 1-800-468-8892.

J. Notice of planned changes.

1. The permittee shall give notice to the department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

- a. The permittee plans alteration or addition to any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

(1) After promulgation of standards of performance under §306 of Clean Water Act which are applicable to such source; or

(2) After proposal of standards of performance in accordance with §306 of Clean Water Act which are applicable to such source, but only if the standards are promulgated in accordance with §306 within 120 days of their proposal;

b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations nor to notification requirements specified elsewhere in this permit; or

c. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

2. The permittee shall give advance notice to the department of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

K. Signatory requirements.

1. Registration statements. All registration statements shall be signed as follows:

a. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking

Regulations

ected official. For purposes of this section, a principal executive officer of a public agency includes: (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

2. Reports, etc. All reports required by permits, and other information requested by the board shall be signed by a person described in Part II K 1, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described in Part II K 1;

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company (a duly authorized representative may thus be either a named individual or any individual occupying a named position); and

c. The written authorization is submitted to the department.

3. Changes to authorization. If an authorization under Part II K 2 is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part II K 2 shall be submitted to the department prior to or together with any reports or information to be signed by an authorized representative.

4. Certification. Any person signing a document under Part II K 1 or 2 shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

L. Duty to comply. The permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the State Water Control Law and the Clean Water Act, except that noncompliance with certain provisions of this permit may constitute a violation of the State Water Control Law but not the Clean Water Act. Permit

noncompliance is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

The permittee shall comply with effluent standards or prohibitions established under §307(a) of the Clean Water Act for toxic pollutants and with standards for sewage sludge use or disposal established under §405(d) of the Clean Water Act within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if this permit has not yet been modified to incorporate the requirement.

M. Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall apply for and obtain a new permit. All permittees with a currently effective permit shall submit a new registration statement at least ~~180~~ 90 days before the expiration date of the existing permit, unless permission for a later date has been granted by the board. The board shall not grant permission for registration statements to be submitted later than the expiration date of the existing permit.

N. Effect of a permit. This permit does not convey any property rights in either real or personal property or any exclusive privileges, nor does it authorize any injury to private property or invasion of personal rights, or any infringement of federal, state or local law or regulations.

O. State law. Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any other state law or regulation or under authority preserved by §510 of the Clean Water Act. Except as provided in permit conditions on bypass (Part II U) and upset (Part II V), nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

P. Oil and hazardous substance liability. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under §§62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

Q. Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by the permittee only

when the operation is necessary to achieve compliance with the conditions of this permit.

R. Disposal of solids or sludges. Solids, sludges or other pollutants removed in the course of treatment or management of pollutants shall be disposed of in a manner so as to prevent any pollutant from such materials from entering state waters.

S. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

T. Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

U. Bypass.

1. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to ensure efficient operation. These bypasses are not subject to the provisions of Part II U 2 and U 3.

2. Notice.

a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, prior notice shall be submitted, if possible at least 10 days before the date of the bypass.

b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in Part II I.

3. Prohibition of bypass.

a. Bypass is prohibited, and the board may take enforcement action against a permittee for bypass, unless:

(1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The permittee submitted notices as required under Part II U 2.

b. The board may approve an anticipated bypass, after considering its adverse effects, if the board determines that it will meet the three conditions listed in Part II U 3 a.

V. Upset.

1. An upset constitutes an affirmative defense to an action brought for noncompliance with technology based permit effluent limitations if the requirements of Part II V 2 are met. A determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is not a final administrative action subject to judicial review.

2. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

a. An upset occurred and that the permittee can identify the cause(s) of the upset;

b. The permitted facility was at the time being properly operated;

c. The permittee submitted notice of the upset as required in Part II I; and

d. The permittee complied with any remedial measures required under Part II S.

3. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

W. Inspection and entry. The permittee shall allow the director, or an authorized representative, upon presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act and the State Water Control Law, any substances or parameters at any location.

For purposes of this subsection, the time for inspection shall be deemed reasonable during regular business hours, and whenever the facility is discharging. Nothing contained

Regulations

herein shall make an inspection unreasonable during an emergency.

X. Permit actions. Permits may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

Y. Transfer of permits.

1. Permits are not transferable to any person except after notice to the department. Except as provided in Part II Y 2, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued, or a minor modification made, to identify the new permittee and incorporate such other requirements as may be necessary under the State Water Control Law and the Clean Water Act.

2. As an alternative to transfers under Part II Y 1, this permit may be automatically transferred to a new permittee if:

- a. The current permittee notifies the department at least 30 days in advance of the proposed transfer of the title to the facility or property;
- b. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and
- c. The board does not notify the existing permittee and the proposed new permittee of its intent to modify or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part II Y 2 b.

Z. Severability. The provisions of this permit are severable. If any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances and the remainder of this permit shall not be affected thereby.

VA.R. Doc. No. R07-06; Filed December 18, 2007, 12:40 p.m.

Final Regulation

REGISTRAR'S NOTICE: The State Water Control Board is claiming an exclusion 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 State Water Control Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 9VAC25-210. Virginia Water Protection Permit Program Regulation (amending

9VAC25-210-10, 9VAC25-210-60, 9VAC25-210-116, 9VAC25-210-130).

Statutory Authority: §62.1-44.15 of the Code of Virginia; §401 of the Clean Water Act.

Effective Date: February 6, 2008.

Agency Contact: Brenda Winn, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4516, FAX (804) 698-4032, or email bkwinn@deq.virginia.gov.

Summary:

The amendments conform the regulation to statute changes passed by the 2007 Session of the General Assembly that reorganized the State Water Control Law (§62.1-44.2 et seq. of the Code of Virginia).

9VAC25-210-10. Definitions.

Unless a different meaning is required by the context, the following terms as used in this chapter shall have the following meanings:

"Act" or "Clean Water Act" means 33 USC §1251 et seq. as amended 1987.

"Adjacent" means bordering, contiguous or neighboring; wetlands separated from other surface water by man-made dikes or barriers, natural river berms, sand dunes and the like are adjacent wetlands.

"Affected stream reach" means the portion of a surface water body beginning at the location of a withdrawal and ending at a point where effects of the withdrawal are not reasonably expected to adversely affect beneficial uses.

"Agricultural surface water withdrawal" means a withdrawal of surface water in Virginia or from the Potomac River for the purpose of agricultural, silvicultural, horticultural, or aquacultural operations. Agricultural surface water withdrawals include withdrawals for turf farm operations, but do not include withdrawals for landscaping activities, or turf installment and maintenance associated with landscaping activities.

"Applicant" means a person applying for a VWP individual permit or VWP general permit authorization.

"Aquatic environment" means surface waters and the habitat they provide, including both plant and animal communities.

"Avoidance" means not taking or modifying a proposed action or parts of an action so that there is no adverse impact to the aquatic environment.

"Beneficial use" means both instream and offstream uses. Instream beneficial uses include, but are not limited to: the protection of fish and wildlife habitat; maintenance of waste assimilation; recreation; navigation; and cultural and aesthetic values. Offstream beneficial uses include, but are not limited

to: domestic (including public water supply); agricultural; electric power generation; and commercial and industrial uses.

"Best management practices (BMPs)" means a schedule of activities, prohibition of practices, maintenance procedures and other management practices that prevent or reduce the pollution of surface waters.

"Board" means the State Water Control Board.

"Channelization of streams" means alteration of a stream by widening, deepening, straightening, cleaning, or paving.

"Compensation" or "compensatory mitigation" means actions taken that provide some form of substitute aquatic resource for the impacted aquatic resource.

"Consumptive water use" means the withdrawal of surface waters, without recycle of said waters to their source of origin.

"Creation" means the establishment of a wetland or other aquatic resource where one did not formerly exist.

"Cross-sectional sketch" means a scaled graph or plot that represents the plane made by cutting across an object at right angles to its length. For purposes of this regulation, objects may include, but are not limited to, a surface water body or a portion of it, a man-made channel, an above-ground structure, a below-ground structure, a geographical feature, or the ground surface itself.

"Director" means the Director of the Department of Environmental Quality (DEQ) or an authorized representative.

"Discharge" means, when used without qualification, a discharge of a pollutant, or any addition of any pollutant or combination of pollutants, to state waters or waters of the contiguous zone or ocean other than a discharge from a vessel or other floating craft when being used as a means of transportation.

"Draft VWP permit" means a document indicating the board's tentative decision relative to a VWP permit action.

"Draining" means human-induced activities such as ditching, excavation, installation of tile drains, hydrologic modification by surface water runoff diversion, pumping water from wells, or similar activities such that the activities have the effect of artificially dewatering the wetland or altering its hydroperiod.

"Dredged material" means material that is excavated or dredged from surface waters.

"Dredging" means a form of excavation in which material is removed or relocated from beneath surface waters.

"Drought" means that a Severe Intensity Drought (D2) has been declared by the weekly "U.S. Drought Monitor" for the location in which the withdrawal is located.

"Ecologically preferable" means capable of providing a higher likelihood of replacing existing wetland or stream functions and values, water quality and fish and wildlife resources than alternative proposals.

"Emergency Virginia Water Protection Permit" means a Virginia Water Protection Permit issued pursuant to ~~§62.1-44.15:5~~ §62.1-44.15:22 C of the Code of Virginia authorizing a new or increased surface water withdrawal to address insufficient public drinking water supplies that are caused by a drought and may result in a substantial threat to human health or public safety.

"Enhancement" means activities conducted in existing wetlands or other portions of the aquatic environment that increase one or more aquatic functions or values.

"Excavate" or "excavation" means ditching, dredging, or mechanized removal of earth, soil or rock.

"Fill" means replacing portions of surface water with upland, or changing the bottom elevation of a surface water for any purpose, by placement of any pollutant or material including but not limited to rock, sand, earth, and man-made materials and debris.

"Fill material" means any pollutant which replaces portions of surface water with dry land or which changes the bottom elevation of a surface water for any purpose.

"General permit" means a permit authorizing a specified category of activities.

"Geographic area of a delineated wetland" means the area contained within and up to a wetland boundary determined by delineation methods consistent with this chapter.

"Impacts" means results caused by human-induced activities conducted in surface waters, as specified in ~~§62.1-44.15:5 D~~ §62.1-44.15:20 A of the Code of Virginia.

"Impairment" means the damage, loss or degradation of the functions and values of state waters.

"In-lieu fee fund" means a monetary fund operated by a nonprofit organization or governmental agency which receives financial contributions from persons impacting wetlands or streams pursuant to an authorized permitted activity and which expends the moneys received to provide consolidated compensatory mitigation for permitted wetland or stream impacts.

"Intake structure" means any portion of a withdrawal system used to withdraw surface water that is located within the surface water, such as, but not limited to, a pipe, culvert, hose, tube, or screen.

Regulations

"Isolated wetlands of minimal ecological value" means those wetlands that: (i) do not have a surface water connection to other state waters; (ii) are less than one-tenth of an acre (0.10 acre or 4,356 square feet) in size; (iii) are not located in a Federal Emergency Management Agency designated 100-year floodplain; (iv) are not identified by the Virginia Natural Heritage Program as a rare or state significant natural community; (v) are not forested; and (vi) do not contain listed federal or state threatened or endangered species.

"Joint Permit Application (JPA)" means an application form that is used to apply for permits from the Norfolk District Army Corps of Engineers, the Virginia Marine Resources Commission, the Virginia Department of Environmental Quality, and local wetland boards for work in waters of the United States and in surface waters of Virginia.

"Law" means the State Water Control Law of Virginia.

"Major surface water withdrawal" means a surface water withdrawal of 90 million gallons per month (mgm) or greater.

"Minimization" means lessening impacts by reducing the degree or magnitude of the proposed action and its implementation.

"Minor surface water withdrawal" means a surface water withdrawal of less than 90 million gallons per month (mgm).

"Mitigation" means sequentially avoiding and minimizing impacts to the maximum extent practicable, and then compensating for remaining unavoidable impacts of a proposed action.

"Mitigation bank" means a site providing off-site, consolidated compensatory mitigation that is developed and approved in accordance with all applicable federal and state laws or regulations for the establishment, use and operation of mitigation banks, and is operating under a signed banking agreement.

"Mitigation banking" means compensating for unavoidable wetland or stream losses in advance of development actions through the sale, purchase or use of credits from a mitigation bank.

"Multi-project mitigation site" means an area of wetland restoration, creation, enhancement and, in appropriate circumstances, preservation of wetlands or streams or upland buffers adjacent to wetlands or other state waters, that is or has been utilized to meet compensation requirements for more than one project but that is not a mitigation bank.

"Nationwide permit" means a general permit issued by the USACE under 40 CFR Part 241 and, except where suspended by individual USACE Corps Districts, applicable nationwide.

"Normal agricultural activities" means those activities defined as an agricultural operation in §3.1-22.29 of the Code of Virginia and any activity that is conducted as part of or in furtherance of such agricultural operation, but shall not

include any activity for which a permit would have been required as of January 1, 1997, under 33 USC §1344 or any regulations promulgated pursuant thereto.

"Normal residential gardening, lawn and landscape maintenance" means ongoing noncommercial residential activities conducted by or on behalf of an individual occupant, including mowing, planting, fertilizing, mulching, tilling, vegetation removal by hand or by hand tools, placement of decorative stone, fencing and play equipment. Other appurtenant noncommercial activities, provided that they do not result in the conversion of a wetland to upland or to a different wetland type, may also be included.

"Normal silvicultural activities" means any silvicultural activity as defined in §10.1-1181.1 of the Code of Virginia, and any activity that is conducted as part of or in furtherance of such silvicultural activity, but shall not include any activity for which a permit would have been required as of January 1, 1997, under 33 USC §1344 or any regulations promulgated pursuant thereto.

"Out-of-kind mitigation" means compensatory mitigation that does not replace the same type of wetland or surface water as was impacted, but does replace lost wetland or surface water functions, values, or beneficial uses.

"Permanent flooding or impounding" means a permanent increase in the duration or depth of standing water on a land surface, such as from a dam. Permanent increases in duration or depth of standing water that result from extended-detention basins and enhanced extended-detention basins, when designed, constructed, and maintained to function in accordance with Virginia Department of Conservation and Recreation (DCR) standards for such facilities (Virginia Stormwater Management Handbook, First Edition, 1999, Volume 1, Chapter 3), or when designed in accordance with local standards that, at a minimum, meet the DCR standards, are not considered to be permanent flooding and impounding.

"Permanent impacts" are those impacts to surface waters, including wetlands that cause a permanent alteration of the physical, chemical, or biological properties of the surface waters or of the functions and values of a wetland.

"Permittee" means the person who holds a VWP individual or general permit.

"Person" means one or more individuals, a corporation, a partnership, an association, a governmental body, a municipal corporation, or any other legal entity.

"Plan view sketch" means a scaled graph or plot that represents the view of an object as projected onto orthogonal planes. For purposes of this regulation, objects may include, but are not limited to, structures, contours, or boundaries.

"Pollutant" means any substance, radioactive material, or heat which causes or contributes to, or may cause or contribute to pollution.

"Pollution" means such alteration of the physical, chemical or biological properties of any state waters as will or is likely to create a nuisance or render such waters: (i) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (ii) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (iii) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses; provided that (a) an alteration of the physical, chemical, or biological property of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to state waters by other owners is sufficient to cause pollution; (b) the discharge of untreated sewage by any owner into state waters; and (c) contributing to the contravention of standards of water quality duly established by the board, are "pollution" for the terms and purposes of this chapter.

"Potomac River Low Flow Allocation Agreement" means the agreement among the United States of America, the State of Maryland, the Commonwealth of Virginia, the District of Columbia, the Washington Suburban Sanitation Commission, and the Fairfax County Water Authority dated January 11, 1978, consented to by Congress in §181 of the Water Resources Development Act of 1976, Public Law 94-587, as modified on April 22, 1986.

"Practicable" means available and capable of being done after taking into consideration cost, existing technology and logistics in light of overall project purposes.

"Preservation" means the protection of resources in perpetuity through the implementation of appropriate legal and physical mechanisms.

"Profile sketch" means a scaled graph or plot that represents the side view of an object. For purposes of this regulation, objects may include, but are not limited to, a surface water body or a portion of it, a man-made channel, an above-ground structure, a below-ground structure, a geographical feature, or the ground surface itself.

"Public hearing" means a fact finding proceeding held to afford interested persons an opportunity to submit factual data, views and comments to the board pursuant to the board's Procedural Rule No. 1 - Public and Formal Hearing Procedures (9VAC25-230).

"Public surface water supply withdrawal" means a withdrawal of surface water in Virginia or from the Potomac River for the production of drinking water, distributed to the general public for the purpose of, but not limited to, domestic use.

"Public water supply emergency" means a substantial threat to public health or safety due to insufficient public drinking water supplies caused by drought.

"Regional permit" means a general permit issued by the USACE under 40 CFR Part 241 and applicable within a specified geographic area.

"Restoration" means the reestablishment of a wetland or other aquatic resource in an area where it previously existed. Wetland restoration means the reestablishment of wetland hydrology and vegetation in an area where a wetland previously existed. Stream restoration means the process of converting an unstable, altered or degraded stream corridor, including adjacent areas and floodplains, to its natural conditions.

"Riprap" means a layer of nonerrodible material such as stone or chunks of concrete .

"Schedule of compliance" means a schedule of remedial measures including a sequence of enforceable actions or operations leading to compliance with the Act, the law, and the board regulations, standards and policies.

"Section 401" means §401 of the Clean Water Act, or 33 USC §1341, as amended in 1987.

"Section for Cooperative Water Supply Operations on the Potomac (CO-OP)" means a section of the Interstate Commission on the Potomac River Basin designated by the Water Supply Coordination Agreement as responsible for coordination of water resources during times of low flow in the Potomac River.

"Significant alteration or degradation of existing wetland acreage or function" means human-induced activities that cause either a diminution of the areal extent of the existing wetland or cause a change in wetland community type resulting in the loss or more than minimal degradation of its existing ecological functions.

"State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands.

"Surface water" means all state waters that are not ground water as defined in §62.1-255 of the Code of Virginia.

"Surface water supply project" means a project that withdraws or diverts water from a surface water body for consumptive or nonconsumptive purposes thereby altering the hydrologic regime of the surface water body. Projects that do not alter the hydrologic regime or that alter the hydrologic regime but whose sole purpose is flood control or storm water management are not included in this definition.

"Surface water withdrawal" means a removal or diversion of surface water from its natural water course in Virginia or from the Potomac River.

Regulations

"Temporary impacts" means those impacts to surface waters, including wetlands, that do not cause a permanent alteration of the physical, chemical or biological properties of the surface water or of the functions and values of a wetland. Temporary impacts include activities in which the ground is restored to its preconstruction contours and elevations, such that previous functions and values are restored.

"Toxic pollutant" means any agent or material including, but not limited to, those listed under §307(a) of the Act (33 USC §1317(a)), which after discharge will, on the basis of available information, cause toxicity. Toxicity means the inherent potential or capacity of a material to cause adverse effects in a living organism, including acute or chronic effects to aquatic life, detrimental effects on human health or other adverse environmental effects.

"Undesirable plant species" means any species that invades, naturally colonizes, or otherwise dominates a compensatory mitigation site or mitigation bank and may cause or contribute to the failure of the vegetative success criteria for a particular compensatory mitigation site or mitigation bank.

"USACE" means the United States Army Corps of Engineers.

"VMRC" means the Virginia Marine Resources Commission.

"VWP general permit" means a regulation that constitutes a VWP permit for a category of activities.

"VWP permit" means an individual or general permit issued by the board under ~~§62.1-44.15:5~~ §62.1-44.15:20 of the Code of Virginia that authorizes activities otherwise unlawful under §62.1-44.5 of the Code of Virginia or otherwise serves as the Commonwealth of Virginia's §401 certification.

"Water quality standards" means water quality standards adopted by the board and approved by the administrator of the EPA under §303 of the Act as defined at 9VAC25-260.

"Water Supply Coordination Agreement" means the agreement among the United States of America, the Fairfax County Water Authority, the Washington Suburban Sanitary Commission, the District of Columbia, and the Interstate Commission on the Potomac River Basin, dated July 22, 1982, which establishes agreement among the suppliers to operate their respective water supply systems in a coordinated manner and which outlines operating rules and procedures for reducing impacts of severe droughts in the Potomac River Basin.

"Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

"Withdrawal system" means any device or combination of devices used to withdraw surface water, such as, but not limited to, a machine, pump, pipe, culvert, hose, tube, screen, or fabricated concrete or metal structure.

9VAC25-210-60. Exclusions.

A. The following activities do not require a VWP permit but may require other permits under state and federal law:

1. Discharges of dredged or fill material into state waters, excepting wetlands, which are addressed under a USACE Regional, General or Nationwide Permit, and for which no §401 Water Quality Certificate is required.

2. Any discharge, other than an activity in a surface water governed by ~~§62.1-44.15:5~~ §62.1-44.15:20 of the Code of Virginia, permitted by a Virginia Pollutant Discharge Elimination System (VPDES) permit in accordance with 9VAC25-31.

3. Any activity, other than an activity in a surface water governed by ~~§62.1-44.15:5~~ §62.1-44.15:20 of the Code of Virginia, permitted by a Virginia Pollution Abatement (VPA) permit in accordance with 9VAC25-32.

4. Septic tanks, when authorized by a state Department of Health permit.

5. Any activity permitted under Chapter 13 (§28.2-1300 et seq.) of Title 28.2 of the Code of Virginia, unless state certification is required by §401 of the Clean Water Act.

6. Normal residential gardening, lawn and landscape maintenance in a wetland.

7. Normal agriculture and silviculture activities in a wetland such as plowing, seeding, cultivating, minor drainage and harvesting for the production of food, fiber and forest products, or upland soil and water conservation practices.

a. To fall under this exclusion, the activities specified in subdivision 7 of this section must be part of an established (i.e., ongoing) agriculture or silviculture, operation, and must be in accordance with applicable best management practices set forth in either Forestry Best Management Practices for Water Quality in Virginia Technical Guide (Fourth Edition, July 2002) or Virginia Agricultural BMP Manual (2000), which facilitate compliance with the §404(b)(1) Guidelines (40 CFR Part 230). Activities on areas lying fallow as part of a conventional rotational cycle are part of an established operation.

b. Activities which bring a new area into agricultural or silvicultural use are not part of an established operation. An operation ceases to be established when the area in which it was conducted has been converted to another use or has lain idle so long that modifications to the hydrological regime are necessary to resume operation. If

the activity takes place outside surface waters, it does not need a VWP permit, whether or not it is part of an established agriculture or silviculture operation.

c. For the purposes of subdivision 7 of this section, cultivating, harvesting, minor drainage, plowing, and seeding are defined as follows:

(1) "Cultivating" means physical methods of soil treatment employed within established agriculture and silviculture lands on farm or forest crops to aid and improve their growth, quality, or yield.

(2) "Harvesting" means physical measures employed directly upon farm, forest, or crops within established agricultural and silviculture lands to bring about their removal from farm or forest land, but does not include the construction of farm or forest roads.

(3) "Minor drainage" means:

(a) The discharge of dredged or fill material incidental to connecting upland drainage facilities to surface waters, adequate to effect the removal of excess soil moisture from upland croplands. Construction and maintenance of upland (dryland) facilities, such as ditching and tiling incidental to the planting, cultivating, protecting, or harvesting of crops;

(b) The discharge of dredged or fill material for the purpose of installing ditching or other water control facilities incidental to planting, cultivating, protecting, or harvesting of rice, or other wetland crop species, where these activities and the discharge occur in surface waters which are in established use for such agricultural and silviculture wetland crop production;

(c) The discharge of dredged or fill material for the purpose of manipulating the water levels of, or regulating the flow or distribution of water within, existing impoundments which have been constructed in accordance with applicable requirements of the Act, and which are in established use for the production of rice, or other wetland crop species;

(d) The discharge of dredged or fill material incidental to the emergency removal of sandbars, gravel bars, or other similar blockages which are formed during flood flows or other events, where such blockages close or constrict previously existing drainageways and, if not promptly removed, would result in damage to or loss of existing crops or would impair or prevent the plowing, seeding, harvesting or cultivating of crops on land in established use for crop production. Such removal does not include enlarging or extending the dimensions of, or changing the bottom elevations of, the affected drainageway as it existed prior to the formation of the blockage. Removal must be accomplished within one year after such

blockages are discovered in order to be eligible for exclusion; and

(e) Minor drainage in surface waters is limited to drainage within areas that are part of an established agriculture or silviculture operation. It does not include drainage associated with the immediate or gradual conversion of a wetland to a nonwetland (for example, wetland species to upland species not typically adapted to life in saturated soil conditions), or conversion from one wetland use to another (for example, silviculture to agriculture). In addition, minor drainage does not include the construction of any canal, ditch, dike or other waterway or structure which drains or otherwise significantly modifies a stream, lake, swamp, bog or any other wetland or aquatic area constituting surface water. Any discharge of dredged or fill material into surface water incidental to the construction of any such structure or waterway requires a VWP permit.

(4) "Plowing" means all forms of primary tillage, including moldboard, chisel, or wide-blade plowing, discing, harrowing, and similar physical means used on farm or forest land for the breaking up, cutting, turning over, or stirring of soil to prepare it for the planting of crops. Plowing does not include the redistribution of soil, rock, sand, or other surficial materials in a manner which changes any area of surface water to dry land. For example, the redistribution of surface materials by blading, grading, or other means to fill in wetland areas is not plowing. Rock crushing activities which result in the loss of natural drainage characteristics, the reduction of water storage and recharge capabilities, or the overburden of natural water filtration capacities does not constitute plowing. Plowing as described above will never involve a discharge of dredged or fill material.

(5) "Seeding" means the sowing of seed and placement of seedlings to produce farm or forest crops and includes the placement of soil beds for seeds or seedlings on established farm and forest lands.

8. Maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, groins, levees, dams, riprap breakwaters, causeways, bridge abutments or approaches, and transportation and utility structures. Maintenance does not include modifications that change the character, scope, or size of the original design. In order to qualify for this exclusion, emergency reconstruction must occur within a reasonable period of time after damage occurs.

9. Construction or maintenance of farm or stock ponds or irrigation ditches or the maintenance (but not construction) of drainage ditches. Discharge associated with siphons, pumps, headgates, wingwalls, weirs, diversion structures, and such other facilities as are appurtenant and functionally

Regulations

related to irrigation ditches are included in this exclusion. The maintenance dredging of existing ditches is included in this exclusion provided that the final dimensions of the maintained ditch do not exceed the average dimensions of the original ditch. This exclusion does not apply to the construction of new ditches or to the channelization of streams.

10. Construction of temporary sedimentation basins on a construction site which does not include the placement of fill materials into surface waters or excavation in wetlands. The term "construction site" refers to any site involving the erection of buildings, roads, and other discrete structures and the installation of support facilities necessary for construction and utilization of such structures. The term "construction site" also includes any other land areas which involve land-disturbing excavation activities, including quarrying or other mining activities, where an increase in run-off of sediment is controlled through the use of temporary sedimentation basins.

11. Construction or maintenance of farm roads, forest roads, or temporary roads for moving mining equipment, where such roads are constructed and maintained in accordance with applicable best management practices (BMPs) set forth in either Forestry Best Management Practices for Water Quality in Virginia, Technical Guide, Fourth Edition, July 2002, or Virginia Agricultural BMP Manual, 2000, to ensure that flow and circulation patterns and chemical and biological characteristics of surface waters are not impaired, that the reach of such waters is not reduced, and that any adverse effect on the aquatic environment will otherwise be minimized. The BMPs which must be applied to satisfy this provision include the following baseline provisions:

- a. Permanent roads (for agriculture or forestry activities), temporary access roads (for mining, forestry, or farm purposes), and skid trails (for logging) in surface waters shall be held to the minimum feasible number, width, and total length consistent with the purpose of specific agriculture, silviculture or mining operations, and local topographic and climatic conditions;
- b. All roads, temporary or permanent, shall be located sufficiently far from streams or other water bodies (except for portions of such roads which must cross water bodies) to minimize discharges of dredged or fill material into surface waters;
- c. The road fill shall be bridged, culverted, or otherwise designed to prevent the restriction of expected flood flows;
- d. The fill shall be properly stabilized and maintained to prevent erosion during and following construction;
- e. Discharges of dredged or fill material into surface waters to construct road fill shall be made in a manner

which minimizes the encroachment of trucks, tractors, bulldozers, or other heavy equipment within state waters (including adjacent wetlands) that lie outside the lateral boundaries of the fill itself;

f. In designing, constructing, and maintaining roads, vegetative disturbance in surface waters shall be kept to a minimum;

g. The design, construction and maintenance of the road crossing shall not disrupt the migration or other movement of those species of aquatic life inhabiting the water body;

h. Borrow material shall be taken from upland sources whenever feasible;

i. The discharge shall not take, or jeopardize the continued existence of a state- or federally-listed threatened or endangered species as defined under the Endangered Species Act (16 USC §1531 et seq.), in §29.1-566 of the Code of Virginia and in 4VAC15-20-130 B and C, except as provided in §29.1-568 of the Code of Virginia, or adversely modify or destroy the critical habitat of such species;

j. Discharges into the nesting and breeding areas for migratory waterfowl, spawning areas, and wetlands shall be avoided if practical alternatives exist;

k. The discharge shall not be located in proximity of a public water supply or intake;

l. The discharge shall not occur in areas of concentrated shellfish production;

m. The discharge shall not occur in a component to the National Wild and Scenic River System;

n. The discharge material shall consist of suitable material free from toxic pollutants in toxic amounts; and

o. All temporary fills shall be removed in their entirety and the area restored to its original elevation.

B. The following surface water withdrawals are excluded from VWP permit requirements. Activities, other than the surface water withdrawal, which are contained in 9VAC25-210-50 and are associated with the construction and operation of the surface water withdrawal, are subject to VWP permit requirements unless excluded by subsection A of this section. Other permits under state and federal law may be required.

1. Any surface water withdrawal in existence on July 1, 1989; however, a permit shall be required if a new §401 certification is required to increase a withdrawal. To qualify for this exclusion, the surface water withdrawal shall be deemed to be in existence on July 1, 1989, if there was an actual withdrawal on or before that date that has not been abandoned.

a. Abandonment of a surface water withdrawal. A surface water withdrawal shall be deemed to be abandoned if the owner of the withdrawal system (i) notifies the DEQ in writing that the withdrawal has been abandoned or (ii) removes or disables the withdrawal system with the intent to permanently cease such withdrawal. Transfer of ownership or operational control of the withdrawal system, a change in use of the water, or temporary cessation of the withdrawal shall not be deemed evidence of abandonment. The notification shall be signed by the owner of record or shall include evidence satisfactory to the DEQ that the signatory is authorized to submit the notice on behalf of the owner of record. Evidence may include, but shall not be limited to, a resolution of the governing body of the owner or corporate minutes.

b. Information to be furnished to the DEQ. Each owner or operator of a permanent withdrawal system engaging in a withdrawal that is subject to this exclusion shall provide the DEQ the estimated maximum capacity of the intake structure, the location of the existing intake structure and any other information that may be required by the board. Each owner or operator of a temporary withdrawal system engaging in a withdrawal that is subject to this exclusion, where the purpose of the withdrawal is for agriculture, shall provide to the DEQ the maximum annual surface water withdrawal over the last 10 years. The information shall be provided within one year of the date that notice of such request] is received from the DEQ and shall be updated when the maximum capacity of the existing intake structure changes. The information provided to the DEQ shall not constitute a limit on the exempted withdrawal. Such information shall be utilized by the DEQ and board to protect existing beneficial uses and shall be considered when evaluating applications for new withdrawal permits.

2. Any surface water withdrawal not in existence on July 1, 1989, if the person proposing to make the withdrawal received a §401 certification before January 1, 1989, with respect to installation of any necessary withdrawal structures to make such withdrawal; however, a permit shall be required before any such withdrawal is increased beyond the amount authorized by the certification.

3. Any existing lawful unpermitted surface water withdrawal initiated between July 1, 1989, and July 25, 2007, which is not subject to other exclusions contained in this section. These withdrawals shall be excluded from permit requirements only if they comply with the conditions in this subdivision. Regardless of complying with the conditions of this subdivision, these withdrawals shall require a permit for any increased withdrawal amount.

a. Information to be furnished to the DEQ. Each owner or operator of a withdrawal system engaging in a withdrawal that is subject to this exclusion shall provide the DEQ with copies of water withdrawal reports required by Water Withdrawal Reporting Regulations (9VAC25-200) documenting the largest 12-consecutive month withdrawal that occurred in the 10 years prior to July 25, 2007. In the case of unreported agricultural surface water withdrawals, estimates of withdrawals will be accepted that are based on one of the following:

(1) The area irrigated, depth of irrigation, and annual number of irrigations; pumping capacity and annual pumping time; annual energy consumption for pumps; number and type of livestock watered annually; number and type of livestock where water is used for cooling purposes; or

(2) Other methods approved by the board for the largest 12 consecutive month withdrawal that occurred in the 10 years prior to July 25, 2007. The board shall evaluate all estimates of surface water withdrawals based on projected water demands for crops and livestock as published by the Virginia Cooperative Extension Service, the United States Natural Resources Conservation Service, or other similar references and make a determination whether they are reasonable. In all cases only reasonable estimates will be used to document the excluded withdrawal amount.

b. The information noted in subdivision 3 a of this subsection shall be provided within 12 months of July 25, 2007. The information provided to the DEQ shall constitute a limit on the withdrawal that is excluded from permit requirements; any increase in that withdrawal above the limited amount shall require an application for a permit for the withdrawal system. Information regarding excluded withdrawal amounts shall be utilized by the DEQ and board to protect existing beneficial uses and shall be considered when evaluating applications for new withdrawal permits.

c. All owners and operators of surface water withdrawals excluded from permit requirements by this section shall annually report withdrawals as required by Water Withdrawal Reporting Regulations (9VAC25-200). Failure to file annual reports either reporting actual withdrawals or the fact that withdrawals did not occur may result in the owner or operator being required to file an application and receive a permit prior to resuming any withdrawal.

4. Agricultural surface water withdrawals from nontidal waters that total less than one million gallons in a single month.

5. Surface water withdrawals from nontidal waters for all other purposes that total less than 10,000 gallons per day.

Regulations

6. Surface water withdrawals from tidal waters for nonconsumptive uses.

7. Agricultural surface water withdrawals from tidal waters that total less than 60 million gallons in a single month.

8. Surface water withdrawals from tidal waters for all other consumptive purposes that total less than two million gallons per day.

9. Surface water withdrawals for firefighting or for the training activities related to firefighting, such as dry hydrants and emergency surface water withdrawals.

10. Surface water withdrawals placed into portable containers by persons owning property on, or holding easements to, riparian lands.

11. Surface water withdrawals for the purposes of hydrostatic pressure testing of water tight containers, pipelines, and vessels.

12. Surface water withdrawals for normal single family home residential gardening, lawn, and landscape maintenance.

13. Surface water withdrawals that are located on a property, such that the withdrawal returns to the stream of origin; not more than half of the instantaneous flow is diverted; not more than 1,000 feet of stream channel separate the withdrawal point from the return point; and both banks of the affected stream segment are located within that property boundary.

14. Surface water withdrawals from quarry pits, such that the withdrawal does not alter the physical, biological, or chemical properties of surface waters connected to the quarry pit.

15. Surface water withdrawals from a privately owned agriculture pond, emergency water storage facility, or other water retention facility, provided that such pond or facility is not placed in the bed of a perennial or intermittent stream or wetland. Surface water withdrawals from such facilities constructed in beds of ephemeral streams are excluded from permit requirements.

C. DEQ may require any owner or operator of a withdrawal system excluded from permit requirements by subdivisions B 3 through 15 of this section to cease withdrawals and file an application and receive a permit prior to resuming any withdrawal when the board's assessment indicates that a withdrawal, whether individually or in combination with other existing or proposed projects:

1. Causes or contributes to, or may reasonably be expected to cause or contribute to, a significant impairment of the state waters or fish and wildlife resources;
2. Adversely impacts other existing beneficial uses; or

3. Will cause or contribute to a violation of water quality standards.

9VAC25-210-116. Compensation.

A. No net loss. Compensatory mitigation for project impacts shall be sufficient to achieve no net loss of existing wetland acreage and no net loss of functions in all surface waters. Compensatory mitigation ratios appropriate for the type of aquatic resource impacted and the type of compensation provided shall be applied to permitted impacts to help meet this requirement. Credit may be given for preservation of upland buffers already protected under other ordinances to the extent that additional protection and water quality and fish and wildlife resource benefits are provided.

B. Practicable and ecologically preferable compensation alternatives.

1. An analysis shall be required to justify that off-site compensatory mitigation (including purchase or use of mitigation bank credits or contribution to an in-lieu fee fund) or out-of-kind compensatory mitigation is more ecologically preferable to practicable on-site or in-kind compensation.

2. Such analysis shall include, but is not limited to, the following criteria, which shall be compared between the impacted and replacement sites: water quality benefits; acreage of impacts; distance from impacts; hydrologic source and regime; watershed; functions and values; vegetation type; soils; constructability; timing of compensation versus impact; property acquisition; and cost. The analysis shall compare the ability of each compensatory mitigation option to replace lost wetland acreage and functions or lost stream functions and water quality benefits.

C. Compensatory mitigation proposals shall be evaluated as follows:

1. On-site, in-kind compensatory mitigation, when available, shall be deemed the most ecologically preferable form of compensation for project impacts, in most cases. However, off-site or out-of-kind compensation opportunities that prove to be more ecologically preferable or practicable may be considered. When the applicant can demonstrate satisfactorily that an off-site or out-of-kind compensatory mitigation proposal is practicable and ecologically preferable, then such proposal may be deemed appropriate for compensation of project impacts.

2. Compensatory mitigation for unavoidable wetland impacts may be met through the following options:

- a. Wetland creation;
- b. Wetland restoration;

c. The purchase or use of credits from a mitigation bank, pursuant to ~~§62.1-44.15:5~~ §62.1-44.15:23 of the Code of Virginia;

d. A contribution to an approved in-lieu fee fund;

e. Preservation of upland buffers adjacent to state waters, when utilized in conjunction with subdivision 2 a, b, or c of this subsection, and when consistent with subsection A of this section;

f. Restoration of upland buffers adjacent to state waters, when utilized in conjunction with subsection a, b, or c, and when consistent with subsection A of this section;

g. Preservation of wetlands, when utilized in conjunction with subdivision 2 a, b, or c of this subsection.

3. Compensatory mitigation for unavoidable impacts to streams may be met through the following options, as appropriate to replace functions or water quality benefits. One factor in determining the required compensation shall be an analysis of stream impacts utilizing a stream impact assessment methodology acceptable to the DEQ.

a. Stream channel restoration or enhancement;

b. Riparian buffer restoration or enhancement;

c. Riparian buffer preservation, when consistent with subsection A of this section;

d. A contribution to an approved in-lieu fee fund;

e. The purchase or use of credits from a mitigation bank, pursuant to ~~§62.1-44.15:5~~ §62.1-44.15:23 of the Code of Virginia.

4. Generally, preference shall be given in the following sequence: restoration, creation, mitigation banking, in-lieu fee fund. However, the appropriate compensatory mitigation option for project impacts shall be evaluated on a case-by-case basis, in terms of replacement of wetland acreage and functions or stream functions and water quality benefits.

D. In-lieu fee fund approval.

1. In order for contribution to an in-lieu fee fund to be an acceptable form of compensatory mitigation, the fund must be approved for use by the board and must be dedicated to the achievement of no net loss of wetland acreage and functions or stream functions and water quality benefits through the preservation, restoration and creation of wetlands or streams.

2. The board may approve the use of a fund by:

a. Approving use of a fund for a specific project when approving a VWP permit; or

b. Granting approval of a fund at a board meeting.

3. In order for the board to approve the use of a fund, the fund must meet the following criteria:

a. Demonstration of a no net loss policy in terms of wetland acreage and functions or stream functions and water quality benefits by adoption of operational goals or objectives for preservation, creation or restoration ;

b. Consultation with DEQ on selection of sites for preservation, restoration, or creation;

c. A commitment to provide annual reports to the board detailing contributions received and acreage and type of wetlands or streams preserved, created or restored in each watershed with those contributions, as well as the mitigation credits contributed for each watershed of project impact;

d. A mechanism to establish fee amounts that will ensure each contribution will be adequate to compensate for the wetland acreage and functions or stream functions and water quality benefits lost in the impacted watershed; and

e. Such terms and conditions as the board deems necessary to ensure a no net loss of wetland acreage and functions or stream functions and water quality benefits from permitted projects providing compensatory mitigation through contributions to the fund.

4. Such approval may be granted for up to five years and may be renewed by the board upon a demonstration that the fund has enhanced wetland acreage or functions or stream functions and water quality benefits through the preservation, creation or restoration of wetlands or streams. Such demonstration may be made with the reports submitted pursuant to subdivision 3 c of this subsection.

5. The board may approve the use of an in-lieu fund only after publishing a notice of its intent in the Virginia Register of Regulations at least 45 days prior to taking such action and after accepting and considering public comments on its approval of the fund for at least a 30-day period. Where approval is contemplated in accordance with subdivision 2 a of this subsection, compliance with the public notice and comment requirements for approval of the VWP permit shall meet this requirement.

E. Use of mitigation banks and multi-project mitigation sites. The use of mitigation banks or multi-project mitigation sites for compensating project impacts shall be deemed appropriate if the following criteria are met:

1. The bank or multi-project mitigation site meets the criteria and conditions found in ~~§62.1-44.15:5~~ §62.1-44.15:23 of the Code of Virginia;

2. The bank or multi-project mitigation site is ecologically preferable to practicable on-site and off-site individual compensatory mitigation options;

Regulations

3. For mitigation banks only, the banking instrument, if approved after July 1, 1996, has been approved by a process that involved public review and comment in accordance with federal guidelines;

4. The applicant provides verification to DEQ of purchase of the required amount of credits; and

5. For multi-project mitigation sites, the VWP permit shall include conditions sufficient to ensure long term monitoring and maintenance of surface water functions and values.

F. The final compensatory mitigation plan must include complete information on all components of the conceptual compensatory mitigation plan detailed in 9VAC25-210-80 B 1 k (5) (b) and (c):

1. For wetlands, the final compensation plan shall also include a summary of the type and acreage of existing wetland impacts anticipated during the construction of the compensation site and the proposed compensation for these impacts; a site access plan; a monitoring plan, including proposed success criteria, monitoring goals, and the location of photostations, monitoring wells, vegetation sampling points, and reference wetlands or streams (if available); an abatement and control plan for undesirable plant species; an erosion and sedimentation control plan; a construction schedule; and the mechanism for protection of the compensation site or sites, including all surface waters and buffer areas within its boundaries. The final wetland compensation plan or plans shall include a mechanism for protection in perpetuity of the compensation sites to include all state waters within the compensation site boundary or boundaries. Such protections shall be in place within 120 days of final compensation plan approval. The restrictions, protections, or preservations, or similar instrument, shall state that no activity will be performed on the property in any area designated as a compensation area with the exception of maintenance or corrective action measures authorized by the board. Unless specifically authorized by the board through the issuance of a VWP individual or general permit, or waiver thereof, this restriction applies to ditching, land clearing or discharge of dredge or fill material. Such instrument shall contain the specific phrase "ditching, land clearing or discharge of dredge or fill material" in the limitations placed on the use of these areas. The protective instrument shall be recorded in the chain of title to the property, or an equivalent instrument for government-owned lands. Proof of recordation shall be submitted within 120 days of final compensation plan approval.

2. For streams, the final compensation plan shall also include a site access plan; an erosion and sedimentation control plan, if appropriate; an abatement and control plan for undesirable plant species; a monitoring plan, including, a monitoring and reporting schedule, monitoring design

and methodologies for success; proposed success criteria; and location of photo-monitoring stations, vegetation sampling points, survey points, bank pins, scour chains, and reference streams; the mechanism for the protection of the compensation site or sites, including all surface waters and buffer areas within its boundaries; a plan view sketch depicting the pattern and all compensation measures being employed; a profile sketch; and cross-sectional sketches of the proposed compensation stream. The final stream compensation plan or plans shall include a mechanism for protection in perpetuity of the compensation sites to include all state waters within the compensation site boundary or boundaries. Such protections shall be in place within 120 days of final compensation plan approval. The restrictions, protections, or preservations, or similar instrument, shall state that no activity will be performed on the property in any area designated as a compensation area with the exception of maintenance or corrective action measures authorized by the board. Unless specifically authorized by the board through the issuance of a VWP individual or general permit, or waiver thereof, this restriction applies to ditching, land clearing or discharge of dredge or fill material. Such instrument shall contain the specific phrase "ditching, land clearing or discharge of dredge or fill material" in the limitations placed on the use of these areas. The protective instrument shall be recorded in the chain of title to the property, or an equivalent instrument for government-owned lands. Proof of recordation shall be submitted within 120 days of final compensation plan approval.

9VAC25-210-130. VWP general permits.

A. The board may issue VWP general permits by regulation for certain specified categories of activities as it deems appropriate.

B. When the board determines on a case-by-case basis that concerns for water quality and the aquatic environment so indicate, the board may require individual applications and VWP individual permits rather than approving coverage under a VWP general permit regulation. Cases where an individual VWP permit may be required include the following:

1. Where the activity may be a significant contributor to pollution;
2. Where the applicant or permittee is not in compliance with the conditions of the VWP general permit regulation or authorization;
3. When an applicant or permittee no longer qualifies for coverage under the VWP general permit regulation or authorization; and
4. When a permittee operating under a VWP general permit authorization requests to be excluded from the

coverage of the VWP general permit regulation by applying for a VWP individual permit.

C. When a VWP individual permit is issued to a permittee, the applicability of the VWP general permit authorization to the individual permittee is automatically terminated on the effective date of the VWP individual permit.

D. When a VWP general permit regulation is issued which applies to a permittee already covered by a VWP individual permit, such person may request exclusion from the provisions of the VWP general permit regulation and subsequent coverage under a VWP individual permit.

E. A VWP general permit authorization may be revoked from an individual permittee for any of the reasons set forth in 9VAC25-210-180 subject to appropriate opportunity for a hearing.

F. When all permitted activities requiring notification have been completed, the permittee shall be required to submit a notice of termination unless the permittee has previously submitted a termination by consent request for the same permitted activities and such request has been approved by the board.

G. Activities authorized under a VWP general permit regulation shall be authorized for a fixed term based upon project length and duration. When a general permit regulation is amended or replaced, it shall contain provisions such that coverage authorized under the general permit existing as of the effective date of the amended or replacement VWP general permit regulation may continue under the amended or replacement VWP general permit and that all terms and conditions of the authorization may continue in full force and effect. Notwithstanding any other provision, a request for continuation of a VWP general permit authorization beyond the expiration date of such authorization in order to complete monitoring requirements shall not be considered a new application for coverage and no application fee will be charged.

H. The board may certify, or certify with conditions, a nationwide or regional permit proposed by the USACE in accordance with §401 of the federal Clean Water Act as meeting the requirements of this regulation and a VWP general permit, provided that the nationwide or regional permit and the certification conditions :

1. Require that wetland or stream impacts be avoided and minimized to the maximum extent practicable;
2. Prohibit impacts that cause or contribute to a significant impairment of state waters or fish and wildlife resources;
3. Require compensatory mitigation sufficient to achieve no net loss of existing wetland acreage and functions or stream functions and water quality benefits; and

4. Require that compensatory mitigation for unavoidable wetland impacts be provided through the following options, as appropriate to replace acreage and function:

- a. Wetland creation;
- b. Wetland restoration;
- c. The purchase or use of credits from a mitigation bank, pursuant to ~~§62.1-44.15:5~~ §62.1-44.15:23 of the Code of Virginia;
- d. A contribution to an approved in-lieu fee fund;
- e. Preservation of upland buffers adjacent to state waters, when utilized in conjunction with subdivision 4 a, b, or c of this subsection, and when consistent with 9VAC25-210-116 A;
- f. Restoration of upland buffers adjacent to state waters, when utilized in conjunction with subdivision 4 a, b, or c of this subsection, and when consistent with 9VAC25-210-116 A;
- g. Preservation of wetlands, when utilized in conjunction with subdivision 4 a, b, or c of this subsection.

5. Require that compensatory mitigation for unavoidable stream impacts may be met through the following options as appropriate to replace functions or water quality benefits; one factor in determining the required compensation shall be an analysis of stream impacts utilizing a stream impact assessment methodology approved by the board:

- a. Stream channel restoration or enhancement;
- b. Riparian buffer restoration or enhancement;
- c. Riparian buffer preservation, when consistent with 9VAC25-210-116 A;
- d. A contribution to an approved in-lieu fee fund;
- e. The purchase or use of credits from a mitigation bank, pursuant to ~~§62.1-44.15:5~~ §62.1-44.15:23 of the Code of Virginia.

I. The certifications allowed by subsection H of this section may be provided only after the board has advertised and accepted public comment on its intent to provide certification for at least 30 days.

J. Coverage under a nationwide or regional permit promulgated by the USACE and certified by the board in accordance with this section shall be deemed coverage under a VWP general permit regulation upon submission of proof of coverage under the nationwide or regional permit and any other information required by the board through the certification process. Notwithstanding the provisions of 9VAC25-20-10, no fee shall be required from applicants seeking coverage under this subsection.

Regulations

VA.R. Doc. No. R08-902; Filed December 14, 2007, 3:00 p.m.

Final Regulation

REGISTRAR'S NOTICE: The State Water Control Board is claiming an exclusion 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 State Water Control Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **9VAC25-660. Virginia Water Protection General Permit for Impacts Less Than One-Half of an Acre (amending 9VAC25-660-10, 9VAC25-660-60, 9VAC25-660-70, 9VAC25-660-80, 9VAC25-660-100).**

Statutory Authority: §62.1-44.15 of the Code of Virginia; §401 of the Clean Water Act (33 USC §1251 et seq.).

Effective Date: February 6, 2008.

Agency Contact: Brenda Winn, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4516, FAX (804) 698-4032, or email bkwin@deq.virginia.gov.

Summary:

The amendments conform the regulation to statute changes passed by the 2007 Session of the General Assembly that reorganized the State Water Control Law (§62.1-44.2 et seq. of the Code of Virginia). In addition, the amendments conform the regulation to 2007 legislation amending §33.1-19.1 of the Code of Virginia that changed the processing time frames for certain projects.

9VAC25-660-10. Definitions.

The words and terms used in this chapter shall have the meanings defined in the State Water Control Law (§62.1-44.2 et seq. of the Code of Virginia) and the Virginia Water Protection (VWP) Permit Regulation (9VAC25-210) unless the context clearly indicates otherwise or unless otherwise indicated below.

"Bank protection" means measures employed to stabilize channel banks and combat existing erosion problems. Such measures may include the construction of riprap revetments, sills, rock vanes, beach nourishment, breakwaters, bulkheads, groins, spurs, levees, marsh toe stabilization, anti-scouring devices, and submerged sills.

"Bioengineering method" means a biological measure incorporated into a facility design to benefit water quality and minimize adverse effects to aquatic resources, to the maximum extent practicable, for long-term aquatic resource protection and improvement.

"Channelization" means the alteration of a stream channel by widening, deepening, straightening, cleaning or paving certain areas.

"Cross-sectional drawing" means a graph or plot of ground elevation across a waterbody or a portion of it, usually along a line perpendicular to the waterbody or direction of flow.

"Emergent wetland" means a class of wetlands characterized by erect, rooted, herbaceous plants growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content, excluding mosses and lichens. This vegetation is present for most of the growing season in most years and is usually dominated by perennial plants.

"FEMA" means the Federal Emergency Management Agency.

"Forested wetland" means a class of wetlands characterized by woody vegetation that is six meters (20 feet) tall or taller. These areas typically possess an overstory of trees, an understory of trees or shrubs, and an herbaceous layer.

"Histosols" means organic soils that are often called mucks, peats, or mucky peats. The list of histosols in the Commonwealth includes, but is not limited to, the following soil series: Back Bay, Belhaven, Dorovan, Lanexa, Mattamuskeet, Mattan, Palms, Pamlico, Pungo, Pocaty, and Rappahannock. Histosols are identified in the Hydric soils list generated by the United States Department of Agriculture's Natural Resources Conservation Service.

"Impacts" means results caused by human-induced activities conducted in surface waters as specified in ~~§62.1-44.15:5 D~~ §62.1-44.15:20 A of the Code of Virginia.

"Independent utility" means a test to determine what constitutes a single and complete project. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a phased project that depend upon other phases of the project do not have independent utility. Portions of a phased project that would be constructed even if the other phases are not built can be considered as separate single and complete projects with independent utility.

"Isolated Wetland of Minimal Ecological Value (IWOMEV)" means a wetland that (i) does not have a surface water connection to other state waters; (ii) is less than one-tenth of an acre in size; (iii) is not located in a Federal Emergency Management Agency designated 100-year floodplain; (iv) is not identified by the Virginia Natural Heritage Program as a rare or state significant natural community; (v) is not forested; and (vi) does not contain listed federal or state threatened or endangered species.

"Less than one-half of an acre" means 0.49 acre (21,779 square feet) or less.

"Open water" means an area that, during a year with normal patterns of precipitation, has standing water for sufficient duration to establish an ordinary high water mark. The term "open water" includes lakes and ponds but does not include ephemeral waters, stream beds, or wetlands.

"Ordinary high water" or "ordinary high water mark" means the line on the shore established by the fluctuations of water and indicated by physical characteristics such as clear, natural line impressed on the bank; shelving; changes in the character of soil; destruction of terrestrial vegetation; the presence of litter and debris; or other appropriate means that consider the characteristics of the surrounding areas.

"Perennial stream" means a well-defined channel that contains water year round during a year of normal rainfall. Generally, the water table is located above the streambed for most of the year and groundwater is the primary source for stream flow. A perennial stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.

"Permanent impacts" means those impacts to surface waters, including wetlands, that cause a permanent alteration of the physical, chemical, or biological properties of the surface waters, or of the functions and values of a wetland.

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

"Riprap" means a layer of nonerodible material such as stone or chunks of concrete.

"Single and complete project" means the total project proposed or accomplished by a person, which also has independent utility, as defined in this section. For linear projects, the "single and complete project" (e.g., a single and complete crossing) will apply to each crossing of a separate surface water (e.g., a single waterbody) and to multiple crossings of the same waterbody at separate and distinct locations. Phases of a project that have independent public and economic utility may each be considered single and complete.

"State program general permit (SPGP)" means a general permit that is issued by the Department of the Army in accordance with 33 USC 1344(e), 33 CFR 325.2(e)(2), and 33 CFR 325.3(b) and that is founded on a state program. The SPGP is designed to avoid duplication between the federal and state programs.

"Stream bed" means the substrate of a stream, as measured between the ordinary high water marks along a length of stream. The substrate may consist of organic matter, bedrock or inorganic particles that range in size from clay to boulders, or a combination of both. Areas contiguous to the stream bed,

but outside of the ordinary high water marks, are not considered part of the stream bed.

"Surface waters" means all state waters that are not ground water as defined in §62.1-255 of the Code of Virginia.

"Temporary impacts" are those impacts to surface waters, including wetlands, that do not cause a permanent alteration of the physical, chemical, or biological properties of the surface water, or of the functions and values of a wetland. Temporary impacts include activities in which the ground is restored to its preconstruction conditions, contours, or elevations, such that previous functions and values are restored.

"Up to 300 linear feet" means >0.00 to 300.00 linear feet, as measured along the center of the main channel of the stream segment.

"Up to one-tenth of an acre" means 0.10 acre (4,356 square feet) or less.

"Utility line" means a pipe or pipeline for the transportation of a gaseous, liquid, liquefiable or slurry substance, for any purpose, and a cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages and radio and television communication. The term "utility line" does not include activities that drain a surface water to convert it to an upland, such as drainage tiles or french drains; however, it does apply to pipes conveying drainage from another area.

9VAC25-660-60. Application.

A. Applications shall be filed with the board as follows:

1. The applicant shall file a complete application in accordance with 9VAC25-660-50 for a VWP General Permit WP1 for impacts to nontidal wetlands or open water of less than one-half of an acre and up to 300 linear feet of nontidal stream bed, which will serve as a notice of intent for coverage under this VWP general permit.
2. The VDOT may use its monthly IACM process for submitting applications.

B. The required application shall contain the following information, if applicable to the project:

1. The applicant's name, mailing address, and telephone number and, if applicable, fax number.
2. The authorized agent's (if applicable) name, mailing address, telephone number and, if applicable, fax number and electronic mail address.
3. The existing VWP permit number (if applicable).
4. The name of the project, narrative description of project purpose, and a description of the proposed activity in surface waters.

Regulations

5. The name of the water body or water bodies or receiving stream, as applicable.

6. The hydrologic unit code (HUC) for the project area.

7. The name of the city or county where the project is located.

8. Latitude and longitude (to the nearest second) from a central location within the project limits.

9. A detailed location map (e.g., a United States Geologic Survey topographic quadrangle map) of the project area, including the project boundary. The map shall be of sufficient detail such that the site may be easily located for site inspection.

10. (Reserved.)

11. The project plan view. Plan view sketches shall include, at a minimum, north arrow, scale, existing structures, existing contours, proposed contours (if available), limit of surface water areas, direction of flow, ordinary high water, impact limits, and location and dimension of all proposed structures in impact areas. In addition, cross-sectional or profile sketches with the above information may be required to detail impact areas.

12. (Reserved.)

13. Surface water impact information (wetlands, streams, or open water) for both permanent and temporary impacts, including a description of the impact, the areal extent of the impact (area of wetland in square feet and acres; area of stream, length of stream, and average width); the location (latitude and longitude) at the center of the impact, or at the center of each impact for linear projects; and the type of surface water impact (open water; wetlands according to the Cowardin classification or similar terminology; or perennial and nonperennial for streams). The board encourages applicants to coordinate the determination of perennial or nonperennial streams with the appropriate local government agency in Tidewater Virginia.

14. (Reserved.)

15. A description of the specific on-site measures considered and taken during project design and development both to avoid and minimize impacts to surface waters to the maximum extent practicable.

16. A conceptual plan for the intended compensation for unavoidable impacts, including:

a. Applicants proposing compensation involving contributions to an in-lieu fee fund shall state such as their conceptual compensation plan. Written documentation of the willingness of the entity to accept the donation and documentation of how the amount of the contribution was calculated shall be submitted prior

to issuance of this VWP general permit authorization; and

b. Applicants proposing compensation involving the purchase or use of mitigation banking credits shall include as their conceptual compensation plan:

(1) The name of the proposed mitigation bank and the HUC in which it is located;

(2) The number of credits proposed to be purchased or used; and

(3) Certification from the bank owner of the availability of credits.

17. A delineation map of the geographic area of a delineated wetland for all wetlands on the site, in accordance with 9VAC25-210-45, including the wetlands data sheets. The delineation map shall also include the on-site location of streams, open water, and the approximate limits of Chesapeake Bay Resource Protection Areas (RPAs), as other state or local requirements may apply if the project is located within an RPA. Wetland types shall be noted according to their Cowardin classification or similar terminology. A copy of the USACE delineation confirmation, or other correspondence from the USACE indicating their approval of the wetland boundary, shall be provided at the time of application, or if not available at that time, as soon as it becomes available during the VWP permit review.

18. A copy of the FEMA flood insurance rate map or FEMA-approved local floodplain map for the project site (impacts that include linear feet of stream bed must be converted to a square footage or acreage using the stream width in order to calculate the permit application fee).

19. The appropriate application processing fee for a VWP general permit in accordance with 9VAC25-20. The permit application fee for VWP permit authorizations is based on acres only. Therefore, impacts that include linear feet of stream bed must be converted to an acreage in order to calculate the permit application fee.

20. A written disclosure identifying all wetlands, open water, streams, and associated upland buffers within the proposed project or compensation areas that are under a deed restriction, conservation easement, restrictive covenant, or other land use protective instrument (protected areas). Such disclosure shall include the nature of the prohibited activities within the protected areas.

21. The following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person

or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations."

C. The application shall be signed in accordance with 9VAC25-210-100. If an agent is acting on behalf of an applicant, the applicant shall submit an authorization of the agent that includes the signatures of both the applicant and the agent.

D. Upon receipt of an application from the Department of Transportation for a road or highway construction project by the appropriate DEQ office, the board has 10 business days to review the application and either determine the information requested in subsection B of this section is complete or inform the Department of Transportation that additional information is required to make the application complete (pursuant to §33.1-19.1 of the Code of Virginia). Upon receipt of an application from other applicants for any type of project, the board has 15 days to review the application and either determine that the information requested in subsection B of this section is complete or inform the applicant that additional information is required to make the application complete. ~~Coverage For Department of Transportation road or highway construction projects, coverage under this VWP general permit shall be approved, approved with conditions, or denied within 30 business days of receipt of a complete application (pursuant to §33.1-19.1 of the Code of Virginia).~~ For all other projects, coverage under this VWP general permit shall be approved, approved with conditions, or denied within 45 days of receipt of a complete application. If the board fails to act within the applicable 30 or 45 days on a complete application, coverage under this VWP general permit shall be deemed approved.

1. In evaluating the application, the board shall make an assessment of the impacts associated with the project in combination with other existing or proposed impacts. Coverage under this VWP general permit shall be denied if the cumulative impacts will cause or contribute to a significant impairment of state waters or fish and wildlife resources.

2. The board may place additional conditions on a project in order to approve authorization under this VWP general permit. However, these conditions must be consistent with the VWP permit program regulation.

E. Incomplete application. Where an application is incomplete, the board may require the submission of additional information and may suspend processing the application until such time as the applicant has supplied the requested information and the application is complete. Where

the applicant becomes aware that he omitted one or more relevant facts from an application, or submitted incorrect information in an application or in reports to the board, the applicant shall immediately submit such facts or the correct information. A revised application with new information shall be deemed a new application, but shall not require an additional permit application fee. An incomplete permit application may be administratively withdrawn from processing by the board after 180 days from the date that the original permit application was received by the board. Resubmittal of a permit application for the same or similar project, after such time that the original permit application was administratively withdrawn, shall require submittal of an additional permit application fee.

9VAC25-660-70. Compensation.

A. In accordance with 9VAC25-660-50 A, compensatory mitigation may be required for all permanent, nontidal surface water impacts. All temporary, nontidal surface water impacts shall be restored to preexisting conditions.

B. Generally, the sequence of preferred compensation options shall be restoration, then creation, then mitigation banking, and then in-lieu fee fund. Also, on-site, in-kind compensatory mitigation, when available, shall be deemed the most ecologically preferable form of compensation for project impacts, in most cases. However, for the purposes of this VWP general permit, the board shall assume that the purchase or use of mitigation bank credits or a contribution to an in-lieu fee fund is ecologically preferable to practicable on-site or other off-site surface water compensation options, and no further demonstration is necessary.

C. In order for contribution to an in-lieu fee fund to be an acceptable form of compensation, the fund must be approved for use by the board according to the provisions of ~~9VAC25-210-115 E~~ 9VAC25-210-116 D. The applicant shall provide proof of contribution to DEQ prior to commencing activities in impact areas.

D. In order for purchase or use of bank credits to be an acceptable form of compensation, the bank shall be operating in accordance with the provisions of ~~§62.1-44.15:5 E~~ ~~§62.1-44.15:23~~ of the Code of Virginia and ~~9VAC25-210-115 F~~ 9VAC25-210-116 E. The applicant shall provide proof of purchase, use, or debit to DEQ prior to commencing activities in impact areas.

E. Compensation for unavoidable, permanent wetland impacts shall be provided at a 2:1 compensation to impact ratio, as calculated on an area basis.

F. Compensation for stream bed impacts shall be appropriate to replace lost functions and water quality benefits. One factor determining the required stream compensation shall be an analysis of stream impacts utilizing a stream impact assessment methodology acceptable to DEQ.

Regulations

G. Compensation for permanent open water impacts other than to streams may be required at a 1:1 replacement to impact ratio, as calculated on an area basis, to offset impacts to state waters and fish and wildlife resources from significant impairment.

H. Compensation for conversion impacts to wetlands shall be required at a 1:1 compensation to impact ratio, as calculated on an area basis, when such conversion results in a permanent alteration of the functions and values of the wetland. For example, the permanent conversion of a forested wetland to an emergent wetland is considered to be a permanent impact for the purposes of this regulation. Compensation for conversion of other types of surface waters may be required, as appropriate, to offset impacts to state waters and fish and wildlife resources from significant impairment.

9VAC25-660-80. Notice of planned changes.

A. The permittee shall notify the board in advance of the planned change, and the planned change request will be reviewed according to all provisions of this regulation.

B. Authorization under this VWP general permit may be modified subsequent to issuance if the permittee determines that additional permanent wetland, open water, or stream impacts are necessary, provided that the additional impacts are associated with the previously authorized activities in authorized locations within the same phase of development, the cumulative increase in acreage of wetland or open water impacts is not greater than 1/4 acre, the cumulative increase in stream bed impacts is not greater than 100 linear feet, and the additional impacts are fully mitigated. Prior to a planned change approval, DEQ may require submission of a compensatory mitigation plan for the additional impacts. In cases where the original impacts totaled less than 1/10 acre of wetlands or open water, or less than 300 linear feet of stream bed, and the additional impacts result in these limits being exceeded, the notice of planned change will not be approved. However, the applicant may submit a new permit application and permit application fee for the total impacts to be considered under this VWP general permit, another VWP general permit, or a VWP individual permit.

C. Authorization under this VWP general permit may be modified after issuance if the project results in less wetland or stream impacts. Compensation requirements may be modified in relation to the adjusted impacts at the request of the permittee, provided that the adjusted compensation meets the initial authorization compensation goals. DEQ shall not be responsible for ensuring refunds for mitigation bank credit purchases, mitigation bank usage, or in-lieu fee fund contributions.

D. Authorization under this VWP general permit may be modified after issuance for a change in project plans that does not result in a change in project impacts.

E. Authorization under the VWP general permit may be modified for a change to the mitigation bank at which credits are purchased or used, provided that the same amount of credits are purchased or used and all criteria for use in ~~9VAC25-210-115 F~~ 9VAC25-210-116 E are met.

F. Authorization under the VWP general permit may be modified after issuance for typographical errors.

G. A Notice of Planned Change is not required after authorization issuance for additional temporary impacts to surface waters, provided that DEQ is notified in writing regarding additional temporary impacts, and the area is restored to preexisting conditions in accordance with Part I C 11 of this general permit. In no case can the additional temporary impacts exceed the general permit threshold for use.

H. In no case can this authorization be modified to exceed the general permit threshold for use.

I. A notice of planned change shall be denied if fish and wildlife resources are significantly impacted or if the criteria in subsection B of this section are not met. However, the original VWP general permit authorization shall remain in effect. The applicant may submit a new permit application and permit application fee for consideration under a VWP individual permit.

9VAC25-660-100. VWP general permit.

Any applicant whose application has been accepted by the board shall be subject to the following requirements:

VWP General Permit No. WP1

Authorization expiration date:

Authorization Note(s):

VWP GENERAL PERMIT FOR IMPACTS LESS THAN ONE-HALF OF AN ACRE UNDER THE VIRGINIA WATER PROTECTION PERMIT AND THE VIRGINIA STATE WATER CONTROL LAW

Based upon an examination of the information submitted by the applicant and in compliance with §401 of the Clean Water Act as amended (33 USC §1341) and the State Water Control Law and regulations adopted pursuant thereto, the board has determined that there is a reasonable assurance that the activity authorized by this VWP general permit, if conducted in accordance with the conditions set forth herein, will protect instream beneficial uses and will not violate applicable water quality standards. The board finds that the effect of the impact, together with other existing or proposed impacts to wetlands, will not cause or contribute to a significant impairment of state waters or fish and wildlife resources.

Subject to the provisions of the Clean Water Act, as amended, and pursuant to the State Water Control Law and regulations adopted pursuant to it, the permittee is authorized

to permanently or temporarily impact less than one-half of an acre of nontidal wetlands or open water and up to 300 linear feet of nontidal stream bed.

Permittee:

Address:

Activity Location:

Activity Description:

The authorized activity shall be in accordance with this cover page, Part I-Special Conditions, Part II-Compensation, Monitoring, and Reporting, and Part III-Conditions Applicable to All VWP General Permits, as set forth herein.

Director, Department of Environmental
Quality

Date

Part I. Special Conditions.

A. Authorized activities.

1. This permit authorizes permanent or temporary impacts to less than one-half of an acre of nontidal wetlands or open water and up to 300 linear feet of nontidal stream bed, according to the information provided in the approved and complete application.
2. Any changes to the authorized permanent impacts to surface waters associated with this project shall require either a notice of planned change in accordance with 9VAC25-660-80, or another VWP permit application.
3. Any changes to the authorized temporary impacts to surface waters associated with this project shall require written notification to DEQ and restoration to preexisting conditions in accordance with the conditions of this permit authorization.
4. Modification to compensation requirements may be approved at the request of the permittee when a decrease in the amount of authorized surface waters impacts occurs, provided that the adjusted compensation meets the initial authorization compensation goals.
5. The activities authorized by this VWP general permit must commence and be completed within three years of the date of this authorization.

B. Continuation of coverage. Reapplication for continuation of coverage under this VWP general permit or a new VWP permit may be necessary if any portion of the authorized activities or any VWP general permit requirement (including compensation) has not been completed within three years of the date of authorization. The request for continuation of coverage must be made no less than 60 days prior to the expiration date of this VWP general permit authorization, at

which time the board will determine if continuation of the VWP general permit authorization is necessary.

C. Overall project conditions.

1. The activities authorized by this VWP general permit shall be executed in a manner so as to minimize adverse impacts on instream beneficial uses as defined in §62.1-10 (b) of the Code of Virginia.
2. No activity may substantially disrupt the movement of aquatic life indigenous to the water body, including those species that normally migrate through the area, unless the primary purpose of the activity is to impound water. Culverts placed in streams must be installed to maintain low flow conditions. The requirement to countersink does not apply to extensions or maintenance of existing culverts that are not countersunk, floodplain culverts being placed above ordinary high water, culverts being placed on bedrock, or culverts required to be placed on slopes 5.0% or greater. No activity may cause more than minimal adverse effect on navigation. Furthermore, the activity must not impede the passage of normal or expected high flows and the structure or discharge must withstand expected high flows.
3. Wet or uncured concrete shall be prohibited from entry into flowing surface waters. Excess or waste concrete shall not be disposed of in flowing surface waters or washed into flowing surface waters.
4. All fill material shall be clean and free of contaminants in toxic concentrations or amounts in accordance with all applicable laws and regulations.
5. Erosion and sedimentation controls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992. These controls shall be placed prior to clearing and grading and maintained in good working order to minimize impacts to state waters. These controls shall remain in place until the area is stabilized and shall then be removed.
6. Exposed slopes and streambanks shall be stabilized immediately upon completion of work in each permitted impact area. All denuded areas shall be properly stabilized in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.
7. All construction, construction access (e.g., cofferdams, sheetpiling, and causeways) and demolition activities associated with this project shall be accomplished in a manner that minimizes construction or waste materials from entering surface waters to the maximum extent practicable, unless authorized by this VWP general permit.
8. No machinery may enter flowing waters, unless authorized by this VWP general permit.

Regulations

9. Heavy equipment in temporarily impacted wetland areas shall be placed on mats, geotextile fabric, or other suitable material to minimize soil disturbance to the maximum extent practicable. Equipment and materials shall be removed immediately upon completion of work.

10. All nonimpacted surface waters and compensatory mitigation areas within 50 feet of permitted activities and within the project or right-of-way limits shall be clearly flagged or marked for the life of the construction activity at that location to preclude unauthorized disturbances to these surface waters and compensatory mitigation areas during construction. The permittee shall notify contractors that no activities are to occur in these marked surface waters.

11. Temporary disturbances to surface waters during construction shall be avoided and minimized to the maximum extent practicable. All temporarily disturbed wetland areas shall be restored to preexisting conditions within 30 days of completing work at each respective temporary impact area, which shall include reestablishing preconstruction contours, and planting or seeding with appropriate wetland vegetation according to cover type (emergent, scrub/shrub, or forested). The permittee shall take all appropriate measures to promote and maintain revegetation of temporarily disturbed wetland areas with wetland vegetation through the second year post-disturbance. All temporarily impacted streams and streambanks shall be restored to their original contours within 30 days following the construction at that stream segment, and the banks seeded or planted with the same vegetation cover type originally present along the streambanks, including supplemental erosion control grasses if necessary, except for invasive species identified on DCR's Invasive Alien Plant Species of Virginia list.

12. Materials (including fill, construction debris, and excavated and woody materials) temporarily stockpiled in wetlands shall be placed on mats or geotextile fabric, immediately stabilized to prevent entry into state waters, managed such that leachate does not enter state waters, and completely removed within 30 days following completion of that construction activity. Disturbed areas shall be returned to original contours, restored within 30 days following removal of the stockpile, and restored with the same vegetation cover type originally present, including supplemental erosion control grasses if necessary, except for invasive species identified on DCR's Invasive Alien Plant Species of Virginia list.

13. Continuous flow of perennial springs shall be maintained by the installation of spring boxes, french drains, or other similar structures.

14. The permittee shall employ measures to prevent spills of fuels or lubricants into state waters.

15. The permittee shall conduct his activities in accordance with the time-of-year restrictions recommended by the Virginia Department of Game and Inland Fisheries, the Virginia Marine Resources Commission, or other interested and affected agencies and shall ensure that all contractors are aware of the time-of-year restrictions imposed.

16. Water quality standards shall not be violated as a result of the construction activities, unless allowed by this permit authorization.

17. If stream channelization or relocation is required, all work in surface waters shall be done in the dry, unless authorized by this VWP general permit, and all flows shall be diverted around the channelization or relocation area until the new channel is stabilized. This work shall be accomplished by leaving a plug at the inlet and outlet ends of the new channel during excavation. Once the new channel has been stabilized, flow shall be routed into the new channel by first removing the downstream plug and then the upstream plug. The rerouted stream flow must be fully established before construction activities in the old stream channel can begin.

D. Road crossings.

1. Access roads and associated bridges or culverts shall be constructed to minimize the adverse effects on surface waters to the maximum extent practicable. Access roads constructed above preconstruction contours and elevations in surface waters must be bridged or culverted to maintain surface flows.

2. Installation of road crossings shall occur in the dry via the implementation of cofferdams, sheetpiling, stream diversions, or other similar structures.

E. Utility lines.

1. All utility line work in surface waters shall be performed in a manner that minimizes disturbance, and the area must be returned to its original contours and restored within 30 days of completing work in the area, unless otherwise authorized by this VWP general permit. Restoration shall be the seeding or planting of the same vegetation cover type originally present, including supplemental erosion control grasses if necessary, except for invasive species identified on DCR's Invasive Alien Plant Species of Virginia list.

2. Material resulting from trench excavation may be temporarily sidecast into wetlands not to exceed a total of 90 days, provided the material is not placed in a manner such that it is dispersed by currents or other forces.

3. The trench for a utility line cannot be constructed in a manner that drains wetlands (e.g., backfilling with extensive gravel layers creating a french drain effect). For example, utility lines may be backfilled with clay blocks to

ensure that the trench does not drain surface waters through which the utility line is installed.

F. Stream modification and stream bank protection.

1. Riprap bank stabilization shall be of an appropriate size and design in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.
2. Riprap apron for all outfalls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.
3. For stream bank protection activities, the structure and backfill shall be placed as close to the stream bank as practicable. No material shall be placed in excess of the minimum necessary for erosion protection.
4. All stream bank protection control structures shall be located to eliminate or minimize impacts to vegetated wetlands to the maximum extent practicable.
5. Asphalt and materials containing asphalt or other toxic substances shall not be used in the construction of submerged sills or breakwaters.
6. Redistribution of existing stream substrate for the purpose of erosion control is prohibited.
7. No material removed from the stream bottom shall be disposed of in surface waters, unless authorized by this permit.

G. Stormwater management facilities.

1. Stormwater management facilities shall be installed in accordance with best management practices and watershed protection techniques (e.g., vegetated buffers, siting considerations to minimize adverse effects to aquatic resources, bioengineering methods incorporated into the facility design to benefit water quality and minimize adverse effects to aquatic resources) that provide for long-term aquatic resources protection and enhancement, to the maximum extent practicable.
2. Compensation for unavoidable impacts shall not be allowed within maintenance areas of stormwater management facilities.
3. Maintenance activities within stormwater management facilities shall not require additional permit authorization or compensation, provided that the maintenance activities do not exceed the original contours of the facility, as approved and constructed, and are accomplished in designated maintenance areas as indicated in the facility maintenance or design plan.

Part II. Construction and Compensation Requirements,
Monitoring, and Reporting.

A. Minimum compensation requirements.

1. The permittee shall provide appropriate and practicable compensation for all impacts meeting the conditions outlined in this VWP general permit.

2. The types of compensation options that may be considered under this VWP general permit include the purchase or use of mitigation bank credits or a contribution to an in-lieu fee fund in accordance with 9VAC25-210-115 9VAC25-210-116 and 9VAC25-660-70, provided that all impacts are compensated at a 2:1 ratio.

3. A written statement that conveys the applicant's proposal to use a mitigation bank or in-lieu fee fund for compensation shall be submitted with the application and shall constitute the final compensation plan for the approved project. The board shall review and provide written comments on the plan within 30 days of receipt or it shall be deemed approved. The final compensation plan as approved by the board shall be an enforceable requirement of this VWP general permit authorization. Deviations from the approved plan must be submitted and approved in advance by the board.

4. The permittee shall not initiate work in permitted impact areas until documentation of the mitigation bank credit purchase or usage or of the fund contribution has been submitted to and received by DEQ.

B. Impact site construction monitoring.

1. Construction activities authorized by this permit that are within impact areas shall be monitored and documented. The monitoring shall document the preexisting conditions, activities during construction, and post-construction conditions. Monitoring shall consist of one of the following options:

- a. Photographs shall be taken during construction at the end of the first, second and third months after commencing construction, and then every six months thereafter, for the remainder of the construction project. Photos are not required during periods of no activity within impact areas.
- b. An ortho-rectified photograph shall be taken prior to construction, and then annually thereafter until all impacts are taken. All photos shall clearly show the delineated surface waters and authorized impact areas.
- c. In lieu of photographs, and with prior approval from DEQ, the permittee may submit a written narrative that summarizes site construction activities in impact areas. The narrative shall be submitted at the end of the first, second, and third months after commencing construction, and then every six months thereafter, for the remainder of the construction activities. Narratives are not required during periods of no activity within the impact areas.

Regulations

2. As part of construction monitoring, photographs taken at the photo stations or the narrative shall document site activities and conditions, which may include installation and maintenance of erosion and sediment controls; surface water discharges from the site; condition of adjacent nonimpact surface waters; flagged nonimpact surface waters; construction access and staging areas; filling, excavation, and dredging activities; culvert installation; dredge disposal; and site stabilization, grading, and associated restoration activities. With the exception of the preconstruction photographs, photographs at an individual impact site shall not be required until construction activities are initiated at that site. With the exception of the post-construction photographs, photographs at an individual impact site shall not be required once the site is stabilized following completion of construction at that site.

3. Each photograph shall be labeled to include the following information: permit number, impact area and photo station number, date and time of the photograph, name of the person taking the photograph, photograph orientation, and photograph subject description.

4. Monitoring of water quality parameters shall be conducted during permanent relocation of perennial streams through new channels in the manner noted below. The permittee shall report violations of water quality standards to DEQ in accordance with the procedures in Part II E. Corrective measures and additional monitoring may be required if water quality standards are not met. Reporting shall not be required if water quality standards are not violated.

a. A sampling station shall be located upstream and immediately downstream of the relocated channel.

b. Temperature, pH and dissolved oxygen (D.O.) measurements shall be taken every 30 minutes for at least two hours at each station prior to opening the new channels and immediately before opening new channels.

c. Temperature, pH and D.O. readings shall be taken after opening the channels and every 30 minutes for at least three hours at each station.

C. Reporting.

1. Written communications required by this VWP general permit shall be submitted to the appropriate Department of Environmental Quality (DEQ) office. The VWP general permit authorization number shall be included on all correspondence.

2. DEQ shall be notified in writing at least 10 days prior to the start of construction activities at the first permitted site authorized by this VWP general permit authorization so that inspections of the project can be planned, if deemed necessary by DEQ. The notification shall include a

projected schedule for initiation and completion of work at each permitted impact area.

3. Construction monitoring reports shall be submitted to DEQ no later than the 10th day of the month following the month in which the monitoring event specified in Part II B takes place. The reports shall include the following, as appropriate:

a. For each permitted impact area, a written narrative stating whether work was performed during the monitoring period, and if work was performed, a description of the work performed, when the work was initiated, and expected date of completion.

b. Photographs labeled with the permit number, the photo station number, the photo orientation, the date and time of the photo, the name of the person taking the photograph, and a brief description of the construction activities. The first construction monitoring report shall include the photographs taken at each impact site prior to initiation of construction in a permitted impact area. Written notification and photographs demonstrating that all temporarily disturbed wetland and stream areas have been restored in compliance with the permit conditions shall be submitted within 30 days of restoration. The post-construction photographs shall be submitted within 30 days of documenting post-construction conditions.

c. Summary of activities conducted to comply with the permit conditions.

d. Summary of permit noncompliance events or problems encountered, subsequent notifications, and corrective actions.

e. Summary of anticipated work to be completed during the next monitoring period and an estimated date of construction completion at all impact areas.

f. Labeled site map depicting all impact areas and photo stations.

4. DEQ shall be notified in writing within 30 days following the completion of all activities in all permitted impact areas authorized under this permit.

5. The permittee shall notify DEQ in writing when unusual or potentially complex conditions are encountered that require debris removal or involve a potentially toxic substance. Measures to remove the obstruction, material, or toxic substance or to change the location of a structure are prohibited until approved by DEQ.

6. The permittee shall report fish kills or spills of oil or fuel immediately upon discovery. If spills or fish kills occur between the hours of 8:15 a.m. to 5 p.m., Monday through Friday, the appropriate DEQ regional office shall be notified; otherwise, the Department of Emergency Management shall be notified at 1-800-468-8892.

7. Violations of state water quality standards shall be reported within 24 hours to the appropriate DEQ office.

8. Submittals required by this VWP general permit shall contain the following signed certification statement:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violation."

Part III. Conditions Applicable to All VWP General Permits.

A. Duty to comply. The permittee shall comply with all conditions of the VWP general permit. Nothing in this VWP general permit shall be construed to relieve the permittee of the duty to comply with all applicable federal and state statutes, regulations and toxic standards and prohibitions. VWP general permit noncompliance is a violation of the Clean Water Act and State Water Control Law, and is grounds for enforcement action, VWP general permit authorization termination for cause, VWP general permit authorization revocation, or denial of a continuation of coverage request.

B. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent impacts in violation of the VWP general permit which may have a reasonable likelihood of adversely affecting human health or the environment.

C. Reopener. This VWP general permit authorization may be reopened to modify its conditions when the circumstances on which the previous VWP general permit authorization was based have materially and substantially changed, or special studies conducted by the board or the permittee show material and substantial change since the time the VWP general permit authorization was issued and thereby constitute cause for VWP general permit authorization revocation and reissuance.

D. Compliance with state and federal law. Compliance with this VWP general permit constitutes compliance with the VWP permit requirements of the State Water Control Law. Nothing in this VWP general permit shall be construed to preclude the institution of any legal action under or relieve the permittee from any responsibilities, liabilities, or other penalties established pursuant to any other state law or regulation or under the authority preserved by §510 of the Clean Water Act.

E. Property rights. Coverage under this VWP general permit does not convey property rights in either real or personal

property, or exclusive privileges, nor does it authorize injury to private property or invasion of personal property rights, nor infringement of federal, state or local laws or regulations.

F. Severability. The provisions of this VWP general permit authorization are severable.

G. Right of entry. The permittee shall allow the board or its agents, upon the presentation of credentials, at reasonable times and under reasonable circumstances to enter the permittee's property, public or private, and have access to, inspect and copy records that must be kept as part of the VWP general permit conditions; to inspect facilities, operations or practices (including monitoring and control equipment) regulated or required under the VWP general permit; and to sample or monitor any substance, parameter or activity for the purpose of assuring compliance with the conditions of the VWP general permit or as otherwise authorized by law. For the purpose of this section, the time for inspection shall be deemed reasonable during regular business hours. Nothing contained herein shall make an inspection time unreasonable during an emergency.

H. Transferability of VWP general permit authorization. This VWP general permit authorization may be transferred to another person by a permittee when all of the criteria listed below are met. On the date of the VWP general permit authorization transfer, the transferred VWP general permit authorization shall be as fully effective as if it had been issued directly to the new permittee.

1. The current permittee notifies the board of the transfer of the title to the facility or property.

2. The notice to the board includes a written agreement between the current and new permittees containing a specific date of transfer of VWP general permit authorization responsibility, coverage and liability to the new permittee, or that the current permittee will retain such responsibility, coverage, or liability, including liability for compliance with the requirements of enforcement activities related to the permitted activity.

3. The board does not notify the current and new permittees of its intent to modify or revoke and reissue the VWP general permit authorization within 15 days.

I. Notice of planned change. Authorization under this VWP general permit may be modified subsequent to issuance in one or more of the cases listed below. A notice of planned change is not required if the project results in additional temporary impacts to surface waters, provided that DEQ is notified in writing, the additional temporary impacts are restored to preexisting conditions in accordance with Part I C 11 of this general permit, and the additional temporary impacts do not exceed the general permit threshold for use. The permittee shall notify the board in advance of the planned change, and

Regulations

the planned change request will be reviewed according to all provisions of this regulation.

1. The permittee determines that additional permanent wetland, open water, or stream impacts are necessary, provided that the additional impacts are associated with the previously authorized activities in authorized locations within the same phase of development, the cumulative increase in acreage of wetland or open water impacts is not greater than 1/4 acre, the cumulative increase in stream bed impacts is not greater than 100 linear feet, and all additional impacts are fully compensated.

2. The project results in less wetland or stream impacts, in which case compensation requirements may be modified in relation to the adjusted impacts at the request of the permittee, provided that the adjusted compensation meets the initial authorization compensation goals.

3. There is a change in the project plans that does not result in a change in project impacts.

4. There is a change in the mitigation bank at which credits are purchased or used, provided that the same amount of credits are purchased or used and all criteria for use are met, as detailed in ~~9VAC25-210-115 F~~ 9VAC25-210-116 E.

5. Typographical errors need to be corrected.

J. VWP general permit authorization termination for cause. This VWP general permit authorization is subject to termination for cause by the board after public notice and opportunity for a hearing. Reasons for termination for cause are as follows:

1. Noncompliance by the permittee with any condition of the VWP general permit authorization;

2. The permittee's failure in the application or during the VWP general permit authorization issuance process to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at any time;

3. The permittee's violation of a special or judicial order; and

4. A determination by the board that the permitted activity endangers human health or the environment and can be regulated to acceptable levels by a VWP general permit authorization planned change or termination for cause.

K. VWP general permit authorization termination by consent. This VWP general permit authorization may be terminated by consent when all permitted activities requiring notification under 9VAC25-660-50 A and all compensatory mitigation have been completed or when the authorized impacts will not occur. The permittee shall submit a request for termination by consent within 30 days of project completion or project cancellation. When submitted for project completion, the termination by consent shall

constitute a notice of completion in accordance with 9VAC25-210-130. The director may accept this termination of authorization on behalf of the board. The request for termination by consent shall contain the following information:

1. Name, mailing address and telephone number of the permittee;

2. Name and location of the activity;

3. The VWP permit authorization number; and

4. One of the following certifications:

a. For project completion:

"I certify under penalty of law that all activities and any required compensatory mitigation authorized by a VWP general permit have been completed. I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit, and that performing activities in surface waters is unlawful where the activity is not authorized by a VWP permit. I also understand that the submittal of this notice does not release me from liability for any violations of this VWP general permit authorization."

b. For project cancellation:

"I certify under penalty of law that the activities and any required compensatory mitigation authorized by this VWP general permit will not occur. I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit, and that performing activities in surface waters is unlawful where the activity is not authorized by a VWP permit. I also understand that the submittal of this notice does not release me from liability for any violations of this VWP general permit authorization, nor does it allow me to resume the permitted activities without reapplication and reauthorization."

c. For events beyond permittee control, the permittee shall provide a detailed explanation of the events, to be approved by DEQ, and the following certification statement:

"I certify under penalty of law that the activities or the required compensatory mitigation authorized by a VWP general permit have changed as the result of events beyond my control (see attached). I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit, and that performing activities in surface waters is unlawful where the activity is not authorized by a VWP permit. I also understand that the submittal of this notice does not

release me from liability for any violations of this VWP general permit authorization, nor does it allow me to resume the permitted activities without reapplication and reauthorization."

L. Civil and criminal liability. Nothing in this VWP general permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

M. Oil and hazardous substance liability. Nothing in this VWP general permit shall be construed to preclude the institution of legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under §311 of the Clean Water Act or §§62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

N. Duty to cease or confine activity. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the activity for which a VWP permit has been granted in order to maintain compliance with the conditions of the VWP permit.

O. Duty to provide information.

1. The permittee shall furnish to the board information which the board may request to determine whether cause exists for modifying, revoking and reissuing, and terminating the VWP permit authorization, or to determine compliance with the VWP permit authorization. The permittee shall also furnish to the board, upon request, copies of records required to be kept by the permittee.

2. Plans, maps, conceptual reports and other relevant information shall be submitted as required by the board prior to commencing construction.

P. Monitoring and records requirements.

1. Monitoring of parameters, other than pollutants, shall be conducted according to approved analytical methods as specified in the VWP permit. Analysis of pollutants will be conducted according to 40 CFR Part 136 (2000), Guidelines Establishing Test Procedures for the Analysis of Pollutants.

2. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

3. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart or electronic recordings for continuous monitoring instrumentation, copies of all reports required by the VWP permit, and records of all data used to complete the application for the VWP permit, for a period of at least three years from the date of the expiration of a granted VWP permit. This period may be extended by request of the board at any time.

4. Records of monitoring information shall include, as appropriate:

- a. The date, exact place and time of sampling or measurements;
- b. The name of the individuals who performed the sampling or measurements;
- c. The date and time the analyses were performed;
- d. The name of the individuals who performed the analyses;
- e. The analytical techniques or methods supporting the information such as observations, readings, calculations and bench data used;
- f. The results of such analyses; and
- g. Chain of custody documentation.

Q. Unauthorized discharge of pollutants. Except in compliance with this VWP general permit, it shall be unlawful for the permittee to:

- 1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances;
- 2. Excavate in a wetland;
- 3. Otherwise alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, to animal or aquatic life, to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses; or
- 4. On and after October 1, 2001, conduct the following activities in a wetland:
 - a. New activities to cause draining that significantly alter or degrade existing wetland acreage or functions;
 - b. Filling or dumping;
 - c. Permanent flooding or impounding; or
 - d. New activities that cause significant alteration or degradation of existing wetland acreage or functions.

VA.R. Doc. No. R08-933; Filed December 14, 2007, 3:01 p.m.

Final Regulation

REGISTRAR'S NOTICE: The State Water Control Board is claiming an exclusion 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 State Water Control Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Regulations

Title of Regulation: 9VAC25-670. Virginia Water Protection General Permit for Facilities and Activities of Utility and Public Service Companies Regulated by the Federal Energy Regulatory Commission or the State Corporation Commission and Other Utility Line Activities (amending 9VAC25-670-10, 9VAC25-670-70, 9VAC25-670-80, 9VAC25-670-100).

Statutory Authority: §62.1-44.15 of the Code of Virginia; §401 of the Clean Water Act (33 USC §1251 et seq.).

Effective Date: February 6, 2008.

Agency Contact: Brenda Winn, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4516, FAX (804) 698-4032, or email bkwin@deq.virginia.gov.

Summary:

The amendments conform the regulation to statute changes passed by the 2007 Session of the General Assembly that reorganized the State Water Control Law (§62.1-44.2 et seq. of the Code of Virginia).

9VAC25-670-10. Definitions.

The words and terms used in this chapter shall have the meanings defined in the State Water Control Law (§62.1-44.2 et seq. of the Code of Virginia) and the Virginia Water Protection (VWP) Permit Regulation (9VAC25-210) unless the context clearly indicates otherwise or unless otherwise indicated below.

"Bank protection" means measures employed to stabilize channel banks and combat existing erosion problems. Such measures may include the construction of riprap revetments, sills, rock vanes, beach nourishment, breakwaters, bulkheads, groins, spurs, levees, marsh toe stabilization, anti-scouring devices, and submerged sills.

"Channelization" means the alteration of a stream channel by widening, deepening, straightening, cleaning or paving certain areas.

"Cross-sectional sketch" means a graph or plot of ground elevation across a waterbody or a portion of it, usually along a line perpendicular to the waterbody or direction of flow.

"Emergent wetland" means a class of wetlands characterized by erect, rooted, herbaceous plants growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content, excluding mosses and lichens. This vegetation is present for most of the growing season in most years and are usually dominated by perennial plants.

"FEMA" means Federal Emergency Management Agency.

"Forebay" means a deeper area at the upstream end of a stormwater management facility that would be maintained through excavation.

"Forested wetland" means a class of wetlands characterized by woody vegetation that is six meters (20 feet) tall or taller. These areas normally possess an overstory of trees, an understory of trees or shrubs, and an herbaceous layer.

"Greater than one acre" means more than 1.00 acre (43,560 square feet).

"Impacts" means results caused by human-induced activities conducted in surface waters, as specified in ~~§62.1-44.15:5 D~~ §62.1-44.15:20 A of the Code of Virginia.

"Independent utility" means a test to determine what constitutes a single and complete project. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a phased project that depend upon other phases of the project do not have independent utility. Portions of a phased project that would be constructed even if the other phases are not built can be considered as separate single and complete projects with independent utility.

"Isolated Wetland of Minimal Ecological Value (IWOMEV)" means a wetland that: (i) does not have a surface water connection to other state waters; (ii) is less than one-tenth of an acre in size; (iii) is not located in a Federal Emergency Management Agency designated 100-year floodplain; (iv) is not identified by the Virginia Natural Heritage Program as a rare or state significant natural community; (v) is not forested; and (vi) does not contain listed federal or state threatened or endangered species.

"Less than one-half of an acre" means 0.49 acre (21,779 square feet) or less.

"Open water" means an area that, during a year with normal patterns of precipitation, has standing water for sufficient duration to establish an ordinary high water mark. The term "open water" includes lakes and ponds but does not include ephemeral waters, stream beds, or wetlands.

"Ordinary high water" or "ordinary high water mark" means the line on the shore established by the fluctuations of water and indicated by physical characteristics such as clear, natural line impressed on the bank; shelving; changes in the character of soil; destruction of terrestrial vegetation; the presence of litter and debris; or other appropriate means that consider the characteristics of the surrounding areas.

"Perennial stream" means a well-defined channel that contains water year round during a year of normal rainfall. Generally, the water table is located above the streambed for most of the year and groundwater is the primary source for stream flow. A perennial stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.

"Permanent impacts" means those impacts to surface waters, including wetlands, that cause a permanent alteration of the

physical, chemical, or biological properties of the surface waters, or of the functions and values of a wetland.

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

"Riprap" means a layer of nonerodible material such as stone or chunks of concrete.

"Scrub-shrub wetland" means a class of wetlands dominated by woody vegetation less than six meters (20 feet) tall. The species include tree shrubs, young trees, and trees or shrubs that are small or stunted because of environmental conditions.

"Single and complete project" means the total project proposed or accomplished by a person, which also has independent utility, as defined in this section. For linear projects, the "single and complete project" (e.g., a single and complete crossing) will apply to each crossing of a separate surface water (e.g., a single waterbody) and to multiple crossings of the same waterbody at separate and distinct locations. Phases of a project that have independent public and economic utility may each be considered single and complete.

"State program general permit (SPGP)" means a general permit issued by the Department of the Army in accordance with 33 USC 1344(e), 33 CFR 325.2(e)(2), and 33 CFR 325.3(b) that is founded on a state program. The SPGP is designed to avoid duplication between the federal and state programs.

"Stream bed" means the substrate of a stream, as measured between the ordinary high water marks along a length of stream. The substrate may consist of organic matter, bedrock or inorganic particles that range in size from clay to boulders, or a combination of both. Areas contiguous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.

"Surface waters" means all state waters that are not ground water as defined in §62.1-255 of the Code of Virginia.

"Temporary impacts" are those impacts to surface waters, including wetlands, that do not cause a permanent alteration of the physical, chemical, or biological properties of the surface water, or of the functions and values of a wetland. Temporary impacts include activities in which the ground is restored to its preconstruction conditions, contours, or elevations, such that previous functions and values are restored.

"Up to 300 linear feet" means >0.00 to 300.00 linear feet, as measured along the center of the main channel of the stream segment.

"Up to 1500 linear feet" means >0.00 to 1500.00 linear feet, as measured along the center of the main channel of the stream segment.

"Up to one-tenth of an acre" means 0.10 acre (4,356 square feet) or less.

"Up to two acres" means 2.00 acres (87,120 square feet) or less.

"Utility line" means a pipe or pipeline for the transportation of a gaseous, liquid, liquefiable or slurry substance, for any purpose, and a cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages and radio and television communication. The term utility line does not include activities which drain a surface water to convert it to an upland, such as drainage tiles or french drains; however, it does apply to pipes conveying drainage from another area.

9VAC25-670-70. Compensation.

A. In accordance with 9VAC25-670-50 B, compensatory mitigation may be required for all permanent, nontidal surface water impacts. All temporary, nontidal surface water impacts shall be restored to preexisting conditions.

B. Generally, the sequence of preferred compensation options shall be restoration, then creation, then mitigation banking, and then in-lieu fee fund. Also, on-site, in-kind compensatory mitigation, when available, shall be deemed the most ecologically preferable form of compensation for project impacts, in most cases. However, off-site or out-of-kind compensation opportunities that prove to be more ecologically preferable to practicable on-site or in-kind compensation may be considered. When the applicant can demonstrate satisfactorily that an off-site or out-of-kind compensatory mitigation proposal is ecologically preferable, then such proposal may be deemed appropriate for compensation of project impacts.

C. For the purposes of this VWP general permit, compensatory mitigation for unavoidable wetland impacts may be met through the following:

1. Wetland creation.
2. Wetland restoration.
3. The purchase or use of credits from a mitigation bank, pursuant to ~~§62.1-44.15:5-E~~ §62.1-44.15:23 of the Code of Virginia.
4. A contribution to an approved in-lieu fee fund.
5. Preservation of upland buffers adjacent to state waters, when utilized in conjunction with subdivision 1, 2, or 3 of this subsection and when consistent with ~~9VAC25-210-415-C~~ 9VAC25-210-116 A.
6. Restoration of upland buffers adjacent to state waters, when utilized in conjunction with subdivision 1, 2, or 3 of this subsection and when consistent with ~~9VAC25-210-415-C~~ 9VAC25-210-116 A.

Regulations

7. Preservation of wetlands, when utilized in conjunction with subdivision 1, 2, or 3 of this subsection.

D. For the purposes of this VWP general permit, compensatory mitigation for unavoidable stream impacts may be met through the following:

1. Stream channel restoration or enhancement.
2. Riparian buffer restoration or enhancement.
3. Riparian buffer preservation, when consistent with ~~9VAC25-210-115 C~~ 9VAC25-210-116 A.
4. A contribution to an approved in-lieu fee fund.
5. The purchase or use of credits from a mitigation bank, pursuant to ~~§62.1-44.15:5 E~~ §62.1-44.15:23 of the Code of Virginia.

E. In order for contribution to an in-lieu fee fund to be an acceptable form of compensation, the fund must be approved for use by the board according to the provisions of ~~9VAC25-210-115 E~~ 9VAC25-210-116 D. The applicant shall provide proof of contribution to DEQ prior to commencing activities in impact areas.

F. In order for purchase or use of bank credits to be an acceptable form of compensation, the bank shall be operating in accordance with the provisions of ~~§62.1-44.15:5 E~~ §62.1-44.15:23 of the Code of Virginia and ~~9VAC25-210-115 F~~ 9VAC25-210-116 E. The applicant shall provide proof of purchase, use, or debit to DEQ prior to commencing activities in impact areas.

G. Compensation for unavoidable permanent wetland impacts shall be provided at the following minimum compensation to impact ratios:

1. Impacts to forested wetlands shall be mitigated at 2:1, as calculated on an area basis.
2. Impacts to scrub-shrub wetlands shall be mitigated at 1.5:1, as calculated on an area basis.
3. Impacts to emergent wetlands shall be mitigated at 1:1, as calculated on an area basis.

H. Compensation for stream bed impacts shall be appropriate to replace lost functions and water quality benefits. One factor in determining the required stream compensation shall be an analysis of stream impacts utilizing a stream impact assessment methodology acceptable to DEQ.

I. Compensation for permanent open water impacts other than to streams may be required at a 1:1 replacement to impact ratio, as calculated on an area basis, to offset impacts to state waters and fish and wildlife resources from significant impairment.

J. Compensation for conversion impacts to wetlands shall be required at a 1:1 replacement to impact ratio, as calculated on an area basis, when such conversion results in a permanent

alteration of the functions and values of the wetland. For example, the permanent conversion of a forested wetland to an emergent wetland is considered to be a permanent impact for the purposes of this regulation. Compensation for conversion of other types of surface waters may be required, as appropriate, to offset impacts to state waters and fish and wildlife resources from significant impairment.

9VAC25-670-80. Notice of planned changes.

A. The permittee shall notify the board in advance of the planned change, and the planned change request will be reviewed according to all provisions of this regulation.

B. Authorization under this VWP general permit may be modified subsequent to issuance if the permittee determines that additional permanent wetland, open water, or stream impacts are necessary, provided that the additional impacts are associated with the previously authorized activities in authorized locations within the same phase of development or within logical termini, the cumulative increase in acreage of wetland or open water impacts is not greater than 1/4 acre, the cumulative increase in stream bed impacts is not greater than 100 linear feet, and the additional impacts are fully mitigated. Prior to a planned change approval, DEQ may require submission of a compensatory mitigation plan for the additional impacts. In cases where the original impacts totaled less than 1/10 acre of wetlands or open water, or less than 300 linear feet of stream bed, and the additional impacts result in these limits being exceeded, the notice of planned change will not be approved. However, the applicant may submit a new permit application and permit application fee for the total impacts to be considered under this VWP general permit, another VWP general permit, or a VWP individual permit.

C. Authorization under this VWP general permit may be modified after issuance if the project results in less wetland or stream impacts. Compensation requirements may be modified in relation to the adjusted impacts at the request of the permittee, provided that the adjusted compensation meets the initial authorization compensation goals. DEQ shall not be responsible for ensuring refunds for mitigation bank credit purchases, mitigation bank usage, or in-lieu fee fund contributions.

D. Authorization under this VWP general permit may be modified after issuance for a change in project plans that does not result in a change in project impacts.

E. Authorization under the VWP general permit may be modified for a change to the mitigation bank at which credits are purchased or used, provided that the same amount of credits are purchased or used and all criteria for use in ~~9VAC25-210-115 F~~ 9VAC25-210-116 E are met.

F. Authorization under the VWP general permit may be modified after issuance for typographical errors.

G. A notice of planned change is not required after authorization issuance for additional temporary impacts to surface waters, provided that DEQ is notified in writing regarding additional temporary impacts, and the area is restored to preexisting conditions in accordance with Part I C 11 of this general permit. In no case can the additional temporary impacts exceed the general permit threshold for use.

H. In no case can this authorization be modified to exceed the general permit threshold for use.

I. A notice of planned change shall be denied if fish and wildlife resources are significantly impacted or if the criteria in subsection B of this section are not met. However, the original VWP general permit authorization shall remain in effect. The applicant may submit a new permit application and permit application fee for consideration under a VWP individual permit.

9VAC25-670-100. VWP general permit.

Any applicant whose application has been accepted by the board shall be subject to the following requirements:

VWP General Permit No. WP2

Authorization expiration date:

Authorization Note(s):

VWP GENERAL PERMIT FOR FACILITIES AND ACTIVITIES OF UTILITIES AND PUBLIC SERVICE COMPANIES REGULATED BY THE FEDERAL ENERGY REGULATORY COMMISSION OR THE STATE CORPORATION COMMISSION AND OTHER UTILITY LINE ACTIVITIES UNDER THE VIRGINIA WATER PROTECTION PERMIT AND THE VIRGINIA STATE WATER CONTROL LAW

Based upon an examination of the information submitted by the applicant and in compliance with §401 of the Clean Water Act as amended (33 USC §1341) and the State Water Control Law and regulations adopted pursuant thereto, the board has determined that there is a reasonable assurance that the activity authorized by this VWP general permit, if conducted in accordance with the conditions set forth herein, will protect instream beneficial uses and will not violate applicable water quality standards. The board finds that the effect of the impact, together with other existing or proposed impacts to wetlands, will not cause or contribute to a significant impairment of surface waters or fish and wildlife resources.

Subject to the provisions of the Clean Water Act, as amended, and pursuant to the State Water Control Law and regulations adopted pursuant to it, the permittee is authorized to permanently or temporarily impact up to one acre of nontidal wetlands or open water and up to 1,500 linear feet of nontidal stream bed.

Permittee:

Address:

Activity Location:

Activity Description:

The authorized activity shall be in accordance with this cover page, Part I-Special Conditions, Part II-Compensation, Monitoring, and Reporting, and Part III-Conditions Applicable to All VWP Permits, as set forth herein.

Director, Department of Environmental Quality

Date

Part I. Special Conditions.

A. Authorized activities.

1. This permit authorizes permanent or temporary impacts of up to one acre of nontidal wetlands or open water and up to 1,500 linear feet of nontidal stream bed according to the information provided in the approved and complete application.

2. Any changes to the authorized permanent impacts to surface waters associated with this project shall require either a notice of planned change in accordance with 9VAC25-670-80 or another VWP permit application.

3. Any changes to the authorized temporary impacts to surface waters associated with this project shall require written notification to DEQ and restoration to preexisting conditions in accordance with the conditions of this permit authorization.

4. Modification to compensation requirements may be approved at the request of the permittee when a decrease in the amount of authorized surface waters impacts occurs, provided that the adjusted compensation meets the initial authorization compensation goals.

5. The activities authorized for coverage under this VWP general permit must commence and be completed within seven years of the date of this authorization.

B. Continuation of coverage. Reapplication for continuation of coverage under this VWP general permit or a new VWP permit may be necessary if any portion of the authorized activities or any VWP permit requirement (including compensation) has not been completed within seven years of the date of authorization. Notwithstanding any other provision, a request for continuation of coverage under a VWP general permit in order to complete monitoring requirements shall not be considered a new application, and no application fee will be charged. The request for continuation of coverage must be made no less than 60 days prior to the expiration date of this VWP general permit authorization, at which time the board will determine if

Regulations

continuation of the VWP general permit authorization is necessary.

C. Overall project conditions.

1. The activities authorized by this VWP general permit shall be executed in a manner so as to minimize adverse impacts on instream beneficial uses as defined in §62.1-10 (b) of the Code of Virginia.

2. No activity may substantially disrupt the movement of aquatic life indigenous to the water body, including those species which normally migrate through the area, unless the primary purpose of the activity is to impound water. Culverts placed in streams must be installed to maintain low flow conditions. The requirement to countersink does not apply to extensions or maintenance of existing culverts that are not countersunk, floodplain culverts being placed above ordinary high water, culverts being placed on bedrock, or culverts required to be placed on slopes 5.0% or greater. No activity may cause more than minimal adverse effect on navigation. Furthermore the activity must not impede the passage of normal or expected high flows and the structure or discharge must withstand expected high flows.

3. Wet or uncured concrete shall be prohibited from entry into flowing surface waters. Excess or waste concrete shall not be disposed of in flowing surface waters or washed into flowing surface waters.

4. All fill material shall be clean and free of contaminants in toxic concentrations or amounts in accordance with all applicable laws and regulations.

5. Erosion and sedimentation controls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992. These controls shall be placed prior to clearing and grading and maintained in good working order to minimize impacts to state waters. These controls shall remain in place until the area is stabilized and shall then be removed.

6. Exposed slopes and streambanks shall be stabilized immediately upon completion of work in each permitted area. All denuded areas shall be properly stabilized in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

7. All construction, construction access (e.g., cofferdams, sheetpiling, and causeways) and demolition activities associated with this project shall be accomplished in such a manner that minimizes construction or waste materials from entering surface waters to the maximum extent practicable, unless authorized by this VWP general permit.

8. No machinery may enter flowing waters, unless authorized by this VWP general permit.

9. Heavy equipment in temporarily impacted wetland areas shall be placed on mats, geotextile fabric, or other suitable material, to minimize soil disturbance to the maximum extent practicable. Equipment and materials shall be removed immediately upon completion of work.

10. All nonimpacted surface waters and compensatory mitigation areas within 50 feet of permitted activities and within the project or right-of-way limits shall be clearly flagged or marked for the life of the construction activity at that location to preclude any unauthorized disturbances to these surface waters and compensatory mitigation areas during construction. The permittee shall notify contractors that no activities are to occur in these marked surface waters.

11. Temporary disturbances to surface waters during construction shall be avoided and minimized to the maximum extent practicable. All temporarily disturbed wetland areas shall be restored to preexisting conditions within 30 days of completing work at each respective temporary impact area, which shall include reestablishing preconstruction contours, and planting or seeding with appropriate wetland vegetation according to cover type (emergent, scrub-shrub or forested). The permittee shall take all appropriate measures to promote and maintain revegetation of temporarily disturbed wetland areas with wetland vegetation through the second year post-disturbance. All temporarily impacted streams and streambanks shall be restored to their original contours within 30 days following the construction at that stream segment, and the banks seeded or planted with the same vegetation cover type originally present along the streambanks, including supplemental erosion control grasses if necessary, except for invasive species identified on DCR's Invasive Alien Plant Species of Virginia list.

12. Materials (including fill, construction debris, and excavated and woody materials) temporarily stockpiled in wetlands shall be placed on mats or geotextile fabric, immediately stabilized to prevent entry into state waters, managed such that leachate does not enter state waters, and completely removed within 30 days following completion of that construction activity. Disturbed areas shall be returned to original contours, restored within 30 days following removal of the stockpile, and restored with the same vegetation cover type originally present, including supplemental erosion control grasses if necessary, except for invasive species identified on DCR's Invasive Alien Plant Species of Virginia list.

13. Continuous flow of perennial springs shall be maintained by the installation of spring boxes, french drains, or other similar structures.

14. The permittee shall employ measures to prevent spills of fuels or lubricants into state waters.

15. The permittee shall conduct his activities in accordance with the time-of-year restrictions recommended by the Virginia Department of Game and Inland Fisheries, the Virginia Marine Resources Commission, or other interested and affected agencies and shall ensure that all contractors are aware of the time-of-year restrictions imposed.

16. Water quality standards shall not be violated as a result of the construction activities unless allowed by this permit authorization.

17. If stream channelization or relocation is required, all work in surface waters shall be done in the dry, unless authorized by this VWP general permit, and all flows shall be diverted around the channelization or relocation area until the new channel is stabilized. This work shall be accomplished by leaving a plug at the inlet and outlet ends of the new channel during excavation. Once the new channel has been stabilized, flow shall be routed into the new channel by first removing the downstream plug and then the upstream plug. The rerouted stream flow must be fully established before construction activities in the old stream channel can begin.

D. Road crossings.

1. Access roads and associated bridges or culverts shall be constructed to minimize the adverse effects on surface waters to the maximum extent practicable. Access roads constructed above preconstruction contours and elevations in surface waters must be bridged or culverted to maintain surface flows.

2. Installation of road crossings shall occur in the dry via the implementation of cofferdams, sheetpiling, stream diversions, or similar structures.

E. Utility lines.

1. All utility line work in surface waters shall be performed in a manner that minimizes disturbance, and the area must be returned to its original contours and restored within 30 days of completing work in the area, unless otherwise authorized by this VWP general permit. Restoration shall be the seeding or planting of the same vegetation cover type originally present, including supplemental erosion control grasses if necessary, except for invasive species identified on DCR's Invasive Alien Plant Species of Virginia list.

2. Material resulting from trench excavation may be temporarily sidecast into wetlands, not to exceed 90 days, provided the material is not placed in a manner such that it is dispersed by currents or other forces.

3. The trench for a utility line cannot be constructed in a manner that drains wetlands (e.g., backfilling with extensive gravel layers creating a trench drain effect.). For

example, utility lines may be backfilled with clay blocks to ensure that the trench does not drain surface waters through which the utility line is installed.

F. Stream modification and stream bank protection.

1. Riprap bank stabilization shall be of an appropriate size and design in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

2. Riprap apron for all outfalls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

3. For stream bank protection activities, the structure and backfill shall be placed as close to the stream bank as practicable. No material shall be placed in excess of the minimum necessary for erosion protection.

4. All stream bank protection structures shall be located to eliminate or minimize impacts to vegetated wetlands to the maximum extent practicable.

5. Asphalt and materials containing asphalt or other toxic substances shall not be used in the construction of submerged sills or breakwaters.

6. Redistribution of existing stream substrate for the purpose of erosion control is prohibited.

7. No material removed from the stream bottom shall be disposed of in surface waters, unless authorized by this permit.

Part II. Construction and Compensation Requirements, Monitoring, and Reporting.

A. Minimum compensation requirements.

1. The permittee shall provide appropriate and practicable compensation for all impacts meeting the conditions outlined in this VWP general permit.

2. Compensation options that may be considered under this VWP general permit shall meet the criteria in 9VAC25-670-70.

3. The site or sites depicted in the conceptual compensation plan submitted with the application shall constitute the compensation site for the approved project. A site change will require a modification to the authorization.

4. For compensation involving the purchase or use of mitigation bank credits or a contribution to an in-lieu fee fund, the permittee shall not initiate work in permitted impact areas until documentation of the mitigation bank credit purchase or usage or of the fund contribution has been submitted to and received by DEQ.

5. All aspects of the compensation plan shall be finalized, submitted and approved by the board prior to a construction activity in permitted impact areas. The board

Regulations

shall review and provide written comments on the plan within 30 days of receipt or it shall be deemed approved. The final compensation plan as approved by the board shall be an enforceable requirement of this VWP general permit authorization. Deviations from the approved plan must be submitted and approved in advance by the board.

6. The final wetlands compensation plan shall include:

- a. The goals and objectives of the plan in terms of replacement of wetland acreage and functions, by wetland type;
- b. Location map, including latitude and longitude (to the nearest second) at the center of the site;
- c. Summary of the type and acreage of the existing wetland impacts anticipated during the construction of the compensation site and proposed compensation for these impacts;
- d. Grading plan with existing and proposed elevations at one-foot or less contours;
- e. Schedule for compensation site construction, including sequence of events with estimated dates;
- f. Hydrologic analysis, including a water budget based on expected monthly inputs and outputs that will project water level elevations for a typical year, a dry year, and a wet year;
- g. Groundwater elevation data for the site, or the location of groundwater monitoring wells to collect these data, and groundwater data for reference wetlands, if applicable;
- h. Design of water control structures;
- i. Planting scheme and schedule, indicating plant species, zonation, and acreage of each vegetation type proposed;
- j. An abatement and control plan covering all undesirable plant species, as listed on DCR's Invasive Alien Plant Species of Virginia list, that includes the proposed procedures for notifying DEQ of their presence, methods of removal, and the control of such species;
- k. Erosion and sedimentation control plan;
- l. A soil preparation and amendment plan addressing both topsoil and subsoil conditions;
- m. A discussion of structures and features considered necessary for the success of the site;
- n. A monitoring plan, including success criteria, monitoring goals and methodologies, monitoring and reporting schedule, and the locations of photographic stations and monitoring wells, sampling points, and, if applicable, reference wetlands;
- o. Site access plan;

p. The location and composition of any buffers; and

q. The mechanism for protection of the compensation areas.

7. The final stream compensation plan shall include:

- a. The goals and objectives of the compensation plan in terms of replacement of stream functions and water quality benefits;
- b. A location map, including latitude and longitude (to the nearest second) at the center of the site;
- c. An evaluation, discussion, and plan sketches of existing conditions on the proposed compensation stream, including the identification of functional and physical deficiencies for which the measures are proposed, and summary of geomorphologic measurements (e.g., stream width, entrenchment ratio, width-depth ratio, sinuosity, slope, substrate, etc.);
- d. The identification of existing geomorphological stream type being impacted and proposed geomorphological stream type for compensation purposes;
- e. Detailed design information for the proposed restorative measures, including geomorphological measurements and reference reach information as appropriate;
- f. Riparian buffer plantings, including planting scheme, species, buffer width;
- g. Livestock access limiting measures, to the greatest extent possible;
- h. A site access plan;
- i. An erosion and sedimentation control plan, if appropriate;
- j. An abatement and control plan covering all undesirable plant species, as listed on DCR's Invasive Alien Plant Species of Virginia list, that includes the proposed procedures for notifying DEQ of a their presence, methods for removal, and the control of any such species;
- k. A schedule for compensation site construction including projected start date, sequence of events with projected dates, and projected completion date;
- l. A monitoring plan, including a monitoring and reporting schedule; monitoring design and methodologies to evaluate the success of the proposed compensation measures, allowing comparison from year to year; proposed success criteria for appropriate compensation measures; location of all monitoring stations including photo stations, vegetation sampling points, survey points, bank pins, scour chains, and reference streams;
- m. The mechanism for protection of the compensation area; and

- n. Plan view sketch depicting the pattern and all compensation measures being employed, a profile sketch, and cross-section sketches of the proposed compensation stream.
8. For final wetland or stream compensation plans, the vegetation used shall be native species common to the area, shall be suitable for growth in local wetland or riparian conditions, and shall be from areas within the same or adjacent USDA Plant Hardiness Zone or NRCS Land Resource Region as that of the project site.
9. The final wetland or stream compensation plan(s) shall include a mechanism for protection in perpetuity of the compensation site(s) to include all state waters within the compensation site boundary or boundaries. Such protections shall be in place within 120 days of final compensation plan approval. The restrictions, protections, or preservations, or similar instrument shall state that no activity will be performed on the property in any area designated as a compensation area with the exception of maintenance or corrective action measures authorized by the board. Unless specifically authorized by the board through the issuance of a VWP individual or general permit, or waiver thereof, this restriction applies to ditching, land clearing or the discharge of dredge or fill material. Such instrument shall contain the specific phrase "ditching, land clearing or discharge of dredge or fill material" in the limitations placed on the use of these areas. The protective instrument shall be recorded in the chain of title to the property, or any equivalent instrument for government-owned lands. Proof of recordation shall be submitted within 120 days of survey or final compensation plan approval.
10. All work in permitted impact areas shall cease if compensation site construction has not commenced within 180 days of commencement of project construction, unless otherwise authorized by the board.
11. DEQ shall be notified in writing at least 10 days prior to the initiation of construction activities at the compensation site(s).
12. Planting of woody plants shall occur when vegetation is normally dormant unless otherwise approved in the final wetland or stream compensation plan(s).
13. Point sources of stormwater runoff shall be prohibited from entering a wetland compensation site prior to treatment by appropriate best management practices. Appropriate best management practices may include sediment traps, grassed waterways, vegetated filter strips, debris screens, oil and grease separators, or forebays.
14. The success of the compensation shall be based on meeting the success criteria established in the approved final compensation plan.
15. Wetland hydrology shall be considered established if depths to the seasonal high water table are equal to or less than 12 inches below ground surface for at least 12.5% of the region's killing frost-free growing season, as defined in the soil survey for the locality of the compensation site or the NRCS WETS table, measured in consecutive days under typical precipitation conditions, and as defined in the water budget of the final compensation plan. For the purpose of this regulation, the growing season is defined as the period in which temperatures are expected to be above 28 degrees Fahrenheit in five out of 10 years, or the period during which the soil temperature in a wetland compensation site is greater than biological zero (five degrees Celsius) at a depth of 50 centimeters (19.6 inches), if such data is available.
16. The wetland plant community shall be considered established according to the performance criteria specified in the final compensation plan and approved by the board. The proposed vegetation success criteria in the final compensation plan shall include the following:
- Species composition shall reflect the desired plant community types stated in the final wetlands compensation plan by the end of the first growing season and shall be maintained through the last monitoring year.
 - Species composition shall consist of greater than 50% facultative (FAC) or wetter (FACW or OBL) vegetation, as expressed by plant stem density or areal cover, by the end of the first growing season and shall be maintained through the last monitoring year.
17. Undesirable plant species shall be identified and controlled as described in the undesirable plant species control plan, such that they are not dominant species or do not change the desired community structure. The control plan shall include procedures to notify the board of any invasive species occurrences DEQ when undesirable plant species comprise greater than 5.0% of the vegetation by areal coverage on wetland or stream compensation sites. The notification shall include the methods of removal and control, and whether the methods are successful.
18. If the wetland or stream compensation area fails to meet the specified success criteria in a particular monitoring year, other than the final monitoring year, the reasons for this failure shall be determined and a corrective action plan shall be submitted to DEQ for approval with or before that year's monitoring report. The corrective action plan shall contain at a minimum the proposed actions, a schedule for those actions, and a monitoring plan, and shall be implemented by the permittee in accordance with the approved schedule. Should significant changes be necessary to ensure success, the required monitoring cycle shall begin again, with monitoring year one being the year that the changes are complete, as confirmed by DEQ. If the

Regulations

wetland or stream compensation area fails to meet the specified success criteria by the final monitoring year, or if the wetland or stream compensation area has not met the stated restoration goals, reasons for this failure shall be determined and a corrective action plan, including proposed actions, a schedule, and a monitoring plan, shall be submitted with the final year monitoring report for DEQ approval. Corrective action shall be implemented by the permittee in accordance with the approved schedule. Annual monitoring shall be required to continue until two sequential, annual reports indicate that all criteria have been successfully satisfied and the site has met the overall restoration goals (e.g., that corrective actions were successful).

19. The surveyed wetland boundary for the compensation site shall be based on the results of the hydrology, soils, and vegetation monitoring data and shall be shown on the site plan. Calculation of total wetland acreage shall be based on that boundary at the end of the monitoring cycle. Data shall be submitted by December 31 of the final monitoring year.

20. Herbicides or algicides shall not be used in or immediately adjacent to the compensation site or sites without prior authorization by the board. All vegetation removal shall be done by manual means, unless authorized by DEQ in advance.

B. Impact site construction monitoring.

1. Construction activities authorized by this permit that are within impact areas shall be monitored and documented. The monitoring shall document the preexisting conditions, activities during construction, and post-construction conditions. Monitoring shall consist of one of the following options:

a. Photographs shall be taken during construction at the end of the first, second, and third months after commencing construction, and then every six months thereafter for the remainder of the construction project. Photos are not required during periods of no activity within impact areas.

b. An ortho-rectified photograph shall be taken by a firm specializing in ortho-rectified photography prior to construction, and then annually thereafter, until all impacts are taken. Photos shall clearly show the delineated surface waters and authorized impact areas.

c. In lieu of photographs, and with prior approval from DEQ, the permittee may submit a written narrative that summarizes site construction activities in impact areas. The narrative shall be submitted at the end of the first, second, and third months after commencing construction, and then every six months thereafter, for the remainder of the construction activities. Narratives are not required during periods of no activity within the impact areas.

2. As part of construction monitoring, photographs taken at the photo stations or the narrative shall document site activities and conditions, which may include installation and maintenance of erosion and sediment controls; surface water discharges from the site; condition of adjacent nonimpact surface waters; flagged nonimpact surface waters; construction access and staging areas; filling, excavation, and dredging activities; culvert installation; dredge disposal; and site stabilization, grading, and associated restoration activities. With the exception of the preconstruction photographs, photographs at an individual impact site shall not be required until construction activities are initiated at that site. With the exception of the post-construction photographs, photographs at an individual impact site shall not be required once the site is stabilized following completion of construction at that site.

3. Each photograph shall be labeled to include the following information: permit number, impact area and photo station number, date and time of the photograph, name of the person taking the photograph, photograph orientation, and photograph subject description.

4. Monitoring of water quality parameters shall be conducted during permanent relocation of perennial streams through new channels in the manner noted below. The permittee shall report violations of water quality standards to DEQ in accordance with the procedures in Part II E. Corrective measures and additional monitoring may be required if water quality standards are not met. Reporting shall not be required if water quality standards are not violated.

a. A sampling station shall be located upstream and immediately downstream of the relocated channel.

b. Temperature, pH and dissolved oxygen (D.O.) measurements shall be taken every 30 minutes for at least two hours at each station prior to opening the new channels and immediately before opening new channels.

c. Temperature, pH and D.O. readings shall be taken after opening the channels and every 30 minutes for at least three hours at each station.

C. Wetland compensation site monitoring.

1. An as-built ground survey, or an aerial survey provided by a firm specializing in aerial surveys, shall be conducted for the entire compensation site or sites including invert elevations for all water elevation control structures and spot elevations throughout the site or sites. Aerial surveys shall include the variation from actual ground conditions, such as +/- 0.2 feet. Either type of survey shall be certified by a licensed surveyor or by a registered professional engineer to conform to the design plans. The survey shall be submitted within 60 days of completing compensation site construction. Changes or deviations in the as-built

survey or aerial survey shall be shown on the survey and explained in writing.

2. Photographs shall be taken at the compensation site or sites from the permanent markers identified in the final compensation plan, and established to ensure that the same locations and view directions at the site or sites are monitored in each monitoring period. These photographs shall be taken after the initial planting and at a time specified in the final compensation plan during every monitoring year.

3. Compensation site monitoring shall begin on the first day of the first complete growing season (monitoring year 1) after wetland compensation site construction activities, including planting, have been completed. Monitoring shall be required for monitoring years 1, 2, 3, and 5, unless otherwise approved by DEQ. In all cases, if all success criteria have not been met in the fifth monitoring year, then monitoring shall be required for each consecutive year until two annual sequential reports indicate that all criteria have been successfully satisfied.

4. The establishment of wetland hydrology shall be measured during the growing season, with the location and number of monitoring wells, and frequency of monitoring for each site, set forth in the final monitoring plan. Hydrology monitoring well data shall be accompanied by precipitation data, including rainfall amounts, either from on site, or from the closest weather station. Once the wetland hydrology success criteria have been satisfied for a particular monitoring year, weekly monitoring may be discontinued for the remainder of that monitoring year following DEQ approval. After a period of three monitoring years, the permittee may request that hydrology monitoring be discontinued, providing that adequate hydrology has been established and maintained. Hydrology monitoring shall not be discontinued without written approval from DEQ.

5. The presence of hydric soils or soils under hydric conditions shall be evaluated in accordance with the final compensation plan.

6. The establishment of wetland vegetation shall be in accordance with the final compensation plan. Monitoring shall take place in August, September, or October during the growing season of each monitoring year, unless authorized in the monitoring plan.

7. The presence of undesirable plant species shall be documented.

8. All wetland compensation monitoring reports shall be submitted in accordance with 9VAC25-670-100 Part II E 6.

D. Stream compensation, restoration and monitoring.

1. Riparian buffer restoration activities shall be detailed in the final compensation plan and shall include, as appropriate, the planting of a variety of native species currently growing in the site area, including appropriate seed mixtures and woody species that are bare root, balled, or burlapped. A minimum buffer width of 50 feet, measured from the top of the stream bank at bankfull elevation landward on both sides of the stream, shall be required where practical.

2. The installation of root wads, vanes, and other instream structures, shaping of the stream banks, and channel relocation shall be completed in the dry whenever practicable.

3. Livestock access to the stream and designated riparian buffer shall be limited to the greatest extent practicable.

4. Stream channel restoration activities shall be conducted in the dry or during low flow conditions. When site conditions prohibit access from the streambank, heavy equipment shall be authorized for use within the stream channel.

5. Photographs shall be taken at the compensation site from the vicinity of the permanent photo stations identified in the final compensation plan. The photograph orientation shall remain constant during all monitoring events. At a minimum, photographs shall be taken from the center of the stream, facing downstream, with a sufficient number of photographs to view the entire length of the restoration site. Photographs shall document the completed restoration conditions. Photographs shall be taken prior to site activities, during instream and riparian compensation construction activities, within one week of completion of activities, and during at least one day of each monitoring year to depict restored conditions.

6. An as-built ground survey, or an aerial survey provided by a firm specializing in aerial surveys, shall be conducted for the entire compensation site or sites. Aerial surveys shall include the variation from actual ground conditions, such as +/- 0.2 feet. The survey shall be certified by the licensed surveyor or by a registered, professional engineer to conform to the design plans. The survey shall be submitted within 60 days of completing compensation site construction. Changes or deviations from the final compensation plans in the as-built survey or aerial survey shall be shown on the survey and explained in writing.

7. Compensation site monitoring shall begin on day one of the first complete growing season (monitoring year 1) after stream compensation site construction activities, including planting, have been completed. Monitoring shall be required for monitoring years 1 and 2, unless otherwise determined by DEQ. In all cases, if all success criteria have not been met in the final monitoring year, then monitoring shall be required for each consecutive year until two

Regulations

annual sequential reports indicate that all criteria have been successfully satisfied.

8. All stream compensation monitoring reports shall be submitted in accordance with 9VAC25-670-100 Part II E 6.

E. Reporting.

1. Written communications required by this VWP general permit shall be submitted to the appropriate Department of Environmental Quality (DEQ) office. The VWP general permit authorization number shall be included on all correspondence.

2. DEQ shall be notified in writing at least 10 days prior to the start of construction activities at the first permitted site authorized by this VWP general permit authorization so that inspections of the project can be planned, if deemed necessary by DEQ. The notification shall include projected schedule for initiation and completion of work at each permitted impact area.

3. Construction monitoring reports shall be submitted to DEQ no later than the 10th day of the month following the month in which the monitoring event specified in Part II B takes place. The reports shall include the following, as appropriate:

a. For each permitted impact area, a written narrative stating whether work was performed during the monitoring period, and if work was performed, a description of the work performed, when the work was initiated, and the expected date of completion.

b. Photographs labeled with permit number, the photo station number, the photo orientation, the date and time of the photo, the name of the person taking the photograph, and a brief description of the construction activities. The first construction monitoring report shall include the photographs taken at each impact site prior to initiation of construction in a permitted impact area. Written notification and photographs demonstrating that all temporarily disturbed wetland and stream areas have been restored in compliance with the permit conditions shall be submitted within 30 days of restoration. The post-construction photographs shall be submitted within 30 days of documenting post-construction conditions.

c. Summary of activities conducted to comply with the permit conditions.

d. Summary of permit noncompliance events or problems encountered, subsequent notifications, and corrective actions.

e. Summary of anticipated work to be completed during the next monitoring period and an estimated date of construction completion at all impact areas.

f. Labeled site map depicting all impact areas and photo stations.

4. DEQ shall be notified in writing within 30 days following the completion of all activities in all permitted impact areas authorized under this permit.

5. DEQ shall be notified in writing at least 10 days prior to the initiation of activities at the compensation site. The notification shall include a projected schedule of activities and construction completion.

6. All compensation monitoring reports shall be submitted annually by December 31, with the exception of the last year of authorization, in which case the report shall be submitted at least 60 days prior to expiration of authorization under the general permit.

a. All wetland compensation monitoring reports shall include, as applicable, the following:

(1) General description of the site including a site location map identifying photo stations, vegetative and soil monitoring stations, monitoring wells, and wetland zones.

(2) Summary of activities completed during the monitoring year, including alterations or maintenance conducted at the site.

(3) Description of monitoring methods.

(4) Analysis of all hydrology information, including monitoring well data, precipitation data, and gauging data from streams or other open water areas, as set forth in the final compensation plan.

(5) Evaluation of hydric soils or soils under hydric conditions, as appropriate.

(6) Analysis of all vegetative community information, including woody and herbaceous species, both planted and volunteers, as set forth in the final compensation plan.

(7) Photographs labeled with the permit number, the name of the compensation site, the photo station number, the photograph orientation, the date and time of the photograph, the name of the person taking the photograph, and a brief description of the photograph subject. This information shall be provided as a separate attachment to each photograph, if necessary. Photographs taken after the initial planting shall be included in the first monitoring report after planting is complete.

(8) Discussion of wildlife or signs of wildlife observed at the compensation site.

(9) Comparison of site conditions from the previous monitoring year and reference site.

(10) Discussion of corrective measures or maintenance activities to control undesirable species, to repair damaged water control devices, or to replace damaged planted vegetation.

(11) Corrective action plan, which includes proposed actions, a schedule, and monitoring plan.

b. All stream compensation monitoring reports shall include, as applicable, the following:

(1) General description of the site including a site location map identifying photo stations and monitoring stations.

(2) Summary of activities completed during the monitoring year, including alterations or maintenance conducted at the site.

(3) Description of monitoring methods.

(4) An evaluation and discussion of the monitoring results in relation to the success criteria and overall goals of compensation.

(5) Photographs shall be labeled with the permit number, the name of the compensation site, the photo station number, the photograph orientation, the date and time of the photograph, the name of the person taking the photograph, and a brief description of the photograph subject. Photographs taken prior to compensation site construction activities, during instream and riparian restoration activities, and within one week of completion of activities shall be included in the first monitoring report.

(6) A discussion of alterations, maintenance, or major storm events resulting in significant change in stream profile or cross section, and corrective actions conducted at the stream compensation site.

(7) Documentation of undesirable plant species and summary of abatement and control measures.

(8) A summary of wildlife or signs of wildlife observed at the compensation site.

(9) Comparison of site conditions from the previous monitoring year and reference site, and as-built survey, if applicable.

(10) A corrective action plan, which includes proposed actions, a schedule and monitoring plan.

(11) Additional submittals that were approved by DEQ in the final compensation plan.

7. The permittee shall notify DEQ in writing when unusual or potentially complex conditions are encountered which require debris removal or involve potentially toxic substance. Measures to remove the obstruction, material, or

toxic substance or to change the location of a structure are prohibited until approved by DEQ.

8. The permittee shall report fish kills or spills of oil or fuel immediately upon discovery. If spills or fish kills occur between the hours of 8:15 a.m. to 5 p.m., Monday through Friday, the appropriate DEQ regional office shall be notified; otherwise, the Department of Emergency Management shall be notified at 1-800-468-8892.

9. Violations of state water quality standards shall be reported within 24 hours to the appropriate DEQ office.

10. Submittals required by this VWP general permit shall contain the following signed certification statement:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violation."

Part III. Conditions Applicable to All VWP General Permits.

A. Duty to comply. The permittee shall comply with all conditions of the VWP general permit. Nothing in this VWP general permit shall be construed to relieve the permittee of the duty to comply with all applicable federal and state statutes, regulations and toxic standards and prohibitions. VWP general permit noncompliance is a violation of the Clean Water Act and State Water Control Law, and is grounds for enforcement action, VWP general permit authorization termination for cause, VWP general permit authorization revocation, or denial of a continuation of coverage request.

B. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent impacts in violation of the VWP general permit which may have a reasonable likelihood of adversely affecting human health or the environment.

C. Reopener. This VWP general permit authorization may be reopened to modify its conditions when the circumstances on which the previous VWP general permit authorization was based have materially and substantially changed, or special studies conducted by the board or the permittee show material and substantial change since the time the VWP general permit authorization was issued and, thereby, constitute cause for VWP general permit authorization revocation and reissuance.

D. Compliance with state and federal law. Compliance with this VWP general permit constitutes compliance with the

Regulations

VWP permit requirements of the State Water Control Law. Nothing in this VWP general permit shall be construed to preclude the institution of any legal action under or relieve the permittee from any responsibilities, liabilities, or other penalties established pursuant to any other state law or regulation or under the authority preserved by §510 of the Clean Water Act.

E. Property rights. The issuance of this VWP general permit does not convey property rights in either real or personal property, or exclusive privileges, nor does it authorize injury to private property or invasion of personal property rights, nor infringement of federal, state or local laws or regulations.

F. Severability. The provisions of this VWP general permit authorization are severable.

G. Right of entry. The permittee shall allow the board or its agents, upon the presentation of credentials, at reasonable times and under reasonable circumstances to enter the permittee's property, public or private, and have access to, inspect and copy any records that must be kept as part of the VWP general permit conditions; to inspect facilities, operations or practices (including monitoring and control equipment) regulated or required under the VWP general permit; and to sample or monitor any substance, parameter or activity for the purpose of assuring compliance with the conditions of the VWP general permit or as otherwise authorized by law. For the purpose of this section, the time for inspection shall be deemed reasonable during regular business hours. Nothing contained herein shall make an inspection time unreasonable during an emergency.

H. Transferability of VWP general permit authorization. This VWP general permit authorization may be transferred to another person by a permittee when all of the criteria listed below are met. On the date of the VWP general permit authorization transfer, the transferred VWP general permit authorization shall be as fully effective as if it had been issued directly to the new permittee.

1. The current permittee notifies the board of the transfer of the title to the facility or property.
2. The notice to the board includes a written agreement between the current and new permittees containing a specific date of transfer of VWP general permit authorization responsibility, coverage and liability to the new permittee, or that the current permittee will retain such responsibility, coverage, or liability, including liability for compliance with the requirements of enforcement activities related to the permitted activity.
3. The board does not notify the current and new permittees of its intent to modify or revoke and reissue the VWP general permit authorization within the 15 days.

I. Notice of planned change. Authorization under this VWP general permit may be modified subsequent to issuance in one

or more of the cases listed below. A notice of planned change is not required if the project results in additional temporary impacts to surface waters, provided that DEQ is notified in writing, the additional temporary impacts are restored to preexisting conditions in accordance with Part I C 11 of this general permit, and the additional temporary impacts do not exceed the general permit threshold for use. The permittee shall notify the board in advance of the planned change, and the planned change request will be reviewed according to all provisions of this regulation.

1. The permittee determines that additional permanent wetland, open water, or stream impacts are necessary, provided that the additional impacts are associated with the previously authorized activities in authorized locations within the same phase of development, the cumulative increase in acreage of wetland or open water impacts is not greater than 1/4 acre, the cumulative increase in stream bed impacts is not greater than 100 linear feet, and the additional impacts are fully compensated.
2. The project results in less wetland or stream impacts, in which case, compensation requirements may be modified in relation to the adjusted impacts at the request of the permittee, provided that the adjusted compensation meets the initial authorization compensation goals.
3. There is a change in the project plans that does not result in a change in project impacts.
4. There is a change in the mitigation bank at which credits are purchased or used, provided that the same amount of credits are purchased or used and all criteria for use are met, as detailed in 9VAC25-210-115 F 9VAC25-210-116 E.
5. Typographical errors need to be corrected.

J. VWP general permit authorization termination for cause. This VWP general permit authorization is subject to termination for cause by the board after public notice and opportunity for a hearing. Reasons for termination for cause are as follows:

1. Noncompliance by the permittee with any condition of the VWP general permit authorization;
2. The permittee's failure in the application or during the VWP general permit authorization issuance process to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at any time;
3. The permittee's violation of a special or judicial order; and
4. A determination by the board that the permitted activity endangers human health or the environment and can be regulated to acceptable levels by VWP general permit authorization planned change or termination for cause.

K. VWP general permit authorization termination by consent. This VWP general permit authorization may be terminated by consent when all permitted activities requiring notification under 9VAC25-670-50 B and all compensatory mitigation have been completed or when the authorized impacts do not occur. The permittee shall submit a request for termination by consent within 30 days of project completion or project cancellation. When submitted for project completion, the termination by consent shall constitute a notice of completion in accordance with 9VAC25-210-130. The director may accept this termination of authorization on behalf of the board. The request for termination by consent shall contain the following information:

1. Name, mailing address and telephone number of the permittee;
2. Name and location of the activity;
3. The VWP permit authorization number; and
4. One of the following certifications:

a. For project completion:

"I certify under penalty of law that all activities and any required compensatory mitigation authorized by a VWP general permit have been completed. I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit, and that performing activities in surface waters is unlawful where the activity is not authorized by a VWP permit. I also understand that the submittal of this notice does not release me from liability for any violations of this VWP general permit authorization."

b. For project cancellation:

"I certify under penalty of law that the activities and any required compensatory mitigation authorized by this VWP general permit will not occur. I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit, and that performing activities in surface waters is unlawful where the activity is not authorized by a VWP permit. I also understand that the submittal of this notice does not release me from liability for any violations of this VWP general permit authorization, nor does it allow me to resume the permitted activities without reapplication and reauthorization."

c. For events beyond permittee control, the permittee shall provide a detailed explanation of the events, to be approved by DEQ, and the following certification statement:

"I certify under penalty of law that the activities or the required compensatory mitigation authorized by a VWP

general permit have changed as the result of events beyond my control (see attached). I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit, and that performing activities in surface waters is unlawful where the activity is not authorized by a VWP permit. I also understand that the submittal of this notice does not release me from liability for any violations of this VWP general permit authorization, nor does it allow me to resume the permitted activities without reapplication and reauthorization."

L. Civil and criminal liability. Nothing in this VWP general permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

M. Oil and hazardous substance liability. Nothing in this VWP general permit shall be construed to preclude the institution of legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under §311 of the Clean Water Act or §§62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

N. Duty to cease or confine activity. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the activity for which a VWP permit has been granted in order to maintain compliance with the conditions of the VWP permit.

O. Duty to provide information.

1. The permittee shall furnish to the board any information which the board may request to determine whether cause exists for modifying, revoking and reissuing and terminating the VWP permit authorization, or to determine compliance with the VWP permit authorization. The permittee shall also furnish to the board, upon request, copies of records required to be kept by the permittee.

2. Plans, maps, conceptual reports and other relevant information shall be submitted as required by the board prior to commencing construction.

P. Monitoring and records requirements.

1. Monitoring of parameters, other than pollutants, shall be conducted according to approved analytical methods as specified in the VWP permit. Analysis of pollutants will be conducted according to 40 CFR Part 136 (2000), Guidelines Establishing Test Procedures for the Analysis of Pollutants.

2. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

3. The permittee shall retain records of all monitoring information, including all calibration and maintenance

Regulations

records and all original strip chart or electronic recordings for continuous monitoring instrumentation, copies of all reports required by the VWP permit, and records of all data used to complete the application for the VWP permit, for a period of at least three years from the date of the expiration of a granted VWP permit. This period may be extended by request of the board at any time.

4. Records of monitoring information shall include, as appropriate:

- a. The date, exact place and time of sampling or measurements;
- b. The name of the individuals who performed the sampling or measurements;
- c. The date and time the analyses were performed;
- d. The name of the individuals who performed the analyses;
- e. The analytical techniques or methods supporting the information such as observations, readings, calculations and bench data used;
- f. The results of such analyses; and
- g. Chain of custody documentation.

Q. Unauthorized discharge of pollutants. Except in compliance with this VWP general permit, it shall be unlawful for the permittee to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances;
2. Excavate in a wetland;
3. Otherwise alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, to animal or aquatic life, to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses; or
4. On and after October 1, 2001, conduct the following activities in a wetland:
 - a. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions;
 - b. Filling or dumping;
 - c. Permanent flooding or impounding; or
 - d. New activities that cause significant alteration or degradation of existing wetland acreage or functions.

VA.R. Doc. No. R08-937; Filed December 14, 2007, 3:00 p.m.

Final Regulation

REGISTRAR'S NOTICE: The State Water Control Board is claiming an exclusion 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 State Water Control Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **9VAC25-680. Virginia Water Protection General Permit for Linear Transportation Projects (amending 9VAC25-680-10, 9VAC25-680-60, 9VAC25-680-70, 9VAC25-680-80, 9VAC25-680-100).**

Statutory Authority: §62.1-44.15 of the Code of Virginia; §401 of the Clean Water Act (33 USC §1251 et seq.).

Effective Date: February 6, 2008.

Agency Contact: Brenda Winn, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4516, FAX (804) 698-4032, or email bkwin@deq.virginia.gov.

Summary:

The amendments conform the regulation to statute changes passed by the 2007 Session of the General Assembly that reorganized the State Water Control Law (§62.1-44.2 et seq. of the Code of Virginia). In addition, the amendments conform the regulation to 2007 legislation amending §33.1-19.1 of the Code of Virginia that changed the processing time frames for certain projects.

9VAC25-680-10. Definitions.

The words and terms used in this chapter shall have the meanings defined in the State Water Control Law (§62.1-44.2 et seq. of the Code of Virginia) and the Virginia Water Protection (VWP) Permit Regulation (9VAC25-210) unless the context clearly indicates otherwise or unless otherwise indicated below.

"Bank protection" means measures employed to stabilize channel banks and combat existing erosion problems. Such measures may include the construction of riprap revetments, sills, rock vanes, beach nourishment, breakwaters, bulkheads, groins, spurs, levees, marsh toe stabilization, anti-scouring devices, and submerged sills.

"Bioengineering method" means a biological measure incorporated into a facility design to benefit water quality and minimize adverse effects to aquatic resources, to the maximum extent practicable, for long-term aquatic resource protection and improvement.

"Channelization" means the alteration of a stream channel by widening, deepening, straightening, cleaning or paving certain areas.

"Cross-sectional drawing" means a graph or plot of ground elevation across a waterbody or a portion of it, usually along a line perpendicular to the waterbody or direction of flow.

"Emergent wetland" means a class of wetlands characterized by erect, rooted, herbaceous plants growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content, excluding mosses and lichens. This vegetation is present for most of the growing season in most years and is usually dominated by perennial plants.

"FEMA" means Federal Emergency Management Agency.

"Forebay" means a deeper area at the upstream end of a stormwater management facility that would be maintained through excavation.

"Forested wetland" means a class of wetlands characterized by woody vegetation that is six meters (20 feet) tall or taller. These areas normally possess an overstory of trees, an understory of trees or shrubs, and an herbaceous layer.

"Greater than one acre" means more than 1.00 acre (43,560 square feet).

"Impacts" means results caused by human-induced activities conducted in surface waters, as specified in ~~§62.1-44.15:5-D~~ §62.1-44.15:20 A of the Code of Virginia.

"Independent utility" means a test to determine what constitutes a single and complete project. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases are not built can be considered as separate single and complete projects with independent utility.

"Isolated Wetland of Minimal Ecological Value (IWOMEV)" means a wetland that (i) does not have a surface water connection to other state waters; (ii) is less than one-tenth of an acre in size; (iii) is not located in a Federal Emergency Management Agency designated 100-year floodplain; (iv) is not identified by the Virginia Natural Heritage Program as a rare or state significant natural community; (v) is not forested; and (vi) does not contain listed federal or state threatened or endangered species.

"Less than one-half of an acre" means 0.00 to 0.49 acre (0 to 21,779 square feet).

"Linear transportation project" means a project for the construction, expansion, modification or improvement of features such as, but not limited to, roadways, railways, trails, bicycle and pedestrians paths, and airport runways and taxiways, including all attendant features both temporary and permanent. Nonlinear features commonly associated with transportation projects, such as, but not limited to, vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangars are not included in this definition.

"Open water" means an area that, during a year with normal patterns of precipitation, has standing water for sufficient duration to establish an ordinary high water mark. The term "open water" includes lakes and ponds but does not include ephemeral waters, stream beds, or wetlands.

"Ordinary high water" or "ordinary high water mark" means the line on the shore established by the fluctuations of water and indicated by physical characteristics such as clear, natural line impressed on the bank; shelving; changes in the character of soil; destruction of terrestrial vegetation; the presence of litter and debris; or other appropriate means that consider the characteristics of the surrounding areas.

"Perennial stream" means a well-defined channel that contains water year round during a year of normal rainfall. Generally, the water table is located above the streambed for most of the year and groundwater is the primary source for stream flow. A perennial stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.

"Permanent impacts" means those impacts to surface waters, including wetlands, that cause a permanent alteration of the physical, chemical, or biological properties of the surface waters, or of the functions and values of a wetland.

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

"Riprap" means a layer of nonerodible material such as stone or chunks of concrete.

"Scrub-shrub wetland" means a class of wetlands dominated by woody vegetation less than six meters (20 feet) tall. The species include tree shrubs, young trees, and trees or shrubs that are small or stunted because of environmental conditions.

"Single and complete project" means the total project proposed or accomplished by a person, which also has independent utility, as defined in this section. For linear projects, the "single and complete project" (e.g., a single and complete crossing) will apply to each crossing of a separate surface water (e.g., a single waterbody) and to multiple crossings of the same waterbody at separate and distinct locations. Phases of a project that have independent public and economic utility may each be considered single and complete.

"State program general permit (SPGP)" means a general permit issued by the Department of the Army in accordance with 33 USC 1344(e), 33 CFR 325.2(e)(2), and 33 CFR 325.3(b) and that is founded on a state program. The SPGP is designed to avoid duplication between the federal and state programs.

Regulations

"Stream bed" means the substrate of a stream, as measured between the ordinary high water marks along a length of stream. The substrate may consist of organic matter, bedrock or inorganic particles that range in size from clay to boulders, or a combination of both. Areas contiguous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.

"Surface waters" means all state waters that are not ground water as defined in §62.1-255 of the Code of Virginia.

"Temporary impacts" are those impacts to surface waters, including wetlands, that do not cause a permanent alteration of the physical, chemical, or biological properties of the surface water, or of the functions and values of a wetland. Temporary impacts include activities in which the ground is restored to its preconstruction conditions, contours, or elevations, such that previous functions and values are restored.

"Up to 300 linear feet" means >0.00 to 300.00 linear feet, as measured along the center of the main channel of the stream segment.

"Up to 1500 linear feet" means >0.00 to 1500.00 linear feet, as measured along the center of the main channel of the stream segment.

"Up to one-tenth of an acre" means 0.10 acre (4,356 square feet) or less.

"Up to two acres" means 2.00 acres (87,120 square feet) or less.

"Utility line" means a pipe or pipeline for the transportation of any gaseous, liquid, liquefiable or slurry substance, for any purpose, and a cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages and radio and television communication. The term utility line does not include activities which drain a surface water to convert it to an upland, such as drainage tiles or french drains; however, it does apply to pipes conveying drainage from another area.

9VAC25-680-60. Application.

A. Applications shall be filed with the board as follows:

1. The applicant shall file a complete application in accordance with 9VAC25-680-50, for a VWP General Permit Number WP3 for impacts to surface waters from linear transportation projects, which will serve as a notice of intent for coverage under this VWP general permit.
2. The VDOT may use its monthly IACM process for submitting applications.

B. The required application shall contain the following information, if applicable to the project:

1. The applicant's name, mailing address, and telephone number and, if applicable, fax number.

2. The authorized agent's (if applicable) name, mailing address, telephone number and, if applicable, fax number and electronic mail address.

3. The existing VWP permit number (if applicable).

4. The name of the project, narrative description of project purpose, and a description of the proposed activity in surface waters.

5. The name of the water body or water bodies or receiving stream, as applicable.

6. The hydrologic unit code (HUC) for the project area.

7. The name of the city or county where the project is located.

8. Latitude and longitude (to the nearest second) from a central location within the project limits.

9. A detailed location map (e.g., a United States Geologic Survey topographic quadrangle map) of the project area, including the project boundary. The map shall be of sufficient detail such that the site may be easily located for site inspection.

10. (Reserved.)

11. Project plan view. Plan view sketches shall include, at a minimum, north arrow, scale, existing structures, existing and proposed contours (if available), limit of surface water areas, direction of flow, ordinary high water mark, impact limits, location and dimension of all proposed structures in impact areas. In addition, cross-sectional or profile sketches with the above information may be required to detail impact areas.

12. Dredge material management plan (for dredging projects only) including plan and cross-section view drawings of the disposal or dewatering area, the dimensions and design of the proposed berm and spillway, and the capacity of the proposed disposal or dewatering site.

13. Surface water impact information (wetlands, streams, or open water) for both permanent and temporary impacts, including a description of the impact, the areal extent of the impact (area of wetland in square feet and acres; area of stream, length of stream, and average width); the location (latitude and longitude at the center of the impact, or at the center of each impact for linear projects)) and the type of surface water impact (open water; wetlands according to the Cowardin classification or similar terminology; or perennial and nonperennial for streams). The board encourages applicants to coordinate the determination of perennial or nonperennial streams with the appropriate local government agency in Tidewater Virginia.

14. Functional values assessment for impacts to wetlands greater than one acre, which shall consist of a summary of field observations of the existing wetland functions and values and an assessment of the impact that the project will have on these functions and values. The following parameters and functions shall be directly addressed: surrounding land uses and cover types; nutrient, sediment, and pollutant trapping; flood control and flood storage capacity; erosion control and shoreline stabilization; groundwater recharge and discharge; aquatic and wildlife habitat; and unique or critical habitats.

15. A description of the specific on-site measures considered and taken during project design and development both to avoid and minimize impacts to surface waters to the maximum extent practicable.

16. A conceptual plan for the intended compensation for unavoidable impacts, including:

a. For wetlands, the conceptual compensation plan shall include: the goals and objectives in terms of replacement of wetland acreage and function; a detailed location map (e.g., a United States Geologic Survey topographic quadrangle map), including latitude and longitude (to the nearest second) at the center of the site; a description of the surrounding land use; a hydrologic analysis, including a draft water budget based on expected monthly inputs and outputs which will project water level elevations for a typical year, a dry year, and a wet year; groundwater elevation data, if available, or the proposed location of groundwater monitoring wells to collect these data; a map for existing surface water areas on the proposed site or sites, including a wetland delineation confirmation for any existing wetlands; a conceptual grading plan; a conceptual planting scheme, including suggested plant species and zonation of each vegetation type proposed; and a description of existing soils, including general information on topsoil and subsoil conditions, permeability, and the need for soil amendments.

b. For streams, the conceptual compensation plan shall include: the goals and objectives in terms of water quality benefits and replacement of stream functions; a detailed location map (e.g., a United States Geologic Survey topographic quadrangle map), including the latitude and longitude to the nearest second; the proposed stream segment restoration locations, including plan view and cross-section sketches; the stream deficiencies that need to be addressed; the proposed restoration measures to be employed, including channel measurements, proposed design flows and types of instream structures; and reference stream data, if available.

c. Applicants proposing to compensate off-site, including purchase or use of mitigation bank credits, or

contribution to an in-lieu fee fund, shall submit an evaluation of the feasibility of on-site compensation. If on-site compensation is practicable, applicants shall provide documentation as to why the proposed off-site compensation is ecologically preferable. The evaluation shall include, but not be limited to, the following assessment criteria: water quality benefits, hydrologic source, hydrologic regime, watershed, surface water functions and values, vegetation type, soils, impact acreage, distance from impacts, timing of compensation versus impacts, acquisition, constructability, and cost.

d. Applicants proposing compensation involving contributions to an in-lieu fee fund shall state such as the conceptual compensation plan. Written documentation of the willingness of the entity to accept the donation and documentation of how the amount of the contribution was calculated shall be submitted prior to issuance of this general permit authorization.

e. Applicants proposing compensation involving the purchase or use of mitigation banking credits shall include as their conceptual compensation plan:

(1) The name of the proposed mitigation bank and the HUC in which it is located;

(2) The number of credits proposed to be purchased or used; and

(3) Certification from the bank owner of the availability of credits.

17. A delineation map must be provided of the geographic area of a delineated wetland for all wetlands on the site, in accordance with 9VAC25-210-45, including the wetlands data sheets. The delineation map shall also include the location of streams, open water, and the approximate limits of Chesapeake Bay Resource Protection Areas (RPAs), as other state or local requirements may apply if the project is located within an RPA. Wetland types shall be noted according to their Cowardin classification or similar terminology. A copy of the USACE delineation confirmation, or other correspondence from the USACE indicating their approval of the wetland boundary, shall be provided at the time of application, or if not available at that time, as soon as it becomes available during the VWP permit review.

18. A copy of the FEMA flood insurance rate map or FEMA-approved local floodplain map for the project site.

19. The appropriate application processing fee for a VWP permit in accordance with 9VAC25-20-10 et seq.: The permit application fee for VWP permit authorizations is based on acres only. Therefore, impacts that include linear feet of stream bed must be converted to an acreage in order to calculate the permit application fee.

Regulations

20. A written disclosure identifying all wetlands, open water, streams, and associated upland buffers within the proposed project or compensation areas that are under a deed restriction, conservation easement, restrictive covenant, or other land use protective instrument (protected areas). Such disclosure shall include the nature of the prohibited activities within the protected areas.

21. The following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations."

C. The application shall be signed in accordance with 9VAC25-210-100. If an agent is acting on behalf of an applicant, the applicant shall submit an authorization of the agent that includes the signatures of both the applicant and the agent.

D. Upon receipt of an application from the Department of Transportation for a road or highway construction project by the appropriate DEQ office, the board has 10 business days to review the application and either determine the information requested in subsection B of this section is complete or inform the Department of Transportation that additional information is required to make the application complete (pursuant to §33.1-19.1 of the Code of Virginia). Upon receipt of an application from other applicants for any type of project, the board has 15 days to review the application and either determine the information requested in subsection B of this section is complete or inform the applicant that additional information is required to make the application complete. Coverage For Department of Transportation road or highway construction projects, coverage under this VWP general permit shall be approved, approved with conditions, or denied within 30 business days of receipt of a complete application (pursuant to §33.1-19.1 of the Code of Virginia). For all other projects, coverage under this VWP general permit shall be approved, approved with conditions, or denied within 45 days of receipt of a complete application. If the board fails to act within the applicable 30 or 45 days on a complete application, coverage under this VWP general permit shall be deemed approved.

1. In evaluating the application, the board shall make an assessment of the impacts associated with the project in combination with other existing or proposed impacts. Coverage under this VWP general permit shall be denied if

the cumulative impacts will cause or contribute to a significant impairment of state waters or fish and wildlife resources.

2. The board may place additional conditions on a project in order to approve authorization under this VWP general permit. However, these conditions must be consistent with the VWP permit regulation.

E. Incomplete application. Where an application is incomplete, the board shall require the submission of additional information and may suspend processing the application until such time as the applicant has supplied the requested information and the application is complete. Where the applicant becomes aware that he omitted one or more relevant facts from an application, or submitted incorrect information in an application or in reports to the board, he shall immediately submit such facts or the correct information. A revised application with new information shall be deemed a new application, but shall not require an additional permit application fee. An incomplete permit application may be administratively withdrawn from processing by the board after 180 days from the date that the original permit application was received by the board. Resubmittal of a permit application for the same or similar project, after such time that the original permit application was administratively withdrawn, shall require submittal of an additional permit application fee.

9VAC25-680-70. Compensation.

A. In accordance with 9VAC25-680-50 A, compensatory mitigation may be required for all permanent, nontidal surface water impacts. All temporary, nontidal surface water impacts shall be restored to preexisting conditions.

B. Generally, the sequence of preferred compensation options shall be restoration, then creation, then mitigation banking, and then in-lieu fee fund. Also, on-site, in-kind compensatory mitigation, when available, shall be deemed the most ecologically preferable form of compensation for project impacts, in most cases. However, off-site or out-of-kind compensation opportunities that prove to be more ecologically preferable to practicable on-site or in-kind compensation may be considered. When the applicant can demonstrate satisfactorily that an off-site or out-of-kind compensatory mitigation proposal is ecologically preferable, then such proposal may be deemed appropriate for compensation of project impacts.

C. For the purposes of this VWP general permit, compensatory mitigation for unavoidable wetland impacts may be met through the following:

1. Wetland creation.
2. Wetland restoration.

3. The purchase or use of credits from a mitigation bank, pursuant to ~~§62.1-44.15:5 E~~ §62.1-44.15:23 of the Code of Virginia.

4. A contribution to an approved in-lieu fee fund.

5. Preservation of upland buffers adjacent to state waters, when utilized in conjunction with subdivision 1, 2, or 3 of this subsection and when consistent with ~~9VAC25-210-115 C~~ 9VAC25-210-116 A.

6. Restoration of upland buffers adjacent to state waters, when utilized in conjunction with subdivision 1, 2, or 3 of this subsection and when consistent with ~~9VAC25-210-115 C~~ 9VAC25-210-116 A.

7. Preservation of wetlands, when utilized in conjunction with subdivision 1, 2, or 3 of this subsection.

D. For the purposes of this VWP general permit, compensatory mitigation for unavoidable stream impacts may be met through the following:

1. Stream channel restoration or enhancement.

2. Riparian buffer restoration or enhancement.

3. Riparian buffer preservation, when consistent with ~~9VAC25-210-115 C~~ 9VAC25-210-116 A.

4. A contribution to an approved in-lieu fee fund.

5. The purchase or use of credits from a mitigation bank, pursuant to ~~§62.1-44.15:5 E~~ §62.1-44.15:23 of the Code of Virginia.

E. In order for contribution to an in-lieu fee fund to be an acceptable form of compensation, the fund must be approved for use by the board according to the provisions of ~~9VAC25-210-115 E~~ 9VAC25-210-116 D. The applicant shall provide proof of contribution to DEQ prior to commencing activities in impact areas.

F. In order for purchase or use of bank credits to be an acceptable form of compensation, the bank shall be operating in accordance with the provisions of ~~§62.1-44.15:5 E~~ §62.1-44.15:23 of the Code of Virginia and ~~9VAC25-210-115 F~~ 9VAC25-210-116 E. The applicant shall provide proof of purchase, use, or debit to DEQ prior to commencing activities in impact areas.

G. Compensation for unavoidable, permanent wetland impacts shall be provided at the following minimum compensation to impact ratios:

1. Impacts to forested wetlands shall be mitigated at 2:1, as calculated on an area basis.

2. Impacts to scrub shrub wetlands shall be mitigated at 1.5:1, as calculated on an area basis.

3. Impacts to emergent wetlands shall be mitigated at 1:1, as calculated on an area basis.

H. Compensation for stream bed impacts shall be appropriate to replace lost functions and water quality benefits. One factor in determining the required stream compensation shall be an analysis of stream impacts utilizing a stream impact assessment methodology acceptable to DEQ.

I. Compensation for permanent open water impacts other than to streams may be required at a 1:1 replacement to impact ratio, as calculated on an area basis, to offset impacts to state waters and fish and wildlife resources from significant impairment.

J. Compensation for conversion impacts to wetlands shall be required at a 1:1 replacement to impact ratio, as calculated on an area basis, when such conversion results in a permanent alteration of the functions and values of the wetlands. For example, the permanent conversion of a forested wetland to an emergent wetland is considered to be a permanent impact for the purposes of this regulation. Compensation for conversion of other types of surface waters may be required, as appropriate, to offset impacts to state waters and fish and wildlife resources from significant impairment.

9VAC25-680-80. Notice of planned changes.

A. The permittee shall notify the board in advance of the planned change, and the planned change request will be reviewed according to all provisions of this regulation.

B. Authorization under this VWP general permit may be modified subsequent to issuance if the permittee determines that additional permanent wetland, open water, or stream impacts are necessary, provided that the additional impacts are associated with the previously authorized activities in authorized locations within the same phase of development or within logical termini, the cumulative increase in acreage of wetland or open water impacts is not greater than 1/4 acre, the cumulative increase in stream bed impacts is not greater than 100 linear feet, and the additional impacts are fully mitigated. Prior to a planned change approval, DEQ may require submission of a compensatory mitigation plan for the additional impacts. In cases where the original impacts totaled less than 1/10 acre of wetlands or open water, or less than 300 linear feet of stream bed, and the additional impacts result in these limits being exceeded, the notice of planned change will not be approved. However, the applicant may submit a new permit application and permit application fee for the total impacts to be considered under this VWP general permit, another VWP general permit, or a VWP individual permit.

C. Authorization under this VWP general permit may be modified after issuance if the project results in less wetland or stream impacts. Compensation requirements may be modified in relation to the adjusted impacts at the request of the permittee, provided that the adjusted compensation meets the initial authorization compensation goals. DEQ shall not be responsible for ensuring refunds for mitigation bank credit

Regulations

purchases, mitigation bank usage, or in-lieu fee fund contributions.

D. Authorization under this VWP general permit may be modified after issuance for a change in project plans that does not result in a change in project impacts.

E. Authorization under the VWP general permit may be modified for a change to the mitigation bank at which credits are purchased or used, provided that the same amount of credits are purchased or used and all criteria for use in ~~9VAC25-210-115 F~~ 9VAC25-210-116 E are met.

F. Authorization under the VWP general permit may be modified after issuance for typographical errors.

G. A Notice of Planned Change is not required after authorization issuance for additional temporary impacts to surface waters, provided that DEQ is notified in writing regarding additional temporary impacts, and the area is restored to preexisting conditions in accordance with Part I C 11 of this general permit. In no case can the additional temporary impacts exceed the general permit threshold for use.

H. In no case can this authorization be modified to exceed the general permit threshold for use.

I. A notice of planned change shall be denied if fish and wildlife resources are significantly impacted or if the criteria in subsection B of this section are not met. However, the original VWP general permit authorization shall remain in effect. The applicant may submit a new permit application and permit application fee for consideration under a VWP individual permit.

9VAC25-680-100. VWP general permit.

Any applicant whose application has been accepted by the board shall be subject to the following requirements:

VWP General Permit No. WP3

Authorization Expiration date:

Authorization Notes(s):

VWP GENERAL PERMIT FOR LINEAR TRANSPORTATION PROJECTS UNDER THE VIRGINIA WATER PROTECTION PERMIT AND THE VIRGINIA STATE WATER CONTROL LAW

Based upon an examination of the information submitted by the applicant and in compliance with §401 of the Clean Water Act as amended (33 USC §1341) and the State Water Control Law and regulations adopted pursuant thereto, the board has determined that there is a reasonable assurance that the activity authorized by this VWP general permit, if conducted in accordance with the conditions set forth herein, will protect instream beneficial uses and will not violate applicable water quality standards. The board finds that the effect of the impact, together with other existing or proposed impacts to

wetlands, will not cause or contribute to a significant impairment of state waters or fish and wildlife resources.

Subject to the provisions of the Clean Water Act, as amended, and pursuant to the State Water Control Law and regulations adopted pursuant to it, the permittee is authorized to permanently or temporarily impact up to two acres of nontidal wetlands or open water and up to 1,500 linear feet of nontidal stream bed.

Permittee:

Address:

Activity Location:

Activity Description:

The authorized activity shall be in accordance with this cover page, Part I-Special Conditions, Part II-Compensation, Monitoring, and Reporting, and Part III-Conditions Applicable to All VWP Permits, as set forth herein.

Director, Department of Environmental
Quality

Date

Part I. Special Conditions.

A. Authorized activities.

1. This permit authorizes permanent or temporary impacts of up to two acres of nontidal wetlands or open water and up to 1,500 linear feet of nontidal stream bed according to the information provided in the approved and complete application.

2. Any changes to the authorized permanent impacts to surface waters associated with this project shall require either a notice of planned change in accordance with 9VAC25-680-80 or another VWP permit application.

3. Any changes to the authorized temporary impacts to surface waters associated with this project shall require written notification to DEQ and restoration to preexisting conditions in accordance with the conditions of this permit authorization.

4. Modification to compensation requirements may be approved at the request of the permittee when a decrease in the amount of authorized surface waters impacts occurs, provided that the adjusted compensation meets the initial authorization compensation goals.

5. The activities authorized for coverage under this VWP general permit must commence and be completed within seven years of the date of this authorization.

B. Continuation of Coverage. Reapplication for continuation of coverage under this VWP general permit or a new VWP permit may be necessary if any portion of the authorized activities or any VWP permit requirement (including

compensation) has not been completed within seven years of the date of authorization. Notwithstanding any other provision, a request for continuation of coverage under a VWP general permit in order to complete monitoring requirements shall not be considered a new application and no application fee will be charged. The request for continuation of coverage must be made no less than 60 days prior to the expiration date of this VWP general permit authorization, at which time the board will determine if continuation of the VWP general permit authorization is necessary.

C. Overall project conditions.

1. The activities authorized by this VWP general permit shall be executed in a manner so as to minimize adverse impacts on instream beneficial uses as defined in §62.1-10 (b) of the Code of Virginia.
2. No activity may substantially disrupt the movement of aquatic life indigenous to the water body, including those species which normally migrate through the area, unless the primary purpose of the activity is to impound water. Culverts placed in streams must be installed to maintain low flow conditions. The requirement to countersink does not apply to extensions or maintenance of existing culverts that are not countersunk, floodplain culverts being placed above ordinary high water, culverts being placed on bedrock, or culverts required to be placed on slopes 5.0% or greater. No activity may cause more than minimal adverse effect on navigation. Furthermore the activity must not impede the passage of normal or expected high flows and the structure or discharge must withstand expected high flows.
3. Wet or uncured concrete shall be prohibited from entry into flowing surface waters, unless otherwise approved by DEQ. Excess or waste concrete shall not be disposed of in flowing surface waters or washed into flowing surface waters.
4. All fill material shall be clean and free of contaminants in toxic concentrations or amounts in accordance with all applicable laws and regulations.
5. Erosion and sedimentation controls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992. These controls shall be placed prior to clearing and grading and maintained in good working order to minimize impacts to state waters. These controls shall remain in place until the area is stabilized and shall then be removed.
6. Exposed slopes and streambanks shall be stabilized immediately upon completion of work in each permitted impact area. All denuded areas shall be properly stabilized in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

7. All construction, construction access (e.g., cofferdams, sheetpiling, and causeways) and demolition activities associated with this project shall be accomplished in a manner that minimizes construction or waste materials from entering surface waters to the maximum extent practicable, unless authorized by this VWP general permit.

8. No machinery may enter flowing waters, unless authorized by this VWP general permit.

9. Heavy equipment in temporarily impacted wetland areas shall be placed on mats, geotextile fabric, or other suitable material, to minimize soil disturbance to the maximum extent practicable. Equipment and materials shall be removed immediately upon completion of work.

10. All nonimpacted surface waters and compensatory mitigation areas within 50 feet of permitted activities and within the project or right-of-way limits shall be clearly flagged or marked for the life of the construction activity at that location to preclude unauthorized disturbances to these surface waters and compensatory mitigation areas during construction. The permittee shall notify contractors that no activities are to occur in these marked surface waters.

11. Temporary disturbances to surface waters during construction shall be avoided and minimized to the maximum extent practicable. All temporarily disturbed wetland areas shall be restored to preexisting conditions within 30 days of completing work at each respective temporary impact area, which shall include reestablishing preconstruction contours, and planting or seeding with appropriate wetland vegetation according to cover type (emergent, scrub/shrub, or forested). The permittee shall take all appropriate measures to promote and maintain revegetation of temporarily disturbed wetland areas with wetland vegetation through the second year post-disturbance. All temporarily impacted streams and streambanks shall be restored to their original contours within 30 days following the construction at that stream segment, and the banks seeded or planted with the same vegetation cover type originally present along the streambanks, including supplemental erosion control grasses if necessary, except for invasive species identified on DCR's Invasive Alien Plant Species of Virginia list.

12. Materials (including fill, construction debris, and excavated and woody materials) temporarily stockpiled in wetlands shall be placed on mats or geotextile fabric, immediately stabilized to prevent entry into state waters, managed such that leachate does not enter state waters, and completely removed within 30 days following completion of that construction activity. Disturbed areas shall be returned to original contours, restored within 30 days following removal of the stockpile, and restored with the same vegetation cover type originally present, including supplemental erosion control grasses if necessary, except

Regulations

for invasive species identified on DCR's Invasive Alien Plant Species of Virginia list.

13. Continuous flow of perennial springs shall be maintained by the installation of spring boxes, french drains, or other similar structures.

14. The permittee shall employ measures to prevent spills of fuels or lubricants into state waters.

15. The permittee shall conduct his activities in accordance with the time-of-year restrictions recommended by the Virginia Department of Game and Inland Fisheries, the Virginia Marine Resources Commission, or other interested and affected agencies and shall ensure that all contractors are aware of the time-of-year restrictions imposed.

16. Water quality standards shall not be violated as a result of the construction activities, unless allowed by this permit authorization.

17. If stream channelization or relocation is required, all work in surface waters shall be done in the dry, unless authorized by this VWP general permit, and all flows shall be diverted around the channelization or relocation area until the new channel is stabilized. This work shall be accomplished by leaving a plug at the inlet and outlet ends of the new channel during excavation. Once the new channel has been stabilized, flow shall be routed into the new channel by first removing the downstream plug and then the upstream plug. The rerouted stream flow must be fully established before construction activities in the old stream channel can begin.

D. Road crossings.

1. Access roads and associated bridges or culverts shall be constructed to minimize the adverse effects on surface waters to the maximum extent practicable. Access roads constructed above preconstruction contours and elevations in surface waters must be bridged or culverted to maintain surface flows.

2. Installation of road crossings shall occur in the dry via the implementation of cofferdams, sheetpiling, stream diversions, or similar structures.

E. Utility lines.

1. All utility line work in surface waters shall be performed in a manner that minimizes disturbance, and the area must be returned to its original contours and restored within 30 days of completing work in the area, unless otherwise authorized by this VWP general permit. Restoration shall be the seeding or planting of the same vegetation cover type originally present, including supplemental erosion control grasses if necessary, except for invasive species identified on DCR's Invasive Alien Plant Species of Virginia list.

2. Material resulting from trench excavation may be temporarily sidecast into wetlands not to exceed a total of 90 days, provided the material is not placed in a manner such that it is dispersed by currents or other forces.

3. The trench for a utility line cannot be constructed in a manner that drains wetlands (e.g., backfilling with extensive gravel layers creating a french drain effect). For example, utility lines may be backfilled with clay blocks to ensure that the trench does not drain surface waters through which the utility line is installed.

F. Stream modification and stream bank protection.

1. Riprap bank stabilization shall be of an appropriate size and design in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

2. Riprap aprons for all outfalls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

3. For bank protection activities, the structure and backfill shall be placed as close to the stream bank as practicable. No material shall be placed in excess of the minimum necessary for erosion protection.

4. All stream bank protection structures shall be located to eliminate or minimize impacts to vegetated wetlands to the maximum extent practicable.

5. Asphalt and materials containing asphalt or other toxic substances shall not be used in the construction of submerged sills or breakwaters.

6. Redistribution of existing stream substrate for the purpose of erosion control is prohibited.

7. No material removed from the stream bottom shall be disposed of in surface waters unless authorized by this permit.

G. Dredging.

1. Dredging depths shall be determined and authorized according to the proposed use and controlling depths outside the area to be dredged.

2. Dredging shall be accomplished in a manner that minimizes disturbance of the bottom and minimizes turbidity levels in the water column.

3. If evidence of impaired water quality, such as a fish kill, is observed during the dredging, dredging operations shall cease and the Department of Environmental Quality (DEQ) shall be notified immediately.

4. Barges used for the transportation of dredge material shall be filled in such a manner to prevent the overflow of dredged materials.

5. Double handling of dredged material in state waters shall not be permitted.

6. For navigation channels the following shall apply:

- a. A buffer of four times the depth of the dredge cut shall be maintained between the bottom edge of the design channel and the channelward limit of wetlands, or a buffer of 15 feet shall be maintained from the dredged cut and the channelward edge of wetlands, whichever is greater. This landward limit of buffer shall be flagged and inspected prior to construction.
- b. Side slope cuts of the dredging area shall not exceed a two-horizontal-to-one-vertical slope to prevent slumping of material into the dredged area.

7. A dredged material management plan for the designated upland disposal site shall be submitted and approved 30 days prior to initial dredging activity.

8. Pipeline outfalls and spillways shall be located at opposite ends of the dewatering area to allow for maximum retention and settling time. Filter fabric shall be used to line the dewatering area and to cover the outfall pipe to further reduce sedimentation to state waters.

9. The dredge material dewatering area shall be of adequate size to contain the dredge material and to allow for adequate dewatering and settling out of sediment prior to discharge back into state waters.

10. The dredge material dewatering area shall utilize an earthen berm or straw bales covered with filter fabric along the edge of the area to contain the dredged material, and shall be properly stabilized prior to placing the dredged material within the containment area.

11. Overtopping of the dredge material containment berms with dredge materials shall be strictly prohibited.

H. Stormwater management facilities.

1. Stormwater management facilities shall be installed in accordance with best management practices and watershed protection techniques (e.g., vegetated buffers, siting considerations to minimize adverse effects to aquatic resources, bioengineering methods incorporated into the facility design to benefit water quality and minimize adverse effects to aquatic resources) that provide for long-term aquatic resources protection and enhancement, to the maximum extent practicable.

2. Compensation for unavoidable impacts shall not be allowed within maintenance areas of stormwater management facilities.

3. Maintenance activities within stormwater management facilities shall not require additional permit authorization or compensation, provided that the maintenance activities do not exceed the original contours of the facility, as approved and constructed, and is accomplished in

designated maintenance areas as indicated in the facility maintenance or design plan.

Part II. Construction and Compensation Requirements, Monitoring and Reporting.

A. Minimum compensation requirements:

1. The permittee shall provide appropriate and practicable compensation for all impacts meeting the conditions outlined in this VWP general permit.

2. Compensation options that may be considered under this VWP general permit shall meet the criteria in 9VAC25-680-70.

3. The site or sites depicted in the conceptual compensation plan submitted with the application shall constitute the compensation site for the approved project. A site change will require a modification to the authorization.

4. For compensation involving the purchase or use of mitigation bank credits or a contribution to an in-lieu fee fund, the permittee shall not initiate work in permitted impact areas until documentation of the mitigation bank credit purchase or usage or of the fund contribution has been submitted to and received by DEQ.

5. All aspects of the compensation plan shall be finalized, submitted and approved by the board prior to a construction activity in permitted impact areas. The board shall review and provide written comments on the plan within 30 days of receipt or it shall be deemed approved. The final compensation plan as approved by the board shall be an enforceable requirement of this VWP general permit authorization. Deviations from the approved plan must be submitted and approved in advance by the board.

6. The final wetlands compensation plan shall include:

a. The goals and objectives of the plan in terms of replacement of wetland acreage and functions, by wetland type;

b. Location map, including latitude and longitude (to the nearest second) at the center of the site;

c. Summary of the type and acreage of existing wetland impacts anticipated during the construction of the compensation site and proposed compensation for these impacts;

d. Grading plan with existing and proposed elevations at one-foot or less contours;

e. Schedule for compensation site construction, including sequence of events with estimated dates;

f. Hydrologic analysis, including a water budget based on expected monthly inputs and outputs that will project water level elevations for a typical year, a dry year, and a wet year;

Regulations

- g. Groundwater elevation data for the site, or the location of groundwater monitoring wells to collect these data, and groundwater data for reference wetlands, if applicable;
 - h. Design of water control structures;
 - i. Planting scheme and schedule, indicating plant species zonation, and acreage of each vegetation type proposed;
 - j. An abatement and control plan covering all undesirable plant species, as listed on DCR's Invasive Alien Plant Species of Virginia list, that includes the proposed procedures for notifying DEQ of their presence, methods of removal, and the control of such species;
 - k. Erosion and sedimentation control plan;
 - l. A soil preparation and amendment plan addressing both topsoil and subsoil conditions;
 - m. A discussion of structures and features considered necessary for the success of the plan;
 - n. A monitoring plan, including success criteria, monitoring goals and methodologies, monitoring and reporting schedule, and the locations of photographic stations and monitoring wells, sampling points and, if applicable, reference wetlands;
 - o. Site access plan;
 - p. The location and composition of any buffers; and
 - q. The mechanism for protection of the compensation areas.
7. The final stream compensation plan shall include:
- a. The goals and objectives of the compensation plan in terms of replacement of stream functions and water quality benefits;
 - b. A location map, including latitude and longitude (to the nearest second) at the center of the site;
 - c. An evaluation, discussion, and plan sketches of existing conditions on the proposed compensation stream, including the identification of functional and physical deficiencies for which the measures are proposed, and summary of geomorphologic measurements (e.g., stream width, entrenchment ratio, width-depth ratio, sinuosity, slope, substrate, etc.);
 - d. The identification of existing geomorphological stream type being impacted and proposed geomorphological stream type for compensation purposes;
 - e. Detailed design information for the proposed restorative measures, including geomorphological measurements and reference reach information as appropriate;
 - f. Riparian buffer plantings, including planting scheme, species, buffer width;
 - g. Livestock access limiting measures, to the greatest extent possible;
 - h. A site access plan;
 - i. An erosion and sedimentation control plan, if appropriate;
 - j. Abatement and control plan covering all undesirable plant species, as listed on DCR's Invasive Alien Plant Species of Virginia list that includes the proposed procedures for notifying DEQ of their presence, methods for removal, and the control of such species;
 - k. A schedule for compensation site construction including projected start date, sequence of events with projected dates, and projected completion date;
 - l. A monitoring plan, including a monitoring and reporting schedule; monitoring design and methodologies to evaluate the success of the proposed compensation measures, allowing comparison from year to year; proposed success criteria for appropriate compensation measures; location of all monitoring stations including photo stations, vegetation sampling points, survey points, bank pins, scour chains, and reference streams;
 - m. The mechanism for protection of the compensation area; and
 - n. Plan view sketch depicting the pattern and all compensation measures being employed, a profile sketch, and cross-section sketches of the proposed compensation stream.
8. For final wetland or stream compensation plans, the vegetation used shall be native species common to the area, shall be suitable for growth in local wetland or riparian conditions, and shall be from areas within the same or adjacent USDA Plant Hardiness Zone or NRCS Land Resource Region as that of the project site.
9. The final wetland or stream compensation plan or plans shall include a mechanism for protection in perpetuity of the compensation sites to include all state waters within the compensation site boundary or boundaries. Such protections shall be in place within 120 days of final compensation plan approval. The restrictions, protections, or preservations, or similar instrument, shall state that no activity will be performed on the property in any area designated as a compensation area with the exception of maintenance or corrective action measures authorized by the board. Unless specifically authorized by the board through the issuance of a VWP individual or general permit, or waiver thereof, this restriction applies to ditching, land clearing or the discharge of dredge or fill material. Such instrument shall contain the specific phrase

"ditching, land clearing or discharge of dredge or fill material" in the limitations placed on the use of these areas. The protective instrument shall be recorded in the chain of title to the property, or an equivalent instrument for government-owned lands. Proof of recordation shall be submitted within 120 days of final compensation plan approval.

10. All work in permitted impact areas shall cease if compensation site construction has not commenced within 180 days of commencement of project construction, unless otherwise authorized by the board.

11. DEQ shall be notified in writing at least 10 days prior to the initiation of construction activities at the compensation sites.

12. Planting of woody plants shall occur when vegetation is normally dormant unless otherwise approved in the final wetlands or stream compensation plan(s).

13. Point sources of stormwater runoff shall be prohibited from entering a wetland compensation site prior to treatment by appropriate best management practices. Appropriate best management practices may include sediment traps, grassed waterways, vegetated filter strips, debris screens, oil and grease separators, or forebays.

14. The success of the compensation shall be based on meeting the success criteria established in the approved final compensation plan.

15. Wetland hydrology shall be considered established if depths to the seasonal high water table are equal to or less than 12 inches below ground surface for at least 12.5% of the region's killing frost-free growing season, as defined in the soil survey for the locality of the compensation site or the NRCS WETS table, measured in consecutive days under typical precipitation conditions, and as defined in the water budget of the final compensation plan. For the purpose of this regulation, the growing season is defined as the period in which temperatures are expected to be above 28 degrees Fahrenheit in five out of 10 years, or the period during which the soil temperature in a wetland compensation site is greater than biological zero (five degrees Celsius) at a depth of 50 centimeters (19.6 inches), if such data is available.

16. The wetland plant community shall be considered established according to the performance criteria specified in the final compensation plan and approved by the board. The proposed vegetation success criteria in the final compensation plan shall include the following:

a. Species composition shall reflect the desired plant community types stated in the final wetland compensation plan by the end of the first growing season and shall be maintained through the last monitoring year.

b. Species composition shall consist of greater than 50% facultative (FAC) or wetter (FACW or OBL) vegetation, as expressed by plant stem density or areal cover, by the end of the first growing season and shall be maintained through the last monitoring year.

17. Undesirable plant species shall be identified and controlled as described in the undesirable plant species control plan, such that they are not dominant species or do not change the desired community structure. The control plan shall include procedures to notify DEQ when undesirable plant species comprise greater than 5.0% of the vegetation by areal coverage on wetland or stream compensation sites. The notification shall include the methods of removal and control, and whether the methods are successful.

18. If the wetland or stream compensation area fails to meet the specified success criteria in a particular monitoring year, other than the final monitoring year, the reasons for this failure shall be determined and a corrective action plan shall be submitted to DEQ for approval with or before that year's monitoring report. The corrective action plan shall contain at minimum the proposed actions, a schedule for those actions, and a monitoring plan, and shall be implemented by the permittee in accordance with the approved schedule. Should significant changes be necessary to ensure success, the required monitoring cycle shall begin again, with monitoring year one being the year that the changes are complete as confirmed by DEQ. If the wetland or stream compensation area fails to meet the specified success criteria by the final monitoring year, or if the wetland or stream compensation area has not met the stated restoration goals, reasons for this failure shall be determined and a corrective action plan, including proposed actions, a schedule, and a monitoring plan, shall be submitted with the final year monitoring report for DEQ approval. Corrective action shall be implemented by the permittee in accordance with the approved schedule. Annual monitoring shall be required to continue until two sequential, annual reports indicate that all criteria have been successfully satisfied and the site has met the overall restoration goals (e.g., that corrective actions were successful).

19. The surveyed wetland boundary for the compensation site shall be based on the results of the hydrology, soils, and vegetation monitoring data and shall be shown on the site plan. Calculation of total wetland acreage shall be based on that boundary at the end of the monitoring cycle. Data shall be submitted by December 31 of the final monitoring year.

20. Herbicides or algicides shall not be used in or immediately adjacent to the compensation site or sites without prior authorization by the board. All vegetation

Regulations

removal shall be done by manual means only, unless authorized by DEQ in advance.

B. Impact site construction monitoring.

1. Construction activities authorized by this permit that are within impact areas shall be monitored and documented. The monitoring shall document the preexisting conditions, activities during construction, and post-construction conditions. Monitoring shall consist of one of the following options:

a. Photographs shall be taken during construction at the end of the first, second and third months of commencing construction, and then every six months thereafter for the remainder of the construction project. Photos are not required during periods of no activity within impact areas.

b. An ortho-rectified photograph shall be taken by a firm specializing in ortho-rectified photography prior to construction, and annually thereafter, until all impacts are taken. Photos shall clearly show the delineated surface waters and authorized impact areas.

c. In lieu of photographs, and with prior approval from DEQ, the permittee may submit a written narrative that summarizes site construction activities in impact areas. The narrative shall be submitted at the end of the first, second, and third months after commencing construction, and then every six months thereafter, for the remainder of the construction activities. Narratives are not required during periods of no activity with the impact areas.

2. As part of construction monitoring, photographs taken at the photo stations or the narrative shall document site activities and conditions, which may include installation and maintenance of erosion and sediment controls; surface water discharges from the site; condition of adjacent nonimpact surface waters; flagged nonimpact surface waters; construction access and staging areas; filling, excavation, and dredging activities; culvert installation; dredge disposal; and site stabilization, grading, and associated restoration activities. With the exception of the preconstruction photographs, photographs at an individual impact site shall not be required until construction activities are initiated at that site. With the exception of the post-construction photographs, photographs at an individual impact site shall not be required once the site is stabilized following completion of construction at that site.

3. Each photograph shall be labeled to include the following information: permit number, impact area and photo station number, date and time of the photograph, name of the person taking the photograph, photograph orientation, and photograph subject description.

4. Monitoring of water quality parameters shall be conducted during permanent relocation of perennial

streams through new channels in the manner noted below. The permittee shall report violations of water quality standards to DEQ in accordance with the procedures in Part II E. Corrective measures and additional monitoring may be required if water quality standards are not met. Reporting shall not be required if water quality standards are not violated.

a. A sampling station shall be located upstream and immediately downstream of the relocated channel.

b. Temperature, pH and dissolved oxygen (D.O.) measurements shall be taken every 30 minutes for at least two hours at each station prior to opening the new channels and immediately before opening new channels.

c. Temperature, pH and D.O. readings shall be taken after opening the channels and every 30 minutes for at least three hours at each station.

C. Wetland compensation site monitoring.

1. An as-built ground survey, or an aerial survey provided by a firm specializing in aerial surveys, shall be conducted for the entire compensation site or sites, including invert elevations for all water elevation control structures and spot elevations throughout the site or sites. Aerial surveys shall include the variation from actual ground conditions, such as +/- 0.2 feet. Either type of survey shall be certified by a licensed surveyor or by a registered professional engineer to conform to the design plans. The survey shall be submitted within 60 days of completing compensation site construction. Changes or deviations in the as-built survey or aerial survey shall be shown on the survey and explained in writing.

2. Photographs shall be taken at the compensation site or sites from the permanent markers identified in the final compensation plan, and established to ensure that the same locations and view directions at the site or sites are monitored in each monitoring period. These photographs shall be taken after the initial planting and at a time specified in the final compensation plan during every monitoring year.

3. Compensation site monitoring shall begin on the first day of the first complete growing season (monitoring year 1) after wetland compensation site construction activities, including planting, have been completed. Monitoring shall be required for monitoring years 1, 2, 3, and 5, unless otherwise approved by DEQ. In all cases, if all success criteria have not been met in the final monitoring year, then monitoring shall be required for each consecutive year until two annual sequential reports indicate that all criteria have been successfully satisfied.

4. The establishment of wetland hydrology shall be measured weekly during the growing season, with the location and number of monitoring wells, and frequency of

monitoring for each site, set forth in the final monitoring plan. Hydrology monitoring well data shall be accompanied by precipitation data, including rainfall amounts, either from on site or from the closest weather station. Once the wetland hydrology success criteria have been satisfied for a particular monitoring year, monitoring may be discontinued for the remainder of that monitoring year following DEQ approval. After a period of three monitoring years, the permittee may request that hydrology monitoring be discontinued, providing that adequate hydrology has been established and maintained. Hydrology monitoring shall not be discontinued without written approval from DEQ.

5. The presence of hydric soils or soils under hydric conditions shall be evaluated in accordance with the final compensation plan.

6. The establishment of wetland vegetation shall be in accordance with the final compensation plan. Monitoring shall take place in August, September, or October during the growing season of each monitoring year, unless otherwise authorized in the monitoring plan.

7. The presence of undesirable plant species shall be documented.

8. All wetland compensation monitoring reports shall be submitted in accordance with 9VAC25-680-100 Part II E 6.

D. Stream compensation, restoration, and monitoring.

1. Riparian buffer restoration activities shall be detailed in the final compensation plan and shall include, as appropriate, the planting of a variety of native species currently growing in the site area, including appropriate seed mixtures and woody species that are bare root, balled, or burlapped. A minimum buffer width of 50 feet, measured from the top of the stream bank at bankfull elevation landward on both sides of the stream, shall be required where practical.

2. The installation of root wads, vanes, and other instream structures, shaping of the stream banks and channel relocation shall be completed in the dry whenever practicable.

3. Livestock access to the stream and designated riparian buffer shall be limited to the greatest extent practicable.

4. Stream channel restoration activities shall be conducted in the dry or during low flow conditions. When site conditions prohibit access from the streambank, heavy equipment shall be authorized for use within the stream channel.

5. Photographs shall be taken at the compensation site from the vicinity of the permanent photo stations identified in the final compensation plan. The photograph orientation

shall remain constant during all monitoring events. At a minimum, photographs shall be taken from the center of the stream, facing downstream, with a sufficient number of photographs to view the entire length of the restoration site. Photographs shall document the completed restoration conditions. Photographs shall be taken prior to site activities, during instream and riparian compensation construction activities, within one week of completion of activities, and during at least one day of each monitoring year to depict restored conditions.

6. An as-built ground survey, or an aerial survey provided by a firm specializing in aerial surveys, shall be conducted for the entire compensation site or sites. Aerial surveys shall include the variation from actual ground conditions, such as +/- 0.2 feet. The survey shall be certified by the licensed surveyor or by a registered, professional engineer to conform to the design plans. The survey shall be submitted within 60 days of completing compensation site construction. Changes or deviations from the final compensation plans in the as-built survey or aerial survey shall be shown on the survey and explained in writing.

7. Compensation site monitoring shall begin on day one of the first complete growing season (monitoring year 1) after stream compensation site construction activities, including planting, have been completed. Monitoring shall be required for monitoring years 1 and 2, unless otherwise determined by DEQ. In all cases, if all success criteria have not been met in the final monitoring year, then monitoring shall be required for each consecutive year until two annual sequential reports indicate that all criteria have been successfully satisfied.

8. All stream compensation monitoring reports shall be submitted in accordance with 9VAC25-680-100 Part II E 6.

E. Reporting.

1. Written communications required by this VWP general permit shall be submitted to the appropriate DEQ office. The VWP general permit authorization number shall be included on all correspondence.

2. DEQ shall be notified in writing at least 10 days prior to the start of construction activities at the first permitted site authorized by this VWP general permit authorization so that inspections of the project can be planned, if deemed necessary by DEQ. The notification shall include a projected schedule for initiation and completion of work at each permitted impact area.

3. Construction monitoring reports shall be submitted to DEQ no later than the 10th day of the month following the month in which the monitoring event specified in Part II B takes place, unless otherwise specified below. The reports shall include the following, as appropriate:

Regulations

- a. For each permitted impact area, a written narrative stating whether work was performed during the monitoring period, and if work was performed, a description of the work performed, when the work was initiated, and the expected date of completion.
 - b. Photographs labeled with the permit number, the photo station number, the photo orientation, the date and time of the photo, the name of the person taking the photograph, and a brief description of the construction activities. The first construction monitoring report shall include the photographs taken at each impact site prior to initiation of construction in a permitted impact area. Written notification and photographs demonstrating that all temporarily disturbed wetland and stream areas have been restored in compliance with the permit conditions shall be submitted within 30 days of restoration. The post-construction photographs shall be submitted within 30 days of documenting post-construction conditions.
 - c. Summary of activities conducted to comply with the permit conditions.
 - d. Summary of permit noncompliance events or problems encountered, subsequent notifications, and corrective actions.
 - e. Summary of anticipated work to be completed during the next monitoring period and an estimated date of construction completion at all impact areas.
 - f. Labeled site map depicting all impact areas and photo stations.
4. DEQ shall be notified in writing within 30 days following the completion of all activities in all permitted impact areas authorized under this permit.
5. DEQ shall be notified in writing at least 10 days prior to the initiation of activities at the compensation site. The notification shall include a projected schedule of activities and construction completion.
6. All compensation monitoring reports shall be submitted annually by December 31, with the exception of the last year of authorization, in which case the report shall be submitted at least 60 days prior to expiration of authorization under the general permit.
- a. All wetland compensation monitoring reports shall include, as applicable, the following:
 - (1) General description of the site including a site location map identifying photo stations, vegetative and soil monitoring stations, monitoring wells, and wetland zones.
 - (2) Summary of activities completed during the monitoring year, including alterations or maintenance conducted at the site.
 - (3) Description of monitoring methods.
 - (4) Analysis of all hydrology information, including monitoring well data, precipitation data, and gauging data from streams or other open water areas, as set forth in the final compensation plan.
 - (5) Evaluation of hydric soils or soils under hydric conditions, as appropriate.
 - (6) Analysis of all vegetative community information, including woody and herbaceous species, both planted and volunteers, as set forth in the final compensation plan.
 - (7) Photographs labeled with the permit number, the name of the compensation site, the photo station number, the photograph orientation, the date and time of the photograph, the name of the person taking the photograph, and a brief description of the photograph subject. This information shall be provided as a separate attachment to each photograph, if necessary. Photographs taken after the initial planting shall be included in the first monitoring report after planting is complete.
 - (8) Discussion of wildlife or signs of wildlife observed at the compensation site.
 - (9) Comparison of site conditions from the previous monitoring year and reference site.
 - (10) Discussion of corrective measures or maintenance activities to control undesirable species, to repair damaged water control devices, or to replace damaged planted vegetation.
 - (11) Corrective action plan, which includes proposed actions, a schedule, and monitoring plan.
 - b. All stream compensation monitoring reports shall include, as applicable, the following:
 - (1) General description of the site including a site location map identifying photo stations and monitoring stations.
 - (2) Summary of activities completed during the monitoring year, including alterations or maintenance conducted at the site.
 - (3) Description of monitoring methods.
 - (4) An evaluation and discussion of the monitoring results in relation to the success criteria and overall goals of compensation.
 - (5) Photographs shall be labeled with the permit number, the name of the compensation site, the photo station number, the photograph orientation, the date and time of the photograph, the name of the person taking the photograph, and a brief description of the photograph subject. Photographs taken prior to compensation site

construction activities, during instream and riparian restoration activities, and within one week of completion of activities shall be included in the first monitoring report.

(6) A discussion of alterations, maintenance, or major storm events resulting in significant change in stream profile or cross section, and corrective actions conducted at the stream compensation site.

(7) Documentation of undesirable plant species and summary of abatement and control measures.

(8) A summary of wildlife or signs of wildlife observed at the compensation site.

(9) Comparison of site conditions from the previous monitoring year and reference site, and as-built survey, if applicable.

(10) A corrective action plan, which includes proposed actions, a schedule and monitoring plan.

(11) Additional submittals that were approved by DEQ in the final compensation plan.

7. The permittee shall notify DEQ in writing when unusual or potentially complex conditions are encountered which require debris removal or involve potentially toxic substance. Measures to remove the obstruction, material, or toxic substance or to change the location of a structure are prohibited until approved by DEQ.

8. The permittee shall report fish kills or spills of oil or fuel immediately upon discovery. If spills or fish kills occur between the hours of 8:15 a.m. to 5 p.m., Monday through Friday, the appropriate DEQ regional office shall be notified; otherwise, the Department of Emergency Management shall be notified at 1-800-468-8892.

9. Violations of state water quality standards shall be reported within 24 hours to the appropriate DEQ office.

10. Submittals required by this VWP general permit shall contain the following signed certification statement:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violation."

Part III. Conditions Applicable to All VWP General Permits.

A. Duty to comply. The permittee shall comply with all conditions of the VWP general permit. Nothing in this VWP general permit shall be construed to relieve the permittee of the duty to comply with all applicable federal and state statutes, regulations and toxic standards and prohibitions. VWP general permit noncompliance is a violation of the Clean Water Act and State Water Control Law, and is grounds for enforcement action, VWP general permit authorization, termination for cause, VWP general permit authorization, revocation, or denial of a continuation of coverage request.

B. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent impacts in violation of the VWP general permit that may have a reasonable likelihood of adversely affecting human health or the environment.

C. Reopener. This VWP general permit authorization may be reopened to modify its conditions when the circumstances on which the previous VWP general permit authorization was based have materially and substantially changed, or special studies conducted by the board or the permittee show material and substantial change since the time the VWP general permit authorization was issued and thereby constitute cause for VWP general permit authorization revocation and reissuance.

D. Compliance with state and federal law. Compliance with this VWP general permit constitutes compliance with the VWP permit requirements of the State Water Control Law. Nothing in this VWP general permit shall be construed to preclude the institution of any legal action under or relieve the permittee from any responsibilities, liabilities, or other penalties established pursuant to any other state law or regulation or under the authority preserved by §510 of the Clean Water Act.

E. Property rights. The issuance of this VWP general permit does not convey property rights in either real or personal property, or exclusive privileges, nor does it authorize injury to private property or invasion of personal property rights, nor infringement of federal, state or local laws or regulations.

F. Severability. The provisions of this VWP general permit authorization are severable.

G. Right of entry. The permittee shall allow the board or its agents, upon the presentation of credentials, at reasonable times and under reasonable circumstances to enter the permittee's property, public or private, and have access to, inspect and copy records that must be kept as part of the VWP general permit conditions; to inspect facilities, operations or practices (including monitoring and control equipment) regulated or required under the VWP general permit; and to sample or monitor any substance, parameter or activity for the purpose of assuring compliance with the conditions of the VWP general permit or as otherwise

Regulations

authorized by law. For the purpose of this section, the time for inspection shall be deemed reasonable during regular business hours. Nothing contained herein shall make an inspection time unreasonable during an emergency.

H. Transferability of VWP general permit authorization. This VWP general permit authorization may be transferred to another person by a permittee when all of the criteria listed below are met. On the date of the VWP general permit authorization transfer, the transferred VWP general permit authorization shall be as fully effective as if it had been issued directly to the new permittee.

1. The current permittee notifies the board of the transfer of the title to the facility or property.
2. The notice to the board includes a written agreement between the current and new permittees containing a specific date of transfer of VWP general permit authorization responsibility, coverage and liability to the new permittee, or that the current permittee will retain such responsibility, coverage, or liability, including liability for compliance with the requirements of enforcement activities related to the permitted activity.
3. The board does not notify the current and new permittees of its intent to modify or revoke and reissue the VWP general permit authorization within 15 days.

I. Notice of planned change. Authorization under this VWP general permit may be modified subsequent to issuance in one or more of the cases listed below. A notice of planned change is not required if the project results in additional temporary impacts to surface waters, provided that DEQ is notified in writing, the additional temporary impacts are restored to preexisting conditions in accordance with Part I C 11 of this general permit, and the additional temporary impacts do not exceed the general permit threshold for use. The permittee shall notify the board in advance of the planned change, and the planned change request will be reviewed according to all provisions of this regulation.

1. The permittee determines that additional permanent wetland, open water, or stream impacts are necessary, provided that the additional impacts are associated with the previously authorized activities in authorized locations within the same phase of development, the cumulative increase in acreage of wetland or open water impacts is not greater than 1/4 acre, the cumulative increase in stream bed impacts is not greater than 100 linear feet, and the additional impacts are fully compensated.
2. The project results in less wetland or stream impacts, in which case compensation requirements may be modified in relation to the adjusted impacts at the request of the permittee, provided that the adjusted compensation meets the initial authorization compensation goals.

3. There is a change in the project plans that does not result in a change in project impacts.

4. There is a change in the mitigation bank at which credits are purchased or used, provided that the same amount of credits are purchased or used and all criteria for use are met, as detailed in ~~9VAC25-210-115 F~~ 9VAC25-210-116 E.

5. Typographical errors need to be corrected.

J. VWP general permit authorization termination for cause. This VWP general permit authorization is subject to termination for cause by the board after public notice and opportunity for a hearing. Reasons for termination for cause are as follows:

1. Noncompliance by the permittee with any condition of the VWP general permit authorization;
2. The permittee's failure in the application or during the VWP general permit authorization issuance process to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at any time;
3. The permittee's violation of a special or judicial order; and
4. A determination by the board that the permitted activity endangers human health or the environment and can be regulated to acceptable levels by a VWP general permit authorization planned change or termination for cause.

K. VWP general permit authorization termination by consent. This VWP general permit authorization may be terminated by consent when all permitted activities requiring notification under 9VAC25-680-50 A and all compensatory mitigation have been completed or when the authorized impacts will not occur. The permittee shall submit a request for termination by consent within 30 days of project completion or project cancellation. When submitted for project completion, the termination by consent shall constitute a notice of completion in accordance with 9VAC25-210-130. The director may accept this termination of authorization on behalf of the board. The request for termination by consent shall contain the following information:

1. Name, mailing address and telephone number of the permittee;
2. Name and location of the activity;
3. The VWP permit authorization number; and
4. One of the following certifications:
 - a. For project completion:

"I certify under penalty of law that all activities and any required compensatory mitigation authorized by a VWP general permit have been completed. I understand that by

submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit, and that performing activities in surface waters is unlawful where the activity is not authorized by a VWP permit. I also understand that the submittal of this notice does not release me from liability for any violations of this VWP general permit authorization."

b. For project cancellation:

"I certify under penalty of law that the activities and any required compensatory mitigation authorized by this VWP general permit will not occur. I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit, and that performing activities in surface waters is unlawful where the activity is not authorized by a VWP permit. I also understand that the submittal of this notice does not release me from liability for any violations of this VWP general permit authorization, nor does it allow me to resume the permitted activities without reapplication and reauthorization."

c. For events beyond permittee control, the permittee shall provide a detailed explanation of the events, to be approved by DEQ, and the following certification statement:

"I certify under penalty of law that the activities or the required compensatory mitigation authorized by a VWP general permit have been completed (see attached). I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit, and that performing activities in surface waters is unlawful where the activity is not authorized by a VWP permit. I also understand that the submittal of this notice does not release me from liability for any violations of this VWP general permit authorization, nor does it allow me to resume the permitted activities without reapplication and reauthorization."

L. Civil and criminal liability. Nothing in this VWP general permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

M. Oil and hazardous substance liability. Nothing in this VWP general permit shall be construed to preclude the institution of legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under §311 of the Clean Water Act or §§62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

N. Duty to cease or confine activity. It shall not be a defense for a permittee in an enforcement action that it would have

been necessary to halt or reduce the activity for which a VWP permit has been granted in order to maintain compliance with the conditions of the VWP permit.

O. Duty to provide information.

1. The permittee shall furnish to the board any information which the board may request to determine whether cause exists for modifying, revoking and reissuing and terminating the VWP permit authorization, or to determine compliance with the VWP permit authorization. The permittee shall also furnish to the board, upon request, copies of records required to be kept by the permittee.

2. Plans, maps, conceptual reports and other relevant information shall be submitted as required by the board prior to commencing construction.

P. Monitoring and records requirements.

1. Monitoring of parameters, other than pollutants, shall be conducted according to approved analytical methods as specified in the VWP permit. Analysis of pollutants will be conducted according to 40 CFR Part 136 (2000), Guidelines Establishing Test Procedures for the Analysis of Pollutants.

2. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

3. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart or electronic recordings for continuous monitoring instrumentation, copies of all reports required by the VWP permit, and records of all data used to complete the application for the VWP permit, for a period of at least three years from the date of the expiration of a granted VWP permit. This period may be extended by request of the board at any time.

4. Records of monitoring information shall include, as appropriate:

- a. The date, exact place and time of sampling or measurements;
- b. The name of the individuals who performed the sampling or measurements;
- c. The date and time the analyses were performed;
- d. The name of the individuals who performed the analyses;
- e. The analytical techniques or methods supporting the information such as observations, readings, calculations and bench data used;
- f. The results of such analyses; and
- g. Chain of custody documentation.

Regulations

Q. Unauthorized discharge of pollutants. Except in compliance with this VWP general permit, it shall be unlawful for the permittee to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances;
2. Excavate in a wetland;
3. Otherwise alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, to animal or aquatic life, to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses; or
4. On and after August 1, 2001, for linear transportation projects of the Virginia Department of Transportation, or on and after October 1, 2001 for all other projects, conduct the following activities in a wetland:
 - a. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions;
 - b. Filling or dumping;
 - c. Permanent flooding or impounding; or
 - d. New activities that cause significant alteration or degradation of existing wetland acreage or functions.

VA.R. Doc. No. R08-932; Filed December 14, 2007, 3:00 p.m.

Final Regulation

REGISTRAR'S NOTICE: The State Water Control Board is claiming an exclusion 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 State Water Control Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **9VAC25-690. Virginia Water Protection General Permit for Impacts from Development and Certain Mining Activities (amending 9VAC25-690-10, 9VAC25-690-70, 9VAC25-690-80, 9VAC25-690-100).**

Statutory Authority: Sections 62.1-44.15(10) and 62.1-44.15:5 Section 401 of the Clean Water Act (33 USC 1251 et seq.).

Effective Date: February 6, 2008.

Agency Contact: Brenda K. Winn, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4516, FAX (804) 698-4032, or email bkwin@deq.virginia.gov.

Summary:

The amendments conform the regulation to statute changes passed by the 2007 Session of the General Assembly that

reorganized the State Water Control Law (§62.1-44.2 et seq. of the Code of Virginia).

9VAC25-690-10. Definitions.

The words and terms used in this regulation shall have the meanings defined in the State Water Control Law (§62.1-44.2 et seq. of the Code of Virginia) and the Virginia Water Protection (VWP) Permit Regulation (9VAC25-210) unless the context clearly indicates otherwise or unless otherwise indicated below.

"Bank protection" means measures employed to stabilize channel banks and combat existing erosion problems. Such measures may include the construction of riprap revetments, sills, rock vanes, beach nourishment, breakwaters, bulkheads, groins, spurs, levees, marsh toe stabilization, anti-scouring devices, and submerged sills.

"Bioengineering method" means a biological measure incorporated into a facility design to benefit water quality and minimize adverse effects to aquatic resources, to the maximum extent practicable, for long-term aquatic resource protection and improvement.

"Channelization" means the alteration of a stream channel by widening, deepening, straightening, cleaning or paving certain areas.

"Cross-sectional drawing" means a graph or plot of ground elevation across a waterbody or a portion of it, usually along a line perpendicular to the waterbody or direction of flow.

"Emergent wetland" means a class of wetlands characterized by erect, rooted, herbaceous plants growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content, excluding mosses and lichens. This vegetation is present for most of the growing season in most years and is usually dominated by perennial plants.

"FEMA" means Federal Emergency Management Agency.

"Forebay" means a deeper area at the upstream end of a stormwater management facility that would be maintained through excavation.

"Forested wetland" means a class of wetlands characterized by woody vegetation that is six meters (20 feet) tall or taller. These areas typically possess an overstory of trees, an understory of trees or shrubs, and an herbaceous layer.

"Greater than one acre" means more than 1.00 acre (43,560 square feet).

"Histosols" means organic soils that are often called mucks, peats, or mucky peats. The list of histosols in the Commonwealth includes, but is not limited to, the following soil series: Back Bay, Belhaven, Dorovan, Lanexa, Mattamuskeet, Mattan, Palms, Pamlico, Pungo, Pocaty, and Rappahannock. Histosols are identified in the Hydric soils list

generated by United States Department of Agriculture Natural Resources Conservation Service.

"Impacts" means results caused by human-induced activities conducted in surface waters, as specified in ~~§62.1-44.15:5-D~~ §62.1-44.15:20 A of the Code of Virginia.

"Independent utility" means a test to determine what constitutes a single and complete project. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a phased development project that depend upon other phases of the project do not have independent utility. Portions of a phased development project that would be constructed even if the other phases are not built can be considered as separate single complete projects with independent utility.

"In-stream mining" means operations that remove accumulated sand, gravel, and mineral deposits directly from stream channels using equipment such as, but not limited to, hydraulic dredges, clamshell dredges, or draglines for the sole purpose of processing and selling the material. In-stream mining does not include dredging activities, whose main purpose is to maintain channels and harbors for navigation, nor does it include the recovery of spilled material, such as sand, gravel, and aggregate, that was inadvertently spilled into a waterway during loading activities.

"Isolated Wetland of Minimal Ecological Value (IWOMEV)" means a wetland that (i) does not have a surface water connection to other state waters; (ii) is less than one-tenth of an acre in size; (iii) is not located in a Federal Emergency Management Agency designated 100-year floodplain; (iv) is not identified by the Virginia Natural Heritage Program as a rare or state significant natural community; (v) is not forested; and (vi) does not contain listed federal or state threatened or endangered species.

"Less than one-half of an acre" means 0.49 acre (21,779 square feet) or less.

"Open water" means an area that, during a year with normal patterns of precipitation, has standing water for sufficient duration to establish an ordinary high water mark. The term "open water" includes lakes and ponds but does not include ephemeral waters, stream beds, or wetlands.

"Ordinary high water" or "ordinary high water mark" means the line on the shore established by the fluctuations of water and indicated by physical characteristics such as clear, natural line impressed on the bank; shelving; changes in the character of soil; destruction of terrestrial vegetation; the presence of litter and debris; or other appropriate means that consider the characteristics of the surrounding areas.

"Perennial stream" means a well-defined channel that contains water year round during a year of normal rainfall. Generally, the water table is located above the streambed for

most of the year and groundwater is the primary source for stream flow. A perennial stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.

"Permanent impacts" means those impacts to surface waters, including wetlands, that cause a permanent alteration of the physical, chemical, or biological properties of the surface waters, or of the functions and values of a wetland.

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

"Phased development" means more than one project proposed for a single piece of property or an assemblage of contiguous properties under consideration for development by the same person, or by related persons, that will begin and be completed at different times. Depending on the relationship between the projects, a phased development may be considered a single and complete project or each project may be considered a single and complete project, if each project has independent utility, as defined in this subsection.

"Recreational facility" means a facility that is integrated into the natural landscape and does not substantially change preconstruction grades or deviate from natural landscape contours.

"Riprap" means a layer of nonerodible material such as stone or chunks of concrete.

"Scrub-shrub wetland" means a class of wetlands dominated by woody vegetation less than six meters (20 feet) tall. The species include true shrubs, young trees, and trees or shrubs that are small or stunted because of environmental conditions.

"Single and complete project" means the total project proposed or accomplished by a person, which also has independent utility, as defined in this section. For linear projects, the "single and complete project" (e.g., a single and complete crossing) will apply to each crossing of a separate surface water (e.g., a single waterbody) and to multiple crossings of the same waterbody at separate and distinct locations. Phases of a project that have independent public and economic utility may each be considered single and complete.

"State program general permit (SPGP)" means a general permit issued by the Department of the Army in accordance with 33 USC 1344(e), 33 CFR 325.2(e)(2), and 33 CFR 325.3(b) and that is founded on a state program. The SPGP is designed to avoid duplication between the federal and state programs.

"Stream bed" means the substrate of a stream, as measured between the ordinary high water marks along a length of stream. The substrate may consist of organic matter, bedrock

Regulations

or inorganic particles that range in size from clay to boulders, or a combination of both. Areas contiguous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.

"Surface waters" means all state waters that are not ground water as defined in §62.1-255 of the Code of Virginia.

"Temporary impacts" are those impacts to surface waters, including wetlands, that do not cause a permanent alteration of the physical, chemical, or biological properties of the surface waters, or of the functions and values of a wetland. Temporary impacts include activities in which the ground is restored to its preconstruction conditions, contours, or elevations, such that previous functions and values are restored.

"Up to 300 linear feet" means >0.00 to 300.00 linear feet as measured along the center of the main channel of the stream segment.

"Up to 1500 linear feet" means >0.00 to 1500.00 linear feet, as measured along the center of the main channel of the stream segment.

"Up to one-tenth of an acre" means 0.10 acre (4,356 square feet) or less.

"Up to two acres" means 2.00 acres (87,120 square feet) or less.

"Utility line" means a pipe or pipeline for the transportation of a gaseous, liquid, liquefiable or slurry substance, for any purpose, and a cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages and radio and television communication. The term utility line does not include activities which drain a surface water to convert it to an upland, such as drainage tiles or french drains; however, it does apply to pipes conveying drainage from another area.

9VAC25-690-70. Compensation.

A. In accordance with 9VAC25-690-50 A, compensatory mitigation may be required for all permanent, nontidal surface water impacts. All temporary, nontidal surface water impacts shall be restored to preexisting conditions.

B. Generally, the sequence of preferred compensation options shall be restoration, then creation, then mitigation banking, and then in-lieu fee fund. Also, on-site, in-kind compensatory mitigation, when available, shall be deemed the most ecologically preferable form of compensation for project impacts, in most cases. However, off-site or out-of-kind compensation opportunities that prove to be more ecologically preferable to practicable on-site or in-kind compensation may be considered. When the applicant can demonstrate satisfactorily that an off-site or out-of-kind compensatory mitigation proposal is ecologically preferable,

then such proposal may be deemed appropriate for compensation of project impacts.

C. For the purposes of this VWP general permit, compensatory mitigation for unavoidable wetland impacts may be met through the following:

1. Wetland creation.
2. Wetland restoration.
3. The purchase or use of credits from a mitigation bank, pursuant to ~~§62.1-44.15:5 E~~ §62.1-44.15:23 of the Code of Virginia.
4. A contribution to an approved in-lieu fee fund.
5. Preservation of upland buffers adjacent to state waters, when utilized in conjunction with subdivision 1, 2, or 3 of this subsection and when consistent with ~~9VAC25-210-115 C~~ 9VAC25-210-116 A.
6. Restoration of upland buffers adjacent to state waters, when utilized in conjunction with subdivision 1, 2, or 3 of this subsection and when consistent with ~~9VAC25-210-115 C~~ 9VAC25-210-116 A.
7. Preservation of wetlands, when utilized in conjunction with subdivision 1, 2, or 3 of this subsection.

D. For the purposes of this VWP general permit, compensatory mitigation for unavoidable stream impacts may be met through the following:

1. Stream channel restoration or enhancement.
2. Riparian buffer restoration or enhancement.
3. Riparian buffer preservation, when consistent with ~~9VAC25-210-115 C~~ 9VAC25-210-116 A.
4. A contribution to an approved in-lieu fee fund.
5. The purchase or use of credits from a mitigation bank, pursuant to ~~§62.1-44.15:5 E~~ §62.1-44.15:23 of the Code of Virginia.

E. In order for contribution to an in-lieu fee fund to be an acceptable form of compensation, the fund must be approved for use by the board according to the provisions of ~~9VAC25-210-115 E~~ 9VAC25-210-116 D. The applicant shall provide proof of contribution to DEQ prior to commencing activities in impact areas.

F. In order for purchase or use of bank credits to be an acceptable form of compensation, the bank shall be operating in accordance with the provisions of ~~§62.1-44.15:5 E~~ §62.1-44.15:23 of the Code of Virginia and ~~9VAC25-210-115 F~~ 9VAC25-210-116 E. The applicant shall provide proof of purchase, use, or debit to DEQ prior to commencing activities in impact areas.

G. Compensation for unavoidable, permanent wetland impacts shall be provided at the following minimum compensation to impact ratios:

1. Impacts to forested wetlands shall be mitigated at 2:1, as calculated on an area basis.
2. Impacts to scrub shrub wetlands shall be mitigated at 1.5:1, as calculated on an area basis.
3. Impacts to emergent wetlands shall be mitigated at 1:1, as calculated on an area basis.

H. Compensation for stream bed impacts shall be appropriate to replace lost functions and water quality benefits. One factor in determining the required compensation shall be an analysis of stream impacts utilizing a stream impact assessment methodology acceptable to DEQ.

I. Compensation for permanent open water impacts may be required at a 1:1 replacement to impact ratio, as calculated on an area basis, to offset impacts to state waters and fish and wildlife resources from significant impairment.

J. Compensation for conversion impacts to wetlands shall be required at a 1:1 replacement to impact ratio, as calculated on an area basis, when such conversion results in a permanent alteration of the functions and values of the wetland. For example, the permanent conversion of a forested wetland to an emergent wetland is considered to be a permanent impact for the purposes of this regulation. Compensation for conversion of other types of surface waters may be required, as appropriate, to offset impacts to state waters and fish and wildlife resources from significant impairment.

9VAC25-690-80. Notice of planned changes.

A. The permittee shall notify the board in advance of the planned change, and the planned changes request will be reviewed according to all provisions of this regulation.

B. Authorization under this VWP general permit may be modified subsequent to issuance if the permittee determines that additional permanent wetland, open water, or stream impacts are necessary, provided that the additional impacts are associated with the previously authorized activities in authorized locations within the same phase of development, the cumulative increase in acreage of wetland or open water impacts is not greater than 1/4 acre, the cumulative increase in stream bed impacts is not greater than 100 linear feet, and the additional impacts are fully mitigated. Prior to a planned change approval, DEQ may require submission of a compensatory mitigation plan for the additional impacts. In cases where the original impacts totaled less than 1/10 acre of wetlands or open water, or less than 300 linear feet of stream bed, and the additional impacts result in these limits being exceeded, the notice of planned change will not be approved. However, the applicant may submit a new permit application and permit application fee for the total impacts to be

considered under this VWP general permit, another VWP general permit, or a VWP individual permit.

C. Authorization under this VWP general permit may be modified after issuance if the project results in less wetland or stream impacts. Compensation requirements may be modified in relation to the adjusted impacts at the request of the permittee, provided that the adjusted compensation meets the initial authorization compensation goals. DEQ shall not be responsible for ensuring refunds for mitigation bank credit purchases, mitigation bank usage, or in-lieu fee fund contributions.

D. Authorization under this VWP general permit may be modified after issuance for a change in project plans that does not result in a change in project impacts.

E. Authorization under the VWP general permit may be modified for a change to the mitigation bank at which credits are purchased or used, provided that the same amount of credits are purchased or used and all criteria for use in ~~9VAC25-210-115 F~~ 9VAC25-210-116 E are met.

F. Authorization under the VWP general permit may be modified after issuance for typographical errors.

G. A Notice of Planned Change is not required after authorization issuance for additional temporary impacts to surface waters, provided that DEQ is notified in writing regarding additional temporary impacts, and the area is restored to preexisting conditions in accordance with Part I C 11 of this general permit. In no case can the additional temporary impacts exceed the general permit threshold for use.

H. In no case can this authorization be modified to exceed the general permit threshold for use.

I. A notice of planned change shall be denied if fish and wildlife resources are significantly impacted or if the criteria in subsection B of this section are not met. However, the original VWP general permit authorization shall remain in effect. The applicant may submit a new permit application and permit application fee for consideration under a VWP individual permit.

9VAC25-690-100. VWP general permit.

Any applicant whose application has been accepted by the board shall be subject to the following requirements:

VWP General Permit No. WP4

Authorization effective date:

Authorization expiration date:

Authorization Notes(s):

VWP GENERAL PERMIT FOR IMPACTS FROM DEVELOPMENT AND CERTAIN MINING ACTIVITIES

Regulations

UNDER THE VIRGINIA WATER PROTECTION PERMIT AND THE VIRGINIA STATE WATER CONTROL LAW

Based upon an examination of the information submitted by the applicant and in compliance with §401 of the Clean Water Act as amended (33 USC §1341) and the State Water Control Law and regulations adopted pursuant thereto, the board has determined that there is a reasonable assurance that the activity authorized by this VWP general permit, if conducted in accordance with the conditions set forth herein, will protect instream beneficial uses and will not violate applicable water quality standards. The board finds that the effect of the impact, together with other existing or proposed impacts to wetlands, will not cause or contribute to a significant impairment of state waters or fish and wildlife resources.

Subject to the provisions of the Clean Water Act, as amended, and pursuant to the State Water Control Law and regulations adopted pursuant to it, the permittee is authorized to permanently or temporarily impact up to two acres of nontidal wetlands or open water and up to 1,500 linear feet of nontidal stream bed.

Permittee:

Address:

Activity Location:

Activity Description:

The authorized activity shall be in accordance with this cover page, Part I-Special Conditions, Part II-Compensation, Monitoring, and Reporting, and Part III-Conditions Applicable to All VWP Permits, as set forth herein.

Director, Department of Environmental
Quality

Date

Part I. Special Conditions.

A. Authorized activities.

1. This permit authorizes permanent or temporary impacts of up to two acres of nontidal wetlands or open water and up to 1,500 linear feet of nontidal stream bed according to the information provided in the approved and complete application.
2. Any changes to the authorized permanent impacts to surface waters associated with this project shall require either a notice of planned change in accordance with 9VAC25-690-80, or another VWP permit application.
3. Any changes to the authorized temporary impacts to surface waters associated with this project shall require written notification to DEQ and restoration to preexisting conditions in accordance with the conditions of this permit authorization.

4. Modification to compensation requirements may be approved at the request of the permittee when a decrease in the amount of authorized surface waters impacts occurs, provided that the adjusted compensation meets the initial authorization compensation goals.

5. The activities authorized for coverage under this VWP general permit must commence and be completed within seven years of the date of this authorization.

B. Continuation of coverage. Reapplication for continuation of coverage under this VWP general permit or a new VWP permit may be necessary if any portion of the authorized activities or any VWP general permit requirement (including compensation) has not been completed within seven years of the date of authorization. Notwithstanding any other provision, a request for continuation of coverage under a VWP general permit in order to complete monitoring requirements shall not be considered a new application, and no application fee will be charged. The request for continuation of coverage must be made no less than 60 days prior to the expiration date of this VWP general permit authorization, at which time the board will determine if continuation of the VWP general permit authorization is necessary.

C. Overall project conditions.

1. The activities authorized by this VWP general permit shall be executed in a manner so as to minimize adverse impacts on instream beneficial uses as defined in §62.1-10 (b) of the Code of Virginia.
2. No activity may substantially disrupt the movement of aquatic life indigenous to the water body, including those species which normally migrate through the area, unless the primary purpose of the activity is to impound water. Culverts placed in streams must be installed to maintain low flow conditions. The requirement to countersink does not apply to extensions or maintenance of existing culverts that are not countersunk, floodplain culverts being placed above ordinary high water, culverts being placed on bedrock, or culverts required to be placed on slopes 5.0% or greater. No activity may cause more than minimal adverse effect on navigation. Furthermore the activity must not impede the passage of normal or expected high flows and the structure or discharge must withstand expected high flows.
3. Wet or uncured concrete shall be prohibited from entry into flowing surface waters. Excess or waste concrete shall not be disposed of in flowing surface waters or washed into flowing surface waters.
4. All fill material shall be clean and free of contaminants in toxic concentrations or amounts in accordance with all applicable laws and regulations.

5. Erosion and sedimentation controls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992, or for mining activities covered by this general permit, the standards issued by the Virginia Department of Mines, Minerals and Energy that are effective as those in the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992. These controls shall be placed prior to clearing and grading and maintained in good working order to minimize impacts to state waters. These controls shall remain in place until the area is stabilized and shall then be removed.

6. Exposed slopes and streambanks shall be stabilized immediately upon completion of work in each permitted impact area. All denuded areas shall be properly stabilized in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

7. All construction, construction access (e.g., cofferdams, sheetpiling, and causeways) and demolition activities associated with this project shall be accomplished in a manner that minimizes construction or waste materials from entering surface waters to the maximum extent practicable, unless authorized by this VWP general permit.

8. No machinery may enter flowing waters, unless authorized by this VWP general permit.

9. Heavy equipment in temporarily-impacted wetland areas shall be placed on mats, geotextile fabric, or other suitable material to minimize soil disturbance to the maximum extent practicable. Equipment and materials shall be removed immediately upon completion of work.

10. All nonimpacted surface waters and compensatory mitigation areas within 50 feet of permitted activities and within the project or right-of-way limits shall be clearly flagged or marked for the life of the construction activity at that location to preclude unauthorized disturbances to these surface waters and compensatory mitigation areas during construction. The permittee shall notify contractors that no activities are to occur in these marked surface waters.

11. Temporary disturbances to surface waters during construction shall be avoided and minimized to the maximum extent practicable. All temporarily disturbed wetland areas shall be restored to preexisting conditions within 30 days of completing work at each respective temporary impact area, which shall include reestablishing preconstruction contours, and planting or seeding with appropriate wetland vegetation according to cover type (emergent, scrub/shrub, or forested). The permittee shall take all appropriate measures to promote and maintain revegetation of temporarily disturbed wetland areas with wetland vegetation through the second year post-disturbance. All temporarily impacted streams and streambanks shall be restored to their original contours within 30 days following the construction at that stream

segment, and the banks seeded or planted with the same vegetation cover type originally present along the streambanks, including supplemental erosion control grasses if necessary, except for invasive species identified on DCR's Invasive Alien Plant Species of Virginia list.

12. Materials (including fill, construction debris, and excavated and woody materials) temporarily stockpiled in wetlands shall be placed on mats or geotextile fabric, immediately stabilized to prevent entry into state waters, managed such that leachate does not enter state waters, and completely removed within 30 days following completion of that construction activity. Disturbed areas shall be returned to original contours, restored within 30 days following removal of the stockpile, and restored with the same vegetation cover type originally present, including supplemental erosion control grasses if necessary, except for invasive species identified on DCR's Invasive Alien Plant Species of Virginia list.

13. Continuous flow of perennial springs shall be maintained by the installation of spring boxes, french drains, or other similar structures.

14. The permittee shall employ measures to prevent spills of fuels or lubricants into state waters.

15. The permittee shall conduct activities in accordance with the time-of-year restrictions recommended by the Virginia Department of Game and Inland Fisheries, the Virginia Marine Resources Commission, or other interested and affected agencies and shall ensure that all contractors are aware of the time-of-year restrictions imposed.

16. Water quality standards shall not be violated as a result of the construction activities, unless allowed by this permit authorization.

17. If stream channelization or relocation is required, all work in surface waters shall be done in the dry, unless authorized by this VWP general permit, and all flows shall be diverted around the channelization or relocation area until the new channel is stabilized. This work shall be accomplished by leaving a plug at the inlet and outlet ends of the new channel during excavation. Once the new channel has been stabilized, flow shall be routed into the new channel by first removing the downstream plug and then the upstream plug. The rerouted stream flow must be fully established before construction activities in the old stream channel can begin.

D. Road crossings.

1. Access roads and associated bridges or culverts shall be constructed to minimize the adverse effects on surface waters to the maximum extent practicable. Access roads constructed above preconstruction contours and elevations

Regulations

in surface waters must be bridged or culverted to maintain surface flows.

2. Installation of road crossings shall occur in the dry via the implementation of cofferdams, sheetpiling, stream diversions, or similar structures.

E. Utility lines.

1. All utility line work in surface waters shall be performed in a manner that minimizes disturbance, and the area must be returned to its original contours and restored within 30 days of completing work in the area, unless otherwise authorized by this VWP general permit. Restoration shall be the seeding or planting of the same vegetation cover type originally present, including supplemental erosion control grasses if necessary, except for invasive species identified on DCR's Invasive Alien Plant Species of Virginia list.

2. Material resulting from trench excavation may be temporarily sidecast into wetlands not to exceed a total of 90 days, provided the material is not placed in a manner such that it is dispersed by currents or other forces.

3. The trench for a utility line cannot be constructed in a manner that drains wetlands (e.g., backfilling with extensive gravel layers creating a french drain effect.). For example, utility lines may be backfilled with clay blocks to ensure that the trench does not drain surface waters through which the utility line is installed.

F. Stream modification and stream bank protection.

1. Riprap bank stabilization shall be of an appropriate size and design in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

2. Riprap apron for all outfalls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

3. For stream bank protection activities, the structure and backfill shall be placed as close to the stream bank as practicable. No material shall be placed in excess of the minimum necessary for erosion protection.

4. All stream bank protection structures shall be located to eliminate or minimize impacts to vegetated wetlands to the maximum extent practicable.

5. Asphalt and materials containing asphalt or other toxic substances shall not be used in the construction of submerged sills or breakwaters.

6. Redistribution of existing stream substrate for the purpose of erosion control is prohibited.

7. No material removed from the stream bottom shall be disposed of in surface waters, unless authorized by this permit.

G. Dredging.

1. Dredging depths shall be determined and authorized according to the proposed use and controlling depths outside the area to be dredged.

2. Dredging shall be accomplished in a manner that minimizes disturbance of the bottom and minimizes turbidity levels in the water column.

3. If evidence of impaired water quality, such as a fish kill, is observed during the dredging, dredging operations shall cease and the DEQ shall be notified immediately.

4. Barges used for the transportation of dredge material shall be filled in such a manner to prevent the overflow of dredged materials.

5. Double handling of dredged material in state waters shall not be permitted.

6. For navigation channels the following shall apply:

a. A buffer of four times the depth of the dredge cut shall be maintained between the bottom edge of the design channel and the channelward limit of wetlands, or a buffer of 15 feet shall be maintained from the dredged cut and the channelward edge of wetlands, whichever is greater. This landward limit of buffer shall be flagged and inspected prior to construction.

b. Side slope cuts of the dredging area shall not exceed a two-horizontal-to-one-vertical slope to prevent slumping of material into the dredged area.

7. A dredged material management plan for the designated upland disposal site shall be submitted and approved 30 days prior to initial dredging activity.

8. Pipeline outfalls and spillways shall be located at opposite ends of the dewatering area to allow for maximum retention and settling time. Filter fabric shall be used to line the dewatering area and to cover the outfall pipe to further reduce sedimentation to state waters.

9. The dredge material dewatering area shall be of adequate size to contain the dredge material and to allow for adequate dewatering and settling out of sediment prior to discharge back into state waters.

10. The dredge material dewatering area shall utilize an earthen berm or straw bales covered with filter fabric along the edge of the area to contain the dredged material, and shall be properly stabilized prior to placing the dredged material within the containment area.

11. Overtopping of the dredge material containment berms with dredge materials shall be strictly prohibited.

H. Stormwater management facilities.

1. Stormwater management facilities shall be installed in accordance with best management practices and watershed

protection techniques (e.g., vegetated buffers, siting considerations to minimize adverse effects to aquatic resources, bioengineering methods incorporated into the facility design to benefit water quality and minimize adverse effects to aquatic resources) that provide for long-term aquatic resources protection and enhancement, to the maximum extent practicable.

2. Compensation for unavoidable impacts shall not be allowed within maintenance areas of stormwater management facilities.

3. Maintenance activities within stormwater management facilities shall not require additional permit authorization or compensation provided that the maintenance activities do not exceed the original contours of the facility, as approved and constructed, and is accomplished in designated maintenance areas as indicated in the facility maintenance or design plan.

Part II. Construction and Compensation Requirements,
Monitoring, and Reporting.

A. Minimum compensation requirements.

1. The permittee shall provide appropriate and practicable compensation for all impacts meeting the conditions outlined in this VWP general permit.

2. Compensation options that may be considered under this VWP general permit shall meet the criteria in 9VAC25-690-70.

3. The site or sites depicted in the conceptual compensation plan submitted with the application shall constitute the compensation site for the approved project. A site change will require a modification to the authorization.

4. For compensation involving the purchase or use of mitigation bank credits or a contribution to an in-lieu fee fund, the permittee shall not initiate work in permitted impact areas until documentation of the mitigation bank credit purchase or usage or of the fund contribution has been submitted to and received by DEQ.

5. All aspects of the compensation plan shall be finalized, submitted and approved by the board prior to a construction activity in permitted impact areas. The board shall review and provide written comments on the plan within 30 days of receipt or it shall be deemed approved. The final compensation plan as approved by the board shall be an enforceable requirement of this VWP general permit authorization. Deviations from the approved plan must be submitted and approved in advance by the board.

6. The final wetlands compensation plan shall include:

a. The goals and objectives of the plan in terms of replacement of wetland acreage and functions, by wetland type;

b. Location map, including latitude and longitude (to the nearest second) at the center of the site;

c. Summary of the type and acreage of existing wetland impacts anticipated during the construction of the compensation site and proposed compensation for these impacts;

d. Grading plan with existing and proposed elevations at one-foot or less contours;

e. Schedule for compensation site construction, including sequence of events with estimated dates;

f. Hydrologic analysis, including a water budget based on expected monthly inputs and outputs that will project water level elevations for a typical year, a wet year, and a dry year;

g. Groundwater elevation data for the site, or the location of groundwater monitoring wells to collect these data, and groundwater data for reference wetlands, if applicable;

h. Design of water control structures;

i. Planting scheme and schedule, indicating plant species, zonation, and acreage of each vegetation type proposed;

j. An abatement and control plan covering all undesirable plant species, as listed on DCR's Invasive Alien Plant Species of Virginia list, that includes the proposed procedures for notifying DEQ of their presence, methods of removal, and the control of such species;

k. Erosion and sedimentation control plan;

l. A soil preparation and amendments plan addressing both topsoil and subsoil conditions;

m. A discussion of structures and features considered necessary for the success of the site;

n. A monitoring plan, including success criteria, monitoring goals and methodologies, monitoring and reporting schedule, and the locations of photographic stations and monitoring wells, sampling points, and, if applicable, reference wetlands;

o. Site access plan;

p. The location and composition of any buffers; and

q. The mechanism for protection of the compensation area(s).

7. The final stream compensation plan shall include:

a. The goals and objectives of the compensation plan in terms of replacement of stream functions and water quality benefits;

Regulations

- b. A location map, including latitude and longitude (to the nearest second) at the center of the site;
 - c. An evaluation, discussion, and plan sketches of existing conditions on the proposed compensation stream, including the identification of functional and physical deficiencies for which the measures are proposed, and summary of geomorphologic measurements (e.g., stream width, entrenchment ratio, width-depth ratio, sinuosity, slope, substrate, etc.);
 - d. The identification of existing geomorphological stream type being impacted and proposed geomorphological stream type for compensation purposes;
 - e. Detailed design information for the proposed restorative measures, including geomorphological measurements and reference reach information as appropriate;
 - f. Riparian buffer plantings, including planting scheme, species, buffer width;
 - g. Livestock access limiting measures, to the greatest extent possible;
 - h. A site access plan;
 - i. An erosion and sedimentation control plan, if appropriate;
 - j. An abatement and control plan covering all undesirable plant species, listed on DCR's Invasive Alien Plant Species of Virginia list, that includes the proposed procedures for notifying DEQ of their presence, methods for removal, and the control of such species;
 - k. A schedule for compensation site construction including projected start date, sequence of events with projected dates, and projected completion date;
 - l. A monitoring plan, including a monitoring and reporting schedule; monitoring design and methodologies to evaluate the success of the proposed compensation measures, allowing comparison from year to year; proposed success criteria for appropriate compensation measures; location of all monitoring stations including photo stations, vegetation sampling points, survey points, bank pins, scour chains, and reference streams;
 - m. The mechanism for protection of the compensation area; and
 - n. Plan view sketch depicting the pattern and all compensation measures being employed, a profile sketch, and cross-section sketches of the proposed compensation stream.
8. For final wetland or stream compensation plans, the vegetation used shall be native species common to the area, shall be suitable for growth in local wetland or riparian conditions, and shall be from areas within the same or

adjacent USDA Plant Hardiness Zone or NRCS Land Resource Region as that of the project site.

9. The final wetland or stream compensation plan(s) shall include a mechanism for protection in perpetuity of the compensation sites(s) to include all state waters within the compensation site boundary or boundaries. Such protections shall be in place within 120 days of final compensation plan approval. The restrictions, protections, or preservations, or similar instrument, shall state that no activity will be performed on the property in any area designated as a compensation area with the exception of maintenance or corrective action measures authorized by the board. Unless specifically authorized by the board through the issuance of a VWP individual or general permit, or waiver thereof, this restriction applies to ditching, land clearing or the discharge of dredge or fill material. Such instrument shall contain the specific phrase "ditching, land clearing or discharge of dredge or fill material" in the limitations placed on the use of these areas. The protective instrument shall be recorded in the chain of title to the property, or an equivalent instrument for government-owned lands. Proof of recordation shall be submitted within 120 days of final compensation plan approval.

10. All work in impact areas shall cease if compensation site construction has not commenced within 180 days of commencement of project construction, unless otherwise authorized by the board.

11. DEQ shall be notified in writing at least 10 days prior to the initiation of construction activities at the compensation site(s).

12. Planting of woody plants shall occur when vegetation is normally dormant unless otherwise approved in the final wetlands or stream compensation plan(s).

13. Point sources of stormwater runoff shall be prohibited from entering a wetland compensation site prior to treatment by appropriate best management practices. Appropriate best management practices may include sediment traps, grassed waterways, vegetated filter strips, debris screens, oil and grease separators, or forebays.

14. The success of the compensation shall be based on meeting the success criteria established in the approved final compensation plan.

15. Wetland hydrology shall be considered established if depths to the seasonal high water table are equal to or less than 12 inches below ground surface for at least 12.5% of the region's killing frost-free growing season, as defined in the soil survey for the locality of the compensation site or the NRCS WETS table, measured in consecutive days under typical precipitation conditions, and as defined in the water budget of the final compensation plan. For the purpose of this regulation, the growing season is defined as

the period in which temperatures are expected to be above 28 degrees Fahrenheit in five out of 10 years, or the period during which the soil temperature in a wetland compensation site is greater than biological zero (five degrees Celsius) at a depth of 50 centimeters (19.6 inches), if such data is available.

16. The wetland plant community shall be considered established according to the performance criteria specified in the final compensation plan and approved by the board. The proposed vegetation success criteria in the final compensation plan shall include the following:

- a. Species composition shall reflect the desired plant community types stated in the final wetland compensation plan by the end of the first growing season and shall be maintained through the last monitoring year.
- b. Species composition shall consist of greater than 50% facultative (FAC) or wetter (FACW or OBL) vegetation, as expressed by plant stem density or areal cover, by the end of the first growing season and shall be maintained through the last monitoring year.

17. Undesirable plant species shall be identified and controlled as described in the undesirable plant species control plan, such that they are not dominant species or do not change the desired community structure. The control plan shall include procedures to notify DEQ when undesirable plant species comprise greater than 5.0% of the vegetation by areal coverage on wetland or stream compensation sites. The notification shall include the methods of removal and control, and whether the methods are successful.

18. If the wetland or stream compensation area fails to meet the specified success criteria in a particular monitoring year, other than the final monitoring year, the reasons for this failure shall be determined, and a corrective action plan shall be submitted to DEQ for approval with or before that year's monitoring report. The corrective action plan shall contain at minimum the proposed actions, a schedule for those actions, and a monitoring plan, and shall be implemented by the permittee in accordance with the approved schedule. Should significant changes be necessary to ensure success, the required monitoring cycle shall begin again, with monitoring year one being the year that the changes are complete, as confirmed by DEQ. If the wetland or stream compensation area fails to meet the specified success criteria by the final monitoring year, or if the wetland or stream compensation area has not met the stated restoration goals, reasons for this failure shall be determined and a corrective action plan, including proposed actions, a schedule, and a monitoring plan, shall be submitted with the final year monitoring report for DEQ approval. Corrective action shall be implemented by the permittee in

accordance with the approved schedule. Annual monitoring shall be required to continue until two sequential, annual reports indicate that all criteria have been successfully satisfied and the site has met the overall restoration goals (e.g., that corrective actions were successful).

19. The surveyed wetland boundary for the wetlands compensation site shall be based on the results of the hydrology, soils, and vegetation monitoring data and shall be shown on the site plan. Calculation of total wetland acreage shall be based on that boundary at the end of the monitoring cycle. Data shall be submitted by December 31 of the final monitoring year.

20. Herbicides or algicides shall not be used in or immediately adjacent to the wetlands or stream compensation site or sites without prior authorization by the board. All vegetation removal shall be done by manual means, unless authorized by DEQ in advance.

B. Impact site construction monitoring.

1. Construction activities authorized by this permit that are within impact areas shall be monitored and documented. The monitoring shall document the preexisting conditions, activities during construction, and post-construction conditions. Monitoring shall consist of one of the following options:

- a. Photographs shall be taken during construction at the end of the first, second, and third months after commencing construction, and then every six months thereafter for the remainder of the construction project. Photos are not required during periods of no activity within impact areas.

- b. An ortho-rectified photograph shall be taken by a firm specializing in ortho-rectified photography prior to construction, and then annually thereafter, until all impacts are taken. Photos shall clearly show the delineated surface waters and authorized impact areas.

- c. In lieu of photographs, and with prior approval from DEQ, the permittee may submit a written narrative that summarizes site construction activities in impact areas. The narrative shall be submitted at the end of the first, second, and third months after commencing construction, and then every six months thereafter, for the remainder of the construction activities. Narratives are not required during periods of no activity within the impact areas.

2. As part of construction monitoring, photographs taken at the photo stations or the narrative shall document site activities and conditions, which may include installation and maintenance of erosion and sediment controls; surface water discharges from the site; condition of adjacent nonimpact surface waters; flagged nonimpact surface waters; construction access and staging areas; filling,

Regulations

excavation, and dredging activities; culvert installation; dredge disposal; and site stabilization, grading, and associated restoration activities. With the exception of the preconstruction photographs, photographs at an individual impact site shall not be required until construction activities are initiated at that site. With the exception of the post-construction photographs, photographs at an individual impact site shall not be required once the site is stabilized following completion of construction at that site.

3. Each photograph shall be labeled to include the following information: permit number, impact area and photo station number, date and time of the photograph, name of the person taking the photograph, photograph orientation, and photograph subject description.

4. Monitoring of water quality parameters shall be conducted during permanent relocation of perennial streams through new channels in the manner noted below. The permittee shall report violations of water quality standards to DEQ in accordance with the procedures in Part II E. Corrective measures and additional monitoring may be required if water quality standards are not met. Reporting shall not be required if water quality standards are not violated.

a. A sampling station shall be located upstream and immediately downstream of the relocated channel.

b. Temperature, pH and dissolved oxygen (D.O.) measurements shall be taken every 30 minutes for at least two hours at each station prior to opening the new channels and immediately before opening new channels.

c. Temperature, pH and D.O. readings shall be taken after opening the channels and every 30 minutes for at least three hours at each station.

C. Wetland compensation site monitoring.

1. An as-built ground survey, or an aerial survey provided by a firm specializing in aerial surveys, shall be conducted for the entire compensation site or sites including invert elevations for all water elevation control structures and spot elevations throughout the site or sites. Aerial surveys shall include the variation from actual ground conditions, such as +/- 0.2 feet. Either type of survey shall be certified by a licensed surveyor or by a registered professional engineer to conform to the design plans. The survey shall be submitted within 60 days of completing compensation site construction. Changes or deviations in the as-built survey or aerial survey shall be shown on the survey and explained in writing.

2. Photographs shall be taken at the compensation site or sites from the permanent markers identified in the final compensation plan, and established to ensure that the same locations and view directions at the site or sites are monitored in each monitoring period. These photographs

shall be taken after the initial planting and at a time specified in the final compensation plan during every monitoring year.

3. Compensation site monitoring shall begin on day one of the first complete growing season (monitoring year 1) after wetland compensation site construction activities, including planting, have been completed. Monitoring shall be required for monitoring years 1, 2, 3, and 5, unless otherwise approved by DEQ. In all cases if all success criteria have not been met in the final monitoring year, then monitoring shall be required for each consecutive year until two annual sequential reports indicate that all criteria have been successfully satisfied.

4. The establishment of wetland hydrology shall be measured during the growing season, with the location and number of monitoring wells, and frequency of monitoring for each site, set forth in the final monitoring plan. Hydrology monitoring well data shall be accompanied by precipitation data, including rainfall amounts either from on site or from the closest weather station. Once the wetland hydrology success criteria have been satisfied for a particular monitoring year, monitoring may be discontinued for the remainder of that monitoring year following DEQ approval. After a period of three monitoring years, the permittee may request that hydrology monitoring be discontinued, providing that adequate hydrology has been established and maintained. Hydrology monitoring shall not be discontinued without written approval from DEQ.

5. The presence of hydric soils or soils under hydric conditions shall be evaluated in accordance with the final compensation plan.

6. The establishment of wetland vegetation shall be in accordance with the final compensation plan. Monitoring shall take place in August, September, or October during the growing season of each monitoring year, unless otherwise authorized in the monitoring plan:

7. The presence of undesirable plant species shall be documented.

8. All wetland compensation monitoring reports shall be submitted in accordance with 9VAC25-690-100 Part II E 6.

D. Stream compensation, restoration, and monitoring.

1. Riparian buffer restoration activities shall be detailed in the final compensation plan and shall include, as appropriate, the planting of a variety of native species currently growing in the site area, including appropriate seed mixtures and woody species that are bare root, balled, or burlapped. A minimum buffer width of 50 feet, measured from the top of the stream bank at bankfull

elevation landward on both sides of the stream, shall be required where practical.

2. The installation of root wads, vanes, and other instream structures, shaping of the stream banks, and channel relocation shall be completed in the dry whenever practicable.

3. Livestock access to the stream and designated riparian buffer shall be limited to the greatest extent practicable.

4. Stream channel restoration activities shall be conducted in the dry or during low flow conditions. When site conditions prohibit access from the streambank, heavy equipment shall be authorized for use within the stream channel.

5. Photographs shall be taken at the compensation site from the vicinity of the permanent photo stations identified in the final compensation plan. The photograph orientation shall remain constant during all monitoring events. At a minimum, photographs shall be taken from the center of the stream, facing downstream, with a sufficient number of photographs to view the entire length of the restoration site. Photographs shall document the completed restoration conditions. Photographs shall be taken prior to site activities, during instream and riparian compensation construction activities, within one week of completion of activities, and during at least one day of each monitoring year to depict restored conditions.

6. An as-built ground survey, or an aerial survey provided by a firm specializing in aerial surveys, shall be conducted for the entire compensation site or sites. Aerial surveys shall include the variation from actual ground conditions, such as +/- 0.2 feet. The survey shall be certified by the licensed surveyor or by a registered, professional engineer to conform to the design plans. The survey shall be submitted within 60 days of completing compensation site construction. Changes or deviations from the final compensation plans in the as-built survey or aerial survey shall be shown on the survey and explained in writing.

7. Compensation site monitoring shall begin on day one of the first complete growing season (monitoring year 1) after stream compensation site construction activities, including planting, have been completed. Monitoring shall be required for monitoring years 1 and 2, unless otherwise determined by DEQ. In all cases, if all success criteria have not been met in the final monitoring year, then monitoring shall be required for each consecutive year until two annual sequential reports indicate that all criteria have been successfully satisfied.

8. All stream compensation monitoring reports shall be submitted by in accordance with 9VAC25-690-100 Part II E 6.

E. Reporting.

1. Written communications required by this VWP general permit shall be submitted to the appropriate DEQ office. The VWP general permit authorization number shall be included on all correspondence.

2. DEQ shall be notified in writing at least 10 days prior to the start of construction activities at the first permitted site authorized by this VWP general permit authorization so that inspections of the project can be planned, if deemed necessary by DEQ. The notification shall include a projected schedule for initiation and completion of work at each permitted impact area.

3. Construction monitoring reports shall be submitted to DEQ no later than the 10th day of the month following the month in which the monitoring event specified in Part II B takes place, unless otherwise specified below. The reports shall include the following, as appropriate:

a. For each permitted impact area, a written narrative stating whether work was performed during the monitoring period, and if work was performed, a description of the work performed, when the work was initiated, and the expected date of completion.

b. Photographs labeled with the permit number, the photo station number, the photo orientation, the date and time of the photo, the name of the person taking the photograph, and a brief description of the construction activities. The first construction monitoring report shall include the photographs taken at each impact site prior to initiation of construction in a permitted impact area. Written notification and photographs demonstrating that all temporarily disturbed wetland and stream areas have been restored in compliance with the permit conditions shall be submitted within 30 days of restoration. The post-construction photographs shall be submitted within 30 days of documenting post-construction conditions.

c. Summary of activities conducted to comply with the permit conditions.

d. Summary of permit noncompliance events or problems encountered, subsequent notifications, and corrective actions.

e. Summary of anticipated work to be completed during the next monitoring period, and an estimated date of construction completion at all impact areas.

f. Labeled site map depicting all impact areas and photo stations.

4. DEQ shall be notified in writing within 30 days following the completion of all activities in all permitted impact areas authorized under this permit.

5. DEQ shall be notified in writing at least 10 days prior to the initiation of activities at the compensation site. The

Regulations

notification shall include a projected schedule of activities and construction completion.

6. All compensation monitoring reports shall be submitted annually by December 31, with the exception of the last year of authorization, in which case the report shall be submitted at least 60 days prior to expiration of authorization under the general permit.

a. All wetland compensation monitoring reports shall include, as applicable, the following:

(1) General description of the site including a site location map identifying photo stations, vegetative and soil monitoring stations, monitoring wells, and wetland zones.

(2) Summary of activities completed during the monitoring year, including alterations or maintenance conducted at the site.

(3) Description of monitoring methods.

(4) Analysis of all hydrology information, including monitoring well data, precipitation data, and gauging data from streams or other open water areas, as set forth in the final compensation plan.

(5) Evaluation of hydric soils or soils under hydric conditions, as appropriate.

(6) Analysis of all vegetative community information, including woody and herbaceous species, both planted and volunteers, as set forth in the final compensation plan.

(7) Photographs labeled with the permit number, the name of the compensation site, the photo station number, the photograph orientation, the date and time of the photograph, the name of the person taking the photograph, and a brief description of the photograph subject. This information shall be provided as a separate attachment to each photograph, if necessary. Photographs taken after the initial planting shall be included in the first monitoring report after planting is complete.

(8) Discussion of wildlife or signs of wildlife observed at the compensation site.

(9) Comparison of site conditions from the previous monitoring year and reference site.

(10) Discussion of corrective measures or maintenance activities to control undesirable species, to repair damaged water control devices, or to replace damaged planted vegetation.

(11) Corrective action plan, which includes proposed actions, a schedule, and monitoring plan.

b. All stream compensation monitoring reports shall include, as applicable, the following:

(1) General description of the site including a site location map identifying photo stations and monitoring stations.

(2) Summary of activities completed during the monitoring year, including alterations or maintenance conducted at the site.

(3) Description of monitoring methods.

(4) An evaluation and discussion of the monitoring results in relation to the success criteria and overall goals of compensation.

(5) Photographs shall be labeled with the permit number, the name of the compensation site, the photo station number, the photograph orientation, the date and time of the photograph, the name of the person taking the photograph, and a brief description of the photograph subject. Photographs taken prior to compensation site construction activities, during instream and riparian restoration activities, and within one week of completion of activities shall be included in the first monitoring report.

(6) A discussion of alterations, maintenance, or major storm events resulting in significant change in stream profile or cross section, and corrective actions conducted at the stream compensation site.

(7) Documentation of undesirable plant species and summary of abatement and control measures.

(8) A summary of wildlife or signs of wildlife observed at the compensation site.

(9) Comparison of site conditions from the previous monitoring year and reference site, and as-built survey, if applicable.

(10) A corrective action plan, which includes proposed actions, a schedule and monitoring plan.

(11) Additional submittals that were approved by DEQ in the final compensation plan.

7. The permittee shall notify DEQ in writing when unusual or potentially complex conditions are encountered which require debris removal or involve potentially toxic substance. Measures to remove the obstruction, material, or toxic substance or to change the location of a structure are prohibited until approved by DEQ.

8. The permittee shall report fish kills or spills of oil or fuel immediately upon discovery. If spills or fish kills occur between the hours of 8:15 a.m. to 5 p.m., Monday through Friday, the appropriate DEQ regional office shall be notified; otherwise, the Department of Emergency Management shall be notified at 1-800-468-8892.

9. Violations of state water quality standards shall be reported within 24 hours to the appropriate DEQ office.

10. Submittals required by this VWP general permit shall contain the following signed certification statement:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violation."

Part III. Conditions Applicable to All VWP General Permits.

A. **Duty to comply.** The permittee shall comply with all conditions of the VWP general permit. Nothing in this VWP general permit shall be construed to relieve the permittee of the duty to comply with all applicable federal and state statutes, regulations, and toxic standards and prohibitions. VWP general permit noncompliance is a violation of the Clean Water Act and State Water Control Law, and is grounds for enforcement action, VWP general permit authorization termination for cause, VWP general permit authorization revocation, or denial of a continuation of coverage request.

B. **Duty to mitigate.** The permittee shall take all reasonable steps to minimize or prevent impacts in violation of the VWP general permit which may have a reasonable likelihood of adversely affecting human health or the environment.

C. **Reopener.** This VWP general permit authorization may be reopened to modify its conditions when the circumstances on which the previous VWP general permit authorization was based have materially and substantially changed, or special studies conducted by the board or the permittee show material and substantial change since the time the VWP general permit authorization was issued and thereby constitute cause for VWP general permit authorization revocation and reissuance.

D. **Compliance with state and federal law.** Compliance with this VWP general permit constitutes compliance with the VWP permit requirements of the State Water Control Law. Nothing in this VWP general permit shall be construed to preclude the institution of any legal action under or relieve the permittee from any responsibilities, liabilities, or other penalties established pursuant to any other state law or regulation or under the authority preserved by §510 of the Clean Water Act.

E. **Property rights.** The issuance of this VWP general permit does not convey property rights in either real or personal property, or exclusive privileges, nor does it authorize injury

to private property or invasion of personal property rights, nor infringement of federal, state or local laws or regulations.

F. **Severability.** The provisions of this VWP general permit authorization are severable.

G. **Right of entry.** The permittee shall allow the board or its agents, upon the presentation of credentials, at reasonable times and under reasonable circumstances to enter the permittee's property, public or private, and have access to, inspect and copy records that must be kept as part of the VWP general permit conditions; to inspect facilities, operations or practices (including monitoring and control equipment) regulated or required under the VWP general permit; and to sample or monitor any substance, parameter or activity for the purpose of assuring compliance with the conditions of the VWP general permit or as otherwise authorized by law. For the purpose of this section, the time for inspection shall be deemed reasonable during regular business hours. Nothing contained herein shall make an inspection time unreasonable during an emergency.

H. **Transferability of VWP general permit authorization.** This VWP general permit authorization may be transferred to another person by a permittee when all of the criteria listed below are met. On the date of the VWP general permit authorization transfer, the transferred VWP general permit authorization shall be as fully effective as if it had been issued directly to the new permittee.

1. The current permittee notifies the board of the transfer of the title to the facility or property.

2. The notice to the board includes a written agreement between the current and new permittees containing a specific date of transfer of VWP general permit authorization responsibility, coverage and liability to the new permittee, or that the current permittee will retain such responsibility, coverage or liability, including liability for compliance with the requirements of enforcement activities related to the permitted activity.

3. The board does not notify the current and new permittees of its intent to modify or revoke and reissue the VWP general permit authorization within 15 days.

I. **Notice of planned change.** Authorization under the VWP general permit may be modified subsequent to issuance in one or more of the cases listed below. A notice of planned change is not required if the project results in additional temporary impacts to surface waters, provided that DEQ is notified in writing, the additional temporary impacts are restored to preexisting conditions in accordance with Part I C 11 of this general permit, and the additional temporary impacts do not exceed the general permit threshold for use. The permittee shall notify the board in advance of the planned change, and the planned change request will be reviewed according to all provisions of this regulation.

Regulations

1. The permittee determines that additional permanent wetland, open water, or stream impacts are necessary, provided that the additional impacts are associated with the previously authorized activities in authorized locations within the same phase of development, the cumulative increase in acreage of wetland or open water impacts is not greater than 1/4 acre, the cumulative increase in stream bed impacts is not greater than 100 linear feet, and the additional impacts are fully compensated.

2. The project results in less wetland or stream impacts, in which case, compensation requirements may be modified in relation to the adjusted impacts at the request of the permittee, provided that the adjusted compensation meets the initial authorization compensation goals.

3. There is a change in the project plans that does not result in a change in project impacts.

4. There is a change in the mitigation bank at which credits are purchased or used, provided that the same amount of credits are purchased or used and all criteria for use are met, as detailed in ~~9VAC25-210-115 F~~9VAC25-210-116 E.

5. Typographical errors need to be corrected.

J. VWP general permit authorization termination for cause. This VWP general permit authorization is subject to termination for cause by the board after public notice and opportunity for a hearing. Reasons for termination for cause are as follows:

1. Noncompliance by the permittee with any condition of the VWP general permit authorization;

2. The permittee's failure in the application or during the VWP general permit authorization issuance process to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at any time;

3. The permittee's violation of a special or judicial order; and

4. A determination that the permitted activity endangers human health or the environment and can be regulated to acceptable levels by a VWP general permit authorization planned change or termination for cause.

K. VWP general permit authorization termination by consent. This VWP general permit authorization may be terminated by consent when all permitted activities requiring notification under 9VAC25-690-50 A and all compensatory mitigation have been completed or when the authorized impacts will not occur. The permittee shall submit a request for termination by consent within 30 days of project completion or project cancellation. When submitted for project completion, the termination by consent shall constitute a notice of completion in accordance with 9VAC25-210-130. The director may accept this termination

of authorization on behalf of the board. The request for termination by consent shall contain the following information:

1. Name, mailing address and telephone number of the permittee;

2. Name and location of the activity;

3. The VWP permit authorization number; and

4. One of the following certifications:

a. For project completion:

"I certify under penalty of law that all activities and any required compensatory mitigation authorized by a VWP general permit have been completed. I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit, and that performing activities in surface waters is unlawful where the activity is not authorized by a VWP permit. I also understand that the submittal of this notice does not release me from liability for any violations of this VWP general permit authorization."

b. For project cancellation:

"I certify under penalty of law that the activities and any required compensatory mitigation authorized by this VWP general permit will not occur. I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit, and that performing activities in surface waters is unlawful where the activity is not authorized by a VWP permit. I also understand that the submittal of this notice does not release me from liability for any violations of this VWP general permit authorization, nor does it allow me to resume the permitted activities without reapplication and reauthorization."

c. For events beyond permittee control, the permittee shall provide a detailed explanation of the events, to be approved by DEQ, and the following certification statement:

"I certify under penalty of law that the activities or the required compensatory mitigation authorized by a VWP general permit have changed as the result of events beyond my control (see attached). I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit, and that performing activities in surface waters is unlawful where the activity is not authorized by a VWP permit. I also understand that the submittal of this notice does not release me from liability for any violations of this VWP general permit authorization, nor does it allow me to

resume the permitted activities without reapplication and reauthorization."

L. Civil and criminal liability. Nothing in this VWP general permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

M. Oil and hazardous substance liability. Nothing in this VWP general permit shall be construed to preclude the institution of legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under §311 of the Clean Water Act or §§62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

N. Duty to cease or confine activity. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the activity for which a VWP permit has been granted in order to maintain compliance with the conditions of the VWP permit.

O. Duty to provide information.

1. The permittee shall furnish to the board any information which the board may request to determine whether cause exists for modifying, revoking and reissuing and terminating the VWP permit authorization, or to determine compliance with the VWP permit authorization. The permittee shall also furnish to the board, upon request, copies of records required to be kept by the permittee.

2. Plans, maps, conceptual reports and other relevant information shall be submitted as required by the board prior to commencing construction.

P. Monitoring and records requirements.

1. Monitoring of parameters, other than pollutants, shall be conducted according to approved analytical methods as specified in the VWP permit. Analysis of pollutants will be conducted according to 40 CFR Part 136 (2000), Guidelines Establishing Test Procedures for the Analysis of Pollutants.

2. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

3. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart or electronic recordings for continuous monitoring instrumentation, copies of all reports required by the VWP permit, and records of all data used to complete the application for the VWP permit, for a period of at least three years from the date of the expiration of a granted VWP permit. This period may be extended by request of the board at any time.

4. Records of monitoring information shall include, as appropriate:

- a. The date, exact place and time of sampling or measurements;
- b. The name of the individuals who performed the sampling or measurements;
- c. The date and time the analyses were performed;
- d. The name of the individuals who performed the analyses;
- e. The analytical techniques or methods supporting the information such as observations, readings, calculations and bench data used;
- f. The results of such analyses; and
- g. Chain of custody documentation.

Q. Unauthorized discharge of pollutants. Except in compliance with this VWP general permit, it shall be unlawful for the permittee to:

- 1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances;
- 2. Excavate in a wetland;
- 3. Otherwise alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, to animal or aquatic life, to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses; or
- 4. On and after October 1, 2001, conduct the following activities in a wetland:
 - a. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions;
 - b. Filling or dumping;
 - c. Permanent flooding or impounding; or
 - d. New activities that cause significant alteration or degradation of existing wetland acreage or functions.

VA.R. Doc. No. R08-938; Filed December 14, 2007, 3:00 p.m.



TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Proposed Regulation

Titles of Regulations: 12VAC30-50. Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12VAC30-50-140, 12VAC30-50-150, 12VAC30-50-180; adding 12VAC30-50-228, 12VAC30-50-491).

Regulations

12VAC30-60. Standards Established and Methods Used to Assure High Quality Care (adding 12VAC30-60-180, 12VAC30-60-185).

12VAC30-80. Methods and Standards for Establishing Payment Rates; Other Types of Care (adding 12VAC30-80-32).

12VAC30-120. Waivered Services (amending 12VAC30-120-310, 12VAC30-120-380).

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

Public Hearing Information: No public hearings are scheduled.

Public comments: Public comments may be submitted until March 7, 2008.

Agency Contact: Catherine Hancock, Policy & Research Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 225-4272, FAX (804) 786-1680, or email catherine.hancock@dmas.virginia.gov.

Basis: Section 32.1-325 of the Code of Virginia grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. Section 32.1-324 of the Code of Virginia authorizes the Director of DMAS to administer and amend the Plan for Medical Assistance according to the board's requirements. The Medicaid authority as established by §1902 (a) of the Social Security Act (42 USC §1396a) provides governing authority for payments for services.

Chapter 847 of the 2007 Acts of Assembly, Item 302 PPP, requires that DMAS amend the State Plan for Medical Assistance to provide coverage of: substance abuse treatment services for children and adults including emergency services; evaluation and assessment; outpatient services; evaluation and assessment; outpatient services, also including intensive outpatient services; targeted case management; day treatment and opioid treatment services.

Purpose: The purpose of this regulatory action is to establish coverage of basic substance abuse treatment services in the Medicaid Program. Substance abuse treatment services, with the exception of residential and day treatment services for pregnant and postpartum women, were not previously a part of the State Plan. The addition of these services fills a gap in the continuum of care for Medicaid enrollees.

These current proposed regulations follow previously promulgated emergency regulations for substance abuse treatment for emergency services; evaluation and assessment; outpatient services, intensive outpatient services, targeted case management; day treatment and opioid treatment services for children and adults. The new services are modeled after existing mental health services for consistency.

These new services provide needed resources for persons with substance use disorders. Additionally, studies have demonstrated that Medicaid reimbursement for substance abuse treatment produces savings benefits for both public safety and health. This regulatory action will help protect the health, safety and welfare of Medicaid recipients by providing these new services.

Substance: Currently the Medicaid coverage provided for substance abuse treatment services is for pregnant and postpartum women only. The provisions are for residential treatment services and substance abuse day treatment. Residential treatment services for pregnant and postpartum women provides intensive intervention services in residential facilities other than inpatient facilities for the purposes of improving the pregnancy outcome, treating the substance abuse disorder, strengthening the maternal relationship with existing children and the infant, thus achieving and maintaining a sober and drug free lifestyle. Substance abuse day treatment for pregnant and postpartum women provides intensive intervention services at a central location lasting two or more consecutive hours per day, which may be scheduled multiple times per week.

Substance abuse involves the use of illegal drugs, such as heroin and cocaine, as well as the overuse of alcohol, by both adults and children. Substance abuse can also involve the illegal use of prescription medications by persons for whom this medication has not been prescribed. Persons for whom such prescription medications have been appropriately prescribed can also abuse their medications by using them beyond their treatment needs and by selling their prescriptions as street drugs. The substance abuse covered by this action does not include the use of tobacco or caffeine.

Medicaid provides coverage of existing services through managed care organizations as well as through fee-for-service. Medicaid recipients who live in areas of the state covered by managed care organizations (MCOs) are required to obtain their Medicaid covered services from the MCOs network of providers except if the recipient meets an MCO exclusion reason. Those Medicaid recipients who are excluded from participation in an MCO program and those recipients who live in areas of the state not covered by MCOs obtain Medicaid covered services from providers of their own choice who are enrolled with DMAS and paid under a fee-for-service method.

These proposed regulations for substance abuse treatment cover emergency (crisis) services; evaluation and assessment; outpatient services, intensive outpatient services, targeted case management; day treatment and opioid treatment services for children and adults. As noted above, studies have demonstrated that Medicaid reimbursement for substance abuse treatment produces savings benefits for both public safety and health.

These new covered services will be defined as follows:

1. Emergency (crisis) services – Immediate substance abuse care, available 24 hours a day, seven days per week to assist recipients who are experiencing acute dysfunction requiring immediate clinical attention.
2. Evaluation and assessment – A structured interview documented as a written report that provides recommendations substantiated by findings of the evaluation and documents the need for the specific service.
3. Outpatient services – individual, family, and group therapy, generally less than three hours per week.
4. Intensive out-patient services – nonresidential setting provided to those recipients who do not require the intensive level of care of inpatient, residential, or day treatment services, but require more intensive services than outpatient services.
5. Targeted case management – a plan of care in effect which requires direct or recipient-related contacts or communication or activity with the recipient, family, service providers, or significant others, including at least one face-to face contact with the recipient every 90 days.
6. Day treatment services - include the major psychiatric, psychological, and psycho-educational modalities that include individual, group counseling and family therapy, education about the effects of alcohol and other drugs on the physical, emotional, and social functioning of the individual; relapse prevention, occupational and recreational therapy, or other therapies.
7. Opioid treatment services – covers psychological and psycho-educational services for persons who need opioid therapy.

Treating substance abuse will lead to future savings for the Commonwealth. Studies confirm that every \$1.00 spent on substance abuse treatment services generates savings of \$7.00 in costs of unemployment, social services, health care, public safety, and other system-wide costs.

Additionally, the provision of Medicaid reimbursed substance abuse investment promotes a more efficient use of existing Medicaid expenditures. Studies also indicate that \$1 out of every \$5 Medicaid spends on hospital-based care is related to substance abuse and expanded community services will reduce these costs. There are no anticipated negative issues that will need to be addressed in the permanent regulations.

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 existing provider networks. All other mandated substance

abuse 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 with a fee-for-service payment methodology.

Medicaid recipients who are not either MEDALLION or managed care participants will access these new services through their existing open access of DMAS-enrolled fee-for-service providers.

Issues: The primary advantage to the public is that Medicaid participants will be able to receive certain Medicaid reimbursed substance abuse treatment services. Assisting individuals with recovery from substance abuse will benefit the individual, the family, and the community.

Treating substance abuse will lead to future savings for the Commonwealth. Studies confirm that every \$1.00 spent on substance abuse treatment services generates savings of \$7.00 in costs of unemployment, social services, health care, public safety, and other system-wide costs. Therefore, there are not expected to be any disadvantages for the public.

Additionally, the provision of Medicaid reimbursed substance abuse investment promotes a more efficient use of existing Medicaid expenditures. Studies also indicate that \$1 out of every \$5 Medicaid spends on hospital-based care is related to issues of substance abuse and expanded community services will reduce these costs.

The addition of these services will have a positive impact on health care providers as well. Both public and private providers will be eligible to enroll to render the substance abuse treatment services. Public providers and private practitioners are already accustomed to Medicaid's billing forms, service documentation requirements, and audit standards and practices.

DMAS has not identified any disadvantages to the public regarding this proposal.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to the 2007 Acts of Assembly, Chapter 847, Item 302 PPP, the proposed regulations provide Medicaid coverage for substance abuse treatment services for children and adults. The proposed regulations have been in effect since July 1, 2007 under emergency regulations.

Result of Analysis. The benefits likely exceed the costs for all proposed changes. A different design would likely yield greater net benefits.

Estimated Economic Impact. Pursuant to the 2007 Acts of Assembly, Chapter 847, Item 302 PPP, the proposed regulations provide Medicaid coverage for substance abuse

Regulations

treatment services for children and adults. The covered services include emergency services; evaluation and assessment; outpatient services; intensive outpatient services; targeted case management; day treatment; and opioid treatment.

Prior to the emergency regulations, the only services covered were residential and day treatment services for pregnant and postpartum women. With the proposed changes, a broader spectrum of services is offered to a greater number of Medicaid eligible enrollees.

The new services are available to fee-for-service enrollees, Medallion Primary Care Case Management recipients, and Medallion II recipients. Medallion Primary Care Case Management recipients have direct access to the proposed substance abuse services as they do not need a referral from their primary care physician. Medallion II recipients have access to outpatient services (excluding intensive outpatient services) and assessment and evaluation services through their managed care organization while the rest of the services are provided through the fee-for-service model. In other words, outpatient services (excluding intensive outpatient services) and assessment and evaluation services are included as the services that the managed care organization has responsibility to pay while the rest of the services are carved out of the managed care organization's responsibility.

The available economic research on substance abuse services suggests that the benefits of provision of these services easily outweigh the costs. In general, Holder, 1998¹ reviews the literature on cost and benefits of substance abuse treatment and finds that the results in the literature provide consistent support for the cost effectiveness of the substance abuse treatment. More specifically, Wickizer et al., 2006² find that the cost of providing substance abuse services to Medicaid recipients was \$2,300 per person per year while the benefit in avoided (other) healthcare expenses in the following year was about \$2,500 per person per year. In other words, the provision of substance abuse services appears to pay for itself within one year. When some non-healthcare related benefits of substance abuse treatment such as reduction in crime and increased earnings potential of those treated were included, the benefits appear to greatly exceed the costs. Ettner et al., 2005³ reports \$1,583 in treatment costs versus \$11,487 in monetary benefits to the society representing benefit-cost ratio of greater than 7 to 1.

The Department of Medical Assistance Services (DMAS) estimates that approximately 9,000 recipients will use at least one substance abuse treatment service in FY 2008 at a total cost of approximately \$13.2 million. In FY 2009 and 2010, the projected total Medicaid costs are \$14.5 million and \$15.9 million, respectively. Approximately one half of these amounts will be funded by the federal government while Virginia will be responsible for the other half. Based on the research discussed above, we should expect offsetting

reductions in other Medicaid expenditures in addition to lower crime rates and increased earnings.

The proposed program may also have significant distributional economic effects among the Medicaid providers. As more individuals use substance abuse services, we expect to see an increase in reimbursements to substance abuse services providers and a decrease in reimbursements to the providers of other healthcare services, such as hospital based care services.

In addition, the proposed program is expected to introduce approximately \$181,488 in staff administrative costs to perform prior authorization and utilization review for new services.

It is worth noting that the expected increase in expenditures for the proposed services will result in approximately \$6.6 million in additional federal funds coming into the Commonwealth which would have an expansionary economic effect on overall economic activity, all things being equal. However, this expansionary effect will be offset after about a year when the utilization of other healthcare services decreases as a result of the substance abuse treatment services.

Finally, the proposed regulations do not provide substance abuse treatment services for tobacco and caffeine addiction. Given the widespread use of tobacco and its well documented adverse health effects, the treatment of tobacco addiction would probably significantly increase the net economic benefits expected. However, realizing the future savings in other healthcare related costs requires significant funds in the present to treat tobacco addiction. Thus, when and if such funds become available, making tobacco addiction treatment available to Medicaid recipients would likely be worth much more than the costs of coverage.

Businesses and Entities Affected. The number of providers who may render substance abuse treatment services is estimated to be 765. The number of individuals who may utilize newly available services is estimated to be about 9,000.

Localities Particularly Affected. The proposed regulations apply throughout the Commonwealth.

Projected Impact on Employment. Expected increases in the demand for the use of substance abuse treatment services, and the need for administrative staff to conduct prior authorization and utilization reviews, will likely increase the demand for labor. Expected decreases in other health care services, hospital base care in particular, will likely decrease the demand for labor.

Effects on the Use and Value of Private Property. An expected increase in the use of substance abuse treatment services and a corresponding increase in the revenue that accrues to providers will likely enhance the asset value of

these providers, while the expected decrease in the revenues of other healthcare services will likely decrease the asset value of these providers. Also, any reduction in crime is expected to have a positive impact on the use and value of private property in the Commonwealth.

Small Businesses: Costs and Other Effects. All of the substance abuse service providers are believed to be small businesses. Thus, all of the economic effects discussed above apply to them.

Small Businesses: Alternative Method that Minimizes Adverse Impact. There is no known alternative that will reduce the adverse effect on the providers of other healthcare services, such as hospital based care providers, while achieving the goals of the proposed regulations.

Real Estate Development Costs. The proposed regulations are not expected to have any effect on real estate development costs.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with §2.2-4007.04 of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 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, §2.2-4007.04 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.

¹ Holder, Harold D., 1998, "Cost Benefits of Substance Abuse Treatment: An Overview of Results from Alcohol and Drug Abuse," *The Journal of Mental Health Policy and Economics*, Vol. 1, pp. 23-29.

² Wickizer, Thomas M., et al., 2006, "The Effect of Substance Abuse Treatment on Medicaid Expenditures among General Assistance Welfare Clients in Washington State," *The Milbank Quarterly*, Vol. 84, No. 3, pp. 555-576.

³ Ettner, Susan L., et al., 2005, "Benefit-Cost in the California Treatment Outcome Project: Does Substance Abuse Treatment Pay for Itself?," *Health Research and Educational Trust*, pp. 1-22.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Medical Assistance Services has reviewed the economic impact analysis prepared by the Virginia Department of Planning and Budget regarding the Substance Abuse Services. The department concurs with the economic impact analysis performed by the Department of Planning and Budget.

Summary:

This regulatory action establishes limited coverage of substance abuse treatment services for children and adults. Chapter 847 of the 2007 Acts of Assembly, Item 302 PPP, requires that the Department of Medical Assistance Services (DMAS) amend the State Plan for Medical Assistance to provide coverage of substance abuse treatment services for children and adults effective July 1, 2007. These services 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, were not offered prior to an emergency regulation promulgated by DMAS, which became effective July 1, 2007. The addition of these services fills a gap in the continuum of care for Medicaid enrollees.

MEDALLION Primary Care Case Management (PCCM) recipients now have substance abuse services covered by Medicaid. Unlike most other managed care Medicaid services, substance abuse services do not require a referral by the primary care physician. Medallion II recipients who are enrolled in a Managed Care Organization (MCO) will have outpatient services (excluding Intensive Outpatient Services) and assessment and evaluation services covered by the MCOs. All other mandated substance abuse services to be covered (Emergency Services (Crisis), Intensive Outpatient Services, Day Treatment Services, Opioid Treatment Services, and Substance Abuse Case Management services) have been carved out of the services provided by the Medicaid MCOs and will now be covered as fee-for-service by DMAS.

12VAC30-50-140. Physician's services whether furnished in the office, the patient's home, a hospital, a skilled nursing facility or elsewhere.

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

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

Regulations

C. Routine physicals and immunizations are not covered except when the services are provided under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program and when a well-child examination is performed in a private physician's office for a foster child of the local social services department on specific referral from those departments.

D. Outpatient psychiatric services.

1. Psychiatric services are limited to an initial availability of 26 sessions, without prior authorization during the first treatment year. An additional extension of up to 26 sessions during the first treatment year must be prior authorized by DMAS or its designee. The availability is further restricted to no more than 26 sessions each succeeding year when prior authorized by DMAS or its designee. Psychiatric services are further restricted to no more than three sessions in any given seven-day period. Consistent with §6403 of the Omnibus Budget Reconciliation Act of 1989, medically necessary psychiatric services shall be covered when prior authorized by DMAS or its designee for individuals younger than 21 years of age when the need for such services has been identified in an EPSDT screening.

2. Psychiatric services can be provided by psychiatrists or by a licensed clinical social worker, licensed professional counselor, licensed clinical nurse specialist-psychiatric, or a licensed marriage and family therapist under the direct supervision of a psychiatrist.*

3. Psychological and psychiatric services shall be medically prescribed treatment that is directly and specifically related to an active written plan designed and signature-dated by either a psychiatrist or by a licensed clinical social worker, licensed professional counselor, licensed clinical nurse specialist-psychiatric, or licensed marriage and family therapist under the direct supervision of a psychiatrist.*

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

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

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

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

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

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

E. Any procedure considered experimental is not covered.

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

G. Physician visits to inpatient hospital patients over the age of 21 are limited to a maximum of 21 days per admission within 60 days for the same or similar diagnoses or treatment plan and is further restricted to medically necessary authorized (for enrolled providers)/approved (for nonenrolled providers) inpatient hospital days as determined by the Program.

EXCEPTION: SPECIAL PROVISIONS FOR ELIGIBLE INDIVIDUALS UNDER 21 YEARS OF AGE: Consistent with 42 CFR 441.57, payment of medical assistance services shall be made on behalf of individuals under 21 years of age, who are Medicaid eligible, for medically necessary stays in general hospitals and freestanding psychiatric facilities in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical examination. Payments for physician visits for inpatient days shall be limited to medically necessary inpatient hospital days.

H. (Reserved.)

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

J. (Reserved.)

K. For the purposes of organ transplantation, all similarly situated individuals will be treated alike. Transplant services for kidneys, corneas, hearts, lungs, and livers shall be covered for all eligible persons. High dose chemotherapy and bone marrow/stem cell transplantation shall be covered for all eligible persons with a diagnosis of lymphoma, breast cancer, leukemia, or myeloma. Transplant services for any other medically necessary transplantation procedures that are determined to not be experimental or investigational shall be limited to children (under 21 years of age). Kidney, liver, heart, and bone marrow/stem cell transplants and any other medically necessary transplantation procedures that are determined to not be experimental or investigational require preauthorization by DMAS. Cornea transplants do not require preauthorization. The patient must be considered acceptable for coverage and treatment. The treating facility and transplant staff must be recognized as being capable of providing high quality care in the performance of the

requested transplant. Standards for coverage of organ transplant services are in 12VAC30-50-540 through 12VAC30-50-580.

L. Breast reconstruction/prostheses following mastectomy and breast reduction.

1. If prior authorized, breast reconstruction surgery and prostheses may be covered following the medically necessary complete or partial removal of a breast for any medical reason. Breast reductions shall be covered, if prior authorized, for all medically necessary indications. Such procedures shall be considered noncosmetic.

2. Breast reconstruction or enhancements for cosmetic reasons shall not be covered. Cosmetic reasons shall be defined as those which are not medically indicated or are intended solely to preserve, restore, confer, or enhance the aesthetic appearance of the breast.

M. Admitting physicians shall comply with the requirements for coverage of out-of-state inpatient hospital services. Inpatient hospital services provided out of state to a Medicaid recipient who is a resident of the Commonwealth of Virginia shall only be reimbursed under at least one the following conditions. It shall be the responsibility of the hospital, when requesting prior authorization for the admission, to demonstrate that one of the following conditions exists in order to obtain authorization. Services provided out of state for circumstances other than these specified reasons shall not be covered.

1. The medical services must be needed because of a medical emergency;

2. Medical services must be needed and the recipient's health would be endangered if he were required to travel to his state of residence;

3. The state determines, on the basis of medical advice, that the needed medical services, or necessary supplementary resources, are more readily available in the other state;

4. It is general practice for recipients in a particular locality to use medical resources in another state.

N. In compliance with 42 CFR 441.200, Subparts E and F, claims for hospitalization in which sterilization, hysterectomy or abortion procedures were performed shall be subject to review of the required DMAS forms corresponding to the procedures. The claims shall suspend for manual review by DMAS. If the forms are not properly completed or not attached to the bill, the claim will be denied or reduced according to DMAS policy.

O. Prior authorization is required for the following nonemergency outpatient procedures: Magnetic Resonance Imaging (MRI), including Magnetic Resonance Angiography (MRA), Computerized Axial Tomography (CAT) scans,

including Computed Tomography Angiography (CTA), or Positron Emission Tomography (PET) scans performed for the purpose of diagnosing a disease process or physical injury. The referring physician ordering nonemergency outpatient Magnetic Resonance Imaging (MRI), Computerized Axial Tomography (CAT) scans, or Positron Emission Tomography (PET) scans must obtain prior authorization from the Department of Medical Assistance Services (DMAS) for those scans. The servicing provider will not be reimbursed for the scan unless proper prior authorization is obtained from DMAS by the referring physician.

P. Outpatient substance abuse treatment services shall be limited to an initial availability of 26 therapy sessions without prior authorization during the first treatment year. An additional extension of up to 26 sessions during the first treatment year must be prior authorized by DMAS or its designee. The availability is further restricted to no more than 26 therapy sessions each succeeding year when prior authorized by DMAS or its designee. Outpatient substance abuse treatment services are further restricted to no more than three sessions in any given seven-day period. Consistent with §6403 of the Omnibus Budget Reconciliation Act of 1989, medically necessary substance abuse services shall be covered when prior authorized by DMAS or its designee for individuals younger than 21 years of age when the need for such services has been identified in an EPSDT screening.

1. Outpatient substance abuse services shall be provided by medical doctors or by doctors of osteopathy who have completed three years of post-graduate residency training in psychiatry; or by a physician or doctor of osteopathy who is certified in addiction medicine. The provider must also be qualified by training and experience in all of the following areas of substance abuse/addiction counseling: clinical evaluation; treatment planning; referral; service coordination; counseling; client, family, and community education; documentation; professional and ethical responsibilities. Outpatient substance abuse treatment services are further defined in 12VAC30-50-228.

2. Psychological and psychiatric substance abuse services shall be prescribed treatment that is directly and specifically related to an active written plan designed and signature-dated by one of the professionals listed in subdivision 1 of this subsection.

3. Psychological or psychiatric substance abuse services shall be considered appropriate when an individual meets the criteria for an Axis I substance-related disorder. Nicotine or caffeine abuse or dependence shall not be covered. The Axis I substance-related disorder shall meet American Society of Addiction Medicine (ASAM) Level of Care Criteria as prescribed in Patient Placement Criteria for the Treatment of Substance-Related Disorders/ASAMPPC-2, Second Edition.

Regulations

4. Psychological or psychiatric substance abuse services may be provided in an office or a clinic under the direction of a physician.

*Licensed clinical social workers, licensed professional counselors, licensed clinical nurse specialists-psychiatric, and licensed marriage and family therapists may also directly enroll or be supervised by psychologists as provided for in 12VAC30-50-150.

12VAC30-50-150. Medical care by other licensed practitioners within the scope of their practice as defined by state law.

A. Podiatrists' services.

1. Covered podiatry services are defined as reasonable and necessary diagnostic, medical, or surgical treatment of disease, injury, or defects of the human foot. These services must be within the scope of the license of the podiatrists' profession and defined by state law.

2. The following services are not covered: preventive health care, including routine foot care; treatment of structural misalignment not requiring surgery; cutting or removal of corns, warts, or calluses; experimental procedures; acupuncture.

3. The Program may place appropriate limits on a service based on medical necessity or for utilization control, or both.

B. Optometrists' services. Diagnostic examination and optometric treatment procedures and services by ophthalmologists, optometrists, and opticians, as allowed by the Code of Virginia and by regulations of the Boards of Medicine and Optometry, are covered for all recipients. Routine refractions are limited to once in 24 months except as may be authorized by the agency.

C. Chiropractors' services are not provided.

D. Other practitioners' services; psychological services, psychotherapy. Limits and requirements for covered services are found under Outpatient Psychiatric Services (see 12VAC30-50-140 D).

1. These limitations apply to psychotherapy sessions provided, within the scope of their licenses, by licensed clinical psychologists or licensed clinical social workers/licensed professional counselors/licensed clinical nurse specialists-psychiatric/licensed marriage and family therapists who are either independently enrolled or under the direct supervision of a licensed clinical psychologist. Psychiatric services are limited to an initial availability of 26 sessions without prior authorization. An additional extension of up to 26 sessions during the first treatment year must be prior authorized by DMAS or its designee. The availability is further restricted to no more than 26 sessions each succeeding treatment year when prior

authorized by DMAS or its designee. Psychiatric services are further restricted to no more than three sessions in any given seven-day period.

2. Psychological testing is covered when provided, within the scope of their licenses, by licensed clinical psychologists or licensed clinical social workers/licensed professional counselors/licensed clinical nurse specialists-psychiatric, marriage and family therapists who are either independently enrolled or under the direct supervision of a licensed clinical psychologist.

E. Outpatient substance abuse services are limited to an initial availability of 26 sessions without prior authorization during the first treatment year. An additional extension of up to 26 sessions is available during the first treatment year and must be prior authorized by DMAS or its designee. The availability is further restricted to no more than 26 sessions each succeeding year when prior authorized by DMAS or its designee. Outpatient substance abuse services are further restricted to no more than three sessions in any given seven-day period. Consistent with §6403 of the Omnibus Budget Reconciliation Act of 1989, medically necessary substance abuse services shall be covered when prior authorized by DMAS or its designee for individuals younger than 21 years of age when the need for such services has been identified in an EPSDT screening.

1. Outpatient substance abuse services shall be provided by a licensed clinical psychologist, licensed clinical social worker, licensed professional counselor, licensed psychiatric clinical nurse specialist, a licensed psychiatric nurse practitioner, a licensed marriage and family therapist, a licensed substance abuse treatment practitioner, or an individual who holds a bachelor's degree and certification as a substance abuse counselor (CSAC) who is under the direct supervision of one of the licensed practitioners listed in this section, or an individual who holds a Bachelor's degree and is a certified addictions counselor (CAC) who is under the direct supervision of one of the licensed practitioners listed in this section. Outpatient substance abuse treatment services are further defined in 12VAC30-50-228.

2. Psychological and psychiatric substance abuse services shall be prescribed treatment that is directly and specifically related to an active written plan designed and signature-dated by one of the professionals listed in subdivision 1 of this subsection.

3. Psychological or psychiatric substance abuse services shall be considered appropriate when an individual meets criteria for an Axis I substance-related disorder. Nicotine or caffeine abuse or dependence shall not be covered. The Axis I substance-related disorder shall meet American Society of Addiction Medicine (ASAM) Level of Care Criteria as prescribed in Patient Placement Criteria for the

Treatment of Substance-Related Disorders/ASAMPPC-2), Second Edition.

4. Psychological or psychiatric substance abuse services may be provided in an office or a clinic.

12VAC30-50-180. Clinic services.

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

B. Clinic services means preventive, diagnostic, therapeutic, rehabilitative, or palliative items or services that:

1. Are provided to outpatients;
2. Are provided by a facility that is not part of a hospital but is organized and operated to provide medical care to outpatients; and
3. Except in the case of nurse-midwife services, as specified in 42 CFR 440.165, are furnished by or under the direction of a physician or dentist.

C. Reimbursement to community mental health clinics for medical psychotherapy services is provided only when performed by a qualified therapist. For purposes of this section, a qualified therapist is:

1. A licensed physician who has completed three years of post-graduate residency training in psychiatry;
2. An individual licensed by one of the boards administered by the Department of Health Professions to provide medical psychotherapy services including: licensed clinical psychologists, licensed clinical social workers, licensed professional counselors, clinical nurse specialists-psychiatric, or licensed marriage and family therapists; or
3. An individual who holds a master's or doctorate degree, who has completed all coursework necessary for licensure by one of the appropriate boards as specified in subdivision 2 of this subsection, and who has applied for a license but has not yet received such license, and who is currently supervised in furtherance of the application for such license, in accordance with requirements or regulations promulgated by DMAS, by one of the licensed practitioners listed in subdivisions 1 and 2 of this subsection.

D. Coverage of community mental health clinics for substance abuse treatment services, as further defined in 12VAC30-50-228, is provided only when performed by a qualified therapist and consistent with an active written plan designed and signature-dated. For purposes of providing this service a qualified therapist shall be:

1. Medical doctors and doctors of osteopathy who have completed three years of post-graduate residency training in psychiatry or by a physician or doctor of osteopathy who is certified in addiction medicine.

2. A licensed clinical psychologist, licensed clinical social worker, licensed professional counselor, licensed psychiatric clinical nurse specialist, a licensed psychiatric nurse practitioner, a licensed marriage and family therapist, or a licensed substance abuse treatment practitioner. The provider must also be qualified by training and experience in all of the following areas of substance abuse/addiction counseling: clinical evaluation; treatment planning; referral; service coordination; counseling; client, family, and community education; documentation; professional and ethical responsibilities.

3. An individual who holds a master's or doctorate degree, who has completed all coursework necessary for licensure by the respective board, and who has applied for a license but has not yet received such license, and who is currently supervised in furtherance of the application for such license, in accordance with requirements or regulations promulgated by DMAS, by one of the licensed practitioners listed in this subsection.

4. An individual who holds a bachelor's degree in any field and certification as a substance abuse counselor (CSAC) or an individual who holds a bachelor's degree and is a certified addictions counselor (CAC) who is under the direct supervision of one of the licensed practitioners listed in subdivision A1 or 2 of this subsection.

12VAC30-50-228. Community substance abuse treatment services.

A. Services to be covered shall include crisis intervention, day treatment services in nonresidential settings, intensive outpatient services, and opioid treatment services. These services shall be rendered to Medicaid recipients consistent with the criteria specified in 12VAC30-60-250. Individuals shall not receive any combination of day treatment, opioid treatment, and intensive outpatient services concurrently. To be reimbursed by Medicaid, covered services shall meet the following definitions:

1. Emergency (crisis) intervention. This service shall provide immediate substance abuse care, available 24 hours a day, seven days per week, to assist recipients who are experiencing acute dysfunction requiring immediate clinical attention. This service's objectives shall be to prevent exacerbation of a condition, to prevent injury to the recipient or others, and to provide treatment in the context of the least restrictive setting. This service includes therapeutic intervention, stabilization, and referral assistance over the telephone or face-to-face for individuals seeking services for themselves or others.

Regulations

Services are provided in clinics, offices, homes and other community locations.

a. An assessment must be conducted to assess the crisis situation. The assessment must document the need for the service.

b. Crisis intervention activities, limited annually to 180 hours, may include short-term counseling designed to stabilize the recipient, providing access to further immediate assessment and follow-up, and linking the recipient with ongoing care to prevent future crises. Crisis intervention services may include office visits, home visits, telephone contacts, and face-to-face support or monitoring or other client-related activities for the prevention of institutionalization.

c. Assessment and counseling may be provided by a Qualified Substance Abuse Professional (QSAP) as defined in 12VAC30-60-180, or a certified prescriber described in 12VAC30-50-226.

d. Monitoring and face-to-face support may be provided by a QSAP, a certified prescriber, or a paraprofessional. A paraprofessional, as described in 12VAC30-50-226, must be under the supervision of a QSAP and provide services in accordance with a plan of care.

2. Substance abuse day treatment, intensive outpatient, and opioid treatment services. These services shall include the major psychiatric, psychological and psycho-educational modalities to include: individual, group counseling and family therapy; education about the effects of alcohol and other drugs on the physical, emotional, and social functioning of the individual; relapse prevention; occupational and recreational therapy, or other therapies. Family therapy must be focused on the Medicaid eligible individual. To be reimbursed by Medicaid, these covered services shall meet the following definitions:

a. Day treatment services shall be provided in a nonresidential setting and shall be provided in sessions of two or more consecutive hours per day, which may be scheduled multiple times per week to provide a minimum of 20 hours up to a maximum of 30 hours of skilled treatment services per week. This service should be provided to those recipients who do not require the intensive level of care of inpatient or residential services but require more intensive services than outpatient services. Day treatment is the provision of coordinated, intensive, comprehensive, and multidisciplinary treatment to individuals through a combination of diagnostic, medical psychiatric and psychosocial interventions. The maximum annual limit is 1,300 hours. Day treatment services may not be provided concurrently with intensive outpatient services or opioid treatment services.

b. Intensive outpatient services for recipients are provided in a nonresidential setting and may be scheduled multiple times per week, with a maximum of 19 hours of skilled treatment services per week. This service should be provided to those recipients who do not require the intensive level of care of inpatient, residential, or day treatment services, but require more intensive services than outpatient services. Intensive outpatient services are provided in a concentrated manner, and generally involve multiple outpatient visits per week over a period of time for individuals requiring stabilization. These services include monitoring and multiple group therapy sessions during the week, individual and family therapy which are focused on the Medicaid eligible individual. The maximum annual limit is 600 hours. Intensive outpatient services may not be provided concurrently with day treatment services or opioid treatment services.

c. Opioid treatment means an intervention strategy that combines treatment with the administering or dispensing of opioid agonist treatment medication. An individual specific, physician-ordered dose of medication is administered or dispensed either for detoxification or maintenance treatment. Opioid treatment shall be provided in daily sessions with a maximum of 600 hours per year. Day treatment and intensive outpatient services may not be provided concurrently with opioid treatment. Opioid treatment service covers psychological and psycho-educational services. Medication costs for opioid agonists shall be billed separately. An individual-specific, physician-ordered dose of medication may be administered or dispensed either for detoxification or maintenance treatment.

d. Staff qualifications for day treatment, intensive outpatient, and opioid treatment services shall be as follows:

(1) Individual and group counseling, and family therapy, and occupational and recreational therapy must be provided by at least a QSAP.

(2) A QSAP or a paraprofessional, under the supervision of a QSAP, may provide education about the effects of alcohol and other drugs on the physical, emotional and social functioning of the individual, relapse prevention, occupational and recreational activities. A QSAP must be onsite when a paraprofessional is providing services.

(3) Paraprofessionals must participate in supervision as described in 12VAC30-60-250.

B. Evaluations required. Prior to initiation of day treatment, intensive outpatient, or opioid treatment services, an evaluation shall be conducted by at least a QSAP. The minimum evaluation will consist of a structured objective assessment of the impact of substance use or dependence on

the recipient's functioning in the following areas: drug use, alcohol use, legal system involvement, employment and/or school issues, and medical, family-social, and psychiatric issues. If indicated by history or structured assessment, a psychological examination and psychiatric examination shall be included as part of this evaluation. The assessment must be a written report as specified at 12VAC30-60-250 and must document the medical necessity for the service.

C. Consistent with §6403 of the Omnibus Budget Reconciliation Act of 1989, medically necessary substance abuse services shall be covered when prior authorized by DMAS or its designee for individuals younger than 21 years of age when the need for such services has been identified in an EPSDT screening and the above limits have been exceeded.

12VAC30-50-491. Case management services for individuals who have an Axis I substance-related disorder.

A. Target group: The Medicaid eligible recipient shall meet the current DSM diagnostic criteria for an Axis I substance-related disorder. An active client for case management shall mean a recipient for whom there is a plan of care in effect which requires regular direct or recipient-related contacts or communication or activity with the recipient, family or service providers, including at least one face-to-face contact with the recipient every 90 days.

B. Services will be provided to the entire state.

C. Comparability of services: Services are not comparable in amount, duration, and scope. Authority of §1915(g)(1) of the Act is invoked to provide services without regard to the requirements of §1902(a)(10)(B) of the Act.

D. Definition of services: Substance abuse case management services assist recipients in accessing needed medical, psychiatric, psychological, social, educational, vocational, and other supports essential to meeting basic needs. The maximum service limit for case management services is 52 hours per year. Case management services are not reimbursable for recipients residing in institutions, including institutions for mental disease.

Services to be provided shall include:

1. Assessment and planning services, to include developing an Individual Service Plan (does not include performing assessments for severity of substance abuse or dependence, medical, psychological and psychiatric assessment, but does include referral for such assessment);
2. Linking the recipient to services and supports specified in the Individual Service Plan. When available, assessment and evaluation information should be integrated into the Individual Service Plan within two weeks of completion. The Individual Service Plan shall utilize accepted patient

placement criteria and shall be fully completed within 30 days of initiation of service;

3. Assisting the recipient directly for the purpose of locating, developing, or obtaining needed services and resources;

4. Coordinating services and service planning with other agencies and providers involved with the recipient;

5. Enhancing community integration by contacting other entities to arrange community access and involvement, including opportunities to learn community living skills, and use vocational, civic, and recreational services;

6. Making collateral contacts with the recipients' significant others to promote implementation of the service plan and community adjustment;

7. Follow-up and monitoring to assess ongoing progress and to ensure services are delivered; and

8. Education regarding the need for services identified in the Individualized Service Plan (ISP).

Nicotine or caffeine abuse or dependence shall not be covered.

E. Qualifications of providers:

1. The provider of substance abuse case management services must meet the following criteria:

a. The enrolled provider must have the administrative and financial management capacity to meet state and federal requirements;

b. The enrolled provider must have the ability to document and maintain individual case records in accordance with state and federal requirements;

c. The enrolled provider must be licensed by DMHMRSAS as a provider of substance abuse case management services.

2. Providers may bill Medicaid for substance abuse case management only when the services are provided by a professional or professionals who meet at least one of the following criteria:

a. At least a bachelor's degree in one of the following fields (social work, psychology, psychiatric rehabilitation, sociology, counseling, vocational rehabilitation, human services counseling) and has at least one year of substance abuse related clinical experience providing direct services to persons with a diagnosis of mental illness or substance abuse;

b. Licensure by the Commonwealth as a registered nurse or as a practical nurse with at least one year of clinical experience.

Regulations

c. At least a bachelor's degree in any field and certification as a substance abuse counselor (CSAC) or has at least a bachelor's degree in any field and is a certified addictions counselor (CAC).

F. The state assures that the provision of case management services will not restrict a recipient's free choice of providers in violation of §1902(a)(23) of the Act.

1. Eligible recipients shall have free choice of the providers of case management services.

2. Eligible recipients shall have free choice of the providers of other services under the plan.

G. Payment for substance abuse treatment case management services under the Plan does not duplicate payments for other case management made to public agencies or private entities under other Title XIX program authorities for this same purpose.

DOCUMENTS INCORPORATED BY REFERENCE

Diagnostic and Statistical Manual of Mental Disorders-III-R (DSM-III-R) Fourth Edition DSM-IV-TR.

Length of Stay by Diagnosis and Operation, Southern Region, 1996, HCIA, Inc.

Guidelines for Perinatal Care, 4th Edition, August 1997, American Academy of Pediatrics and the American College of Obstetricians and Gynecologists.

Virginia Supplemental Drug Rebate Agreement Contract and Addenda.

Office Reference Manual (Smiles for Children), prepared by DMAS' Dental Benefits Administrator, copyright 2005 (www.dmas.virginia.gov/downloads/pdfs/dental-office_reference_manual_06-09-05.pdf).

Patient Placement Criteria for the Treatment of Substance-Related Disorders (ASAMPPC-2), Second Edition, American Society of Addiction Medicine.

12VAC30-60-180. Utilization review of community substance abuse treatment services.

A. To be eligible to receive these substance abuse treatment services, Medicaid recipients must meet the Diagnostic Statistical Manual diagnostic criteria for an Axis I Substance Use Disorder, with the exception of nicotine or caffeine abuse or dependence. A diagnosis of nicotine or caffeine abuse or dependence alone shall not be sufficient for approval of these services. American Society of Addiction Medicine (ASAM) criteria shall be used to determine the appropriate level of treatment. Referrals for medical examinations shall be made consistent with the Early Periodic Screening and Diagnosis Screening Schedule.

B. Provider qualifications.

1. For Medicaid reimbursed Substance Abuse Day Treatment, Substance Abuse Intensive Outpatient Services, Opioid Treatment Services, a Qualified Substance Abuse Professional (QSAP) is defined as:

a. An individual who has completed master's level training in psychology, social work, counseling, or rehabilitation who also either:

(1) Is certified as a substance abuse counselor by the Virginia Board of Counseling;

(2) Is a certified addictions counselor by the Substance Abuse Certification Alliance of Virginia; or

(3) Holds any certification from the National Association of Alcoholism and Drug Abuse Counselors, or the International Certification and Reciprocity Consortium/Alcohol and Other Drug Abuse, Inc (IC & RC);

b. An individual licensed by the appropriate board of the Virginia Department of Health Professions as either a professional counselor, clinical social worker, registered nurse, psychiatric clinical nurse specialist, a psychiatric nurse practitioner, marriage and family therapist, clinical psychologist, or physician who is qualified by training and experience in all of the following areas of addiction counseling: clinical evaluation; treatment planning; referral; service coordination; counseling; client, family, and community education; documentation; professional and ethical responsibilities;

c. An individual who is licensed as a substance abuse treatment practitioner by the Virginia Board of Counseling;

d. An individual who is certified as either a clinical supervisor by the Substance Abuse Certification Alliance of Virginia or as a Master Addiction Counselor by the National Association of Alcoholism and Drug Abuse Counselors or from the International Certification and Reciprocity Consortium/Alcohol and Other Drug Abuse, Inc (IC & RC).

e. An individual who has completed master's level training in psychology, social work, counseling, or rehabilitation and is certified as a Master Addiction Counselor by the National Association of Alcoholism and Drug Abuse Counselors or from the International Certification and Reciprocity Consortium/Alcohol and Other Drug Abuse, Inc (IC & RC).

f. An individual who has completed a bachelor's degree and is certified as a Substance Abuse Counselor by the Board of Counseling;

g. An individual who has completed a bachelor's degree and is certified as an Addictions Counselor by the Substance Abuse Certification Alliance of Virginia;

h. An individual who has completed a bachelor's degree and is certified as a Level II Addiction Counselor by the National Association of Alcoholism and Drug Abuse Counselors or by the International Certification and Reciprocity Consortium/Alcohol and Other Drug Abuse, Inc (IC & RC).

i. If staff providing services meet only the criteria specified in subdivisions 1 f through h of this subsection, they must be supervised every two weeks by a professional who meets one of the criteria specified in subdivisions 1 a through e of this subsection. Supervision shall include documented face-to-face meetings between the supervisor and the professional providing the services. Documentation shall include review and approval of the plan of care for each recipient to whom services were provided but shall not require that the supervisor be onsite at the time the treatment service is provided.

2. In order to provide substance abuse treatment services, a paraprofessional (peer support specialist) must meet the following qualifications:

a. An associate's degree in one of the following related fields (social work, psychology, psychiatric rehabilitation, sociology, counseling, vocational rehabilitation, human services counseling) and has at least one year of experience providing direct services to persons with a diagnosis of mental illness or substance abuse;

b. An associate's or higher degree, in an unrelated field and at least three years experience providing direct services to persons with a diagnosis of mental illness, substance abuse, gerontology clients, or special education clients. The experience may include supervised internships, practicums, and field experience.

c. A minimum of 90 hours classroom training in behavioral health and 12 weeks of experience under the direct personal supervision of a QSAP providing services to persons with mental illness or substance abuse and at least one year of clinical experience (including the 12 weeks of supervised experience).

d. College credits (from an accredited college) earned toward a bachelor's degree in a human service field that is equivalent to an associate's degree and one year's clinical experience.

e. Licensure by the Commonwealth as a practical nurse with at least one year of clinical experience.

3. Paraprofessionals must participate in clinical supervision with a QSAP at least twice a month. Supervision shall include documented face-to-face meetings between the supervisor and the professional providing the services. Supervision may occur individually or in a group.

4. All providers of substance abuse treatment services must adhere to the requirements of 42 CFR Part 2, Confidentiality of Alcohol and Drug Abuse Patient Records.

5. Day treatment providers must be licensed by the Virginia Department of Mental Health, Mental Retardation, and Substance Abuse Services as providers of day treatment services. Intensive outpatient providers must be licensed by the Virginia Department of Mental Health, Mental Retardation, and Substance Abuse Services as providers of outpatient substance abuse services. The enrolled provider of opioid treatment services must be licensed as a provider of opioid treatment services by the Department of Mental Health, Mental Retardation and Substance Abuse Treatment Services.

C. Evaluations/assessments of the recipient shall be required for day treatment, intensive outpatient, and opioid treatment services. A structured interview shall be documented as a written report that provides recommendations substantiated by the findings of the evaluation and shall document the need for the specific service. Evaluations shall be reimbursed as part of day treatment, intensive outpatient, and opioid treatment services. The structured interview must be conducted by a qualified substance abuse professional as defined above.

D. Individual Service Plan (ISP) for day treatment, intensive outpatient, and opioid treatment services.

1. An initial ISP must be developed. A comprehensive ISP must be fully developed within 30 calendar days of admission to the service.

2. A comprehensive Individual Service Plan shall be developed with the recipient, in consultation with the individual's family, as appropriate, and must address: (i) a summary or reference to the evaluation; (ii) short-term and long-term goals and measurable objectives for addressing each identified individually specific need; (iii) services and supports and frequency of service to accomplish the goals and objectives; (iv) target dates for accomplishment of goals and objectives; (v) estimated duration of service; (vi) the role of other agencies if the plan is a shared responsibility and the staff responsible for the coordination and the integration of services, including designated persons of other agencies if the plan is a shared responsibility. The ISP must be reviewed at least every 90-calendar days and must be modified as appropriate.

E. Individuals shall not receive any combination of day treatment, opioid treatment and intensive outpatient services concurrently.

F. Crisis intervention. Admission to crisis intervention services is indicated following a marked reduction in the recipient's psychiatric, adaptive, or behavioral functioning or

Regulations

an extreme increase in personal distress that is related to the use of alcohol or other drugs. Crisis intervention may be the initial contact with a recipient.

1. The provider of crisis intervention services shall be licensed as a provider of Substance Abuse Outpatient Services by DMHMRSAS. Providers may bill Medicaid for substance abuse crisis intervention only when the services are provided by either a professional or professionals who meet at least one of the criteria listed herein.

2. Only recipient-related activities provided in association with a face-to-face contact shall be reimbursable.

3. An ISP shall not be required for newly admitted recipients to receive this service. Inclusion of crisis intervention as a service on the ISP shall not be required for the service to be provided on an emergency basis.

4. Other than the annual service limits, there shall be no restrictions (regarding numbers of contacts or a given time period to be covered) for reimbursement for unscheduled crisis contacts. An ISP must be developed within 30 days of service initiation.

5. For recipients receiving scheduled, short-term counseling as part of the crisis intervention service, the ISP must reflect the short-term counseling goals.

6. Crisis intervention services may be provided outside of the clinic and billed, provided the provision of out-of-clinic services is clinically or programmatically appropriate for the recipient's needs, and it is included on the ISP. Travel by staff to provide out-of-clinic services shall not be reimbursable. Crisis intervention may involve contacts with the family or significant others.

7. Documentation must include the efforts at resolving the crisis to prevent institutional admissions.

12VAC30-60-185. Utilization review of case management.

A. Utilization review: community substance abuse treatment services.

1. The Medicaid recipient shall meet the current Diagnostic Statistical Manual criteria for an Axis I substance-related disorder. Nicotine or caffeine abuse or dependence shall not be covered.

2. Reimbursement shall be provided only for "active" case management. An active client for case management shall mean an individual for whom there is a plan of care in effect that requires regular direct or client-related contacts or activity or communication with the client or families, significant others, service providers, and others including a minimum of one face-to-face client contact within a 90-day period.

3. Except for a 30-day period following the initiation of this case management service by the recipient, in order to continue receiving case management services, the Medicaid recipient must be receiving another substance abuse treatment service;

4. Billing can be submitted for an active recipient only for months in which direct or client-related contacts, activity, or communications occur.

5. There is a maximum annual service limit of 52 hours for case management services.

6. An initial Individual Service Plan (ISP) must be completed and must document the need for active case management before case management services can be billed. A comprehensive ISP shall be fully developed within 30 days of initiation of this service, which requires regular direct or recipient-related contacts or activity or communication with the recipient or families, significant others, service providers, and others including a minimum of one face-to-face client contact every 90 days. The case manager shall review the ISP every 90 days for the purpose of updating it or otherwise modifying it as appropriate for the recipient's changing condition.

7. The ISP shall be updated at least every 90 days or within seven days of a change in the recipient's treatment.

B. Utilization review: substance abuse treatment case management services.

1. Utilization review general requirements. On-site utilization reviews shall be conducted. Reimbursement shall be provided only for "active" case management clients. An active client for case management shall mean an individual for whom there is a plan of care in effect that requires regular direct or client-related contacts or activity or communication with the client or families, significant others, service providers, and others including a minimum of one face-to-face client contact within a 90-day period. Billing can be submitted only for months in which direct or client-related contacts, activity or communications occur.

2. The Medicaid eligible individual shall meet the current Diagnostic and Statistical Manual of Mental Disorders criteria for an Axis I Substance Abuse Disorder, with the exception of nicotine or caffeine abuse or dependence. A diagnosis of nicotine or caffeine abuse or dependence alone shall not be sufficient for reimbursement of these services.

3. The maximum annual limit for substance abuse treatment case management shall be 52 hours per year. Case management shall not be billed for persons in institutions for mental disease. Substance abuse treatment case management shall not be billed concurrently with any other type of Medicaid reimbursed case management.

4. The ISP must document the need for case management and be fully completed within 30 days of initiation of the service and the case manager shall review the ISP every three months. Such reviews must be documented in the client's record. The review will be due by the last day of the third month following the month in which the last review was completed. If needed a grace period will be granted up to the last day of the fourth month following the month of the last review. When the review was completed in a grace period, the next subsequent review shall be scheduled three months from the month the review was due and not the date of actual review.

5. The ISP shall be updated at least annually.

6. The provider of case management services shall be licensed by DMHMRSAS as a provider of case management services.

DOCUMENTS INCORPORATED BY REFERENCE

Diagnostic and Statistical Manual of Mental Disorders—~~III-R~~ (DSM-III-R) Fourth Edition, DSM-IV-TR.

Length of Stay by Diagnosis and Operation, Southern Region, 1996, HCIA, Inc.

Guidelines for Perinatal Care, 4th Edition, August 1997, American Academy of Pediatrics and the American College of Obstetricians and Gynecologists.

Virginia Supplemental Drug Rebate Agreement Contract and Addenda.

Office Reference Manual (Smiles for Children), prepared by DMAS' Dental Benefits Administrator, copyright 2005 (www.dmas.virginia.gov/downloads/pdfs/dental-office_reference_manual_06-09-05.pdf).

12VAC30-80-32. Reimbursement for substance abuse services.

1. Outpatient psychotherapy services for assessment and evaluation or treatment of substance abuse furnished by physicians shall be reimbursed using the methodology in 12VAC30-80-190. For nonphysicians, they shall be reimbursed at the same levels specified in 12VAC30-50-140 and 12VAC30-50-150.

2. Rates for other substance abuse services shall be based on the agency fee schedule for 15 minute units of service. The Medicaid and commercial rates for similar services as well as the cost for providing services shall be considered when establishing the fee schedules so that payments shall be consistent with economy, efficiency, and quality of care. For each level of professional necessary to provide services described in 12VAC30-50-228 and 12VAC30-50-491, separate rates shall be established for licensed professionals, qualified substance abuse professionals

(OSAP) and paraprofessionals. The same rates shall be paid to public and private providers.

12VAC30-120-310. Services exempted from MEDALLION referral requirements.

A. The following services shall be exempt from the referral requirements of MEDALLION:

1. Obstetrical and gynecological services (pregnancy and pregnancy related);
2. Psychiatric and psychological services, to include but not be limited to mental health, mental retardation services;
3. Family planning services;
4. Routine newborn services;
5. Annual or routine vision examinations (under age 21);
6. Emergency services;
7. EPSDT well-child exams;
8. Immunizations (health departments only);
9. All school health services provided pursuant to the Individuals with Disabilities Education Act (IDEA);
10. Services for the treatment of sexually transmitted diseases;
11. Targeted case management services;
12. Transportation services;
13. Pharmacy services;
14. Substance abuse treatment ~~for pregnant women services;~~ and
15. MR waiver services and MH community rehabilitation services.

B. While reimbursement for these services may not require a referral, an authorization, or a referral and an authorization by the PCP, the PCP must continue to track and document them to ensure continuity of care.

12VAC30-120-380. Medallion II MCO responsibilities.

A. The MCO shall provide, at a minimum, all medically necessary covered services provided under the State Plan for Medical Assistance and further defined by written DMAS regulations, policies and instructions, except as otherwise modified or excluded in this part.

1. Nonemergency services provided by hospital emergency departments shall be covered by MCOs in accordance with rates negotiated between the MCOs and the emergency departments.
2. Services that shall be provided outside the MCO network shall include those services identified and defined

Regulations

by the contract between DMAS and the MCO. Services reimbursed by DMAS include dental and orthodontic services for children up to age 21; for all others, dental services (as described in 12VAC30-50-190), school health services (as defined in 12VAC30-120-360) and community mental health services (rehabilitative, targeted case management and the following substance abuse services): treatment services; emergency services (crisis); intensive outpatient services; day treatment services; substance abuse case management services; and opioid treatment services) as defined in 12VAC30-50-228 and 12VAC30-50-491.

3. The MCOs shall pay for emergency services and family planning services and supplies whether they are provided inside or outside the MCO network.

B. Except for those services specifically carved out in subsection A of this section, EPSDT services shall be covered by the MCO. The MCO shall have the authority to determine the provider of service for EPSDT screenings.

C. The MCOs shall report data to DMAS under the contract requirements, which may include data reports, report cards for clients, and ad hoc quality studies performed by the MCO or third parties.

D. Documentation requirements.

1. The MCO shall maintain records as required by federal and state law and regulation and by DMAS policy. The MCO shall furnish such required information to DMAS, the Attorney General of Virginia or his authorized representatives, or the State Medicaid Fraud Control Unit on request and in the form requested.

2. Each MCO shall have written policies regarding enrollee rights and shall comply with any applicable federal and state laws that pertain to enrollee rights and shall ensure that its staff and affiliated providers take those rights into account when furnishing services to enrollees in accordance with 42 CFR 438.100.

E. The MCO shall ensure that the health care provided to its clients meets all applicable federal and state mandates, community standards for quality, and standards developed pursuant to the DMAS managed care quality program.

F. The MCOs shall promptly provide or arrange for the provision of all required services as specified in the contract between the state and the contractor. Medical evaluations shall be available within 48 hours for urgent care and within 30 calendar days for routine care. On-call clinicians shall be available 24 hours per day, seven days per week.

G. The MCOs must meet standards specified by DMAS for sufficiency of provider networks as specified in the contract between the state and the contractor.

H. Each MCO and its subcontractors shall have in place, and follow, written policies and procedures for processing requests for initial and continuing authorizations of service. Each MCO and its subcontractors shall ensure that any decision to deny a service authorization request or to authorize a service in an amount, duration, or scope that is less than requested, be made by a health care professional who has appropriate clinical expertise in treating the enrollee's condition or disease. Each MCO and its subcontractors shall have in effect mechanisms to ensure consistent application of review criteria for authorization decisions and shall consult with the requesting provider when appropriate.

I. In accordance with 42 CFR 447.50 through 42 CFR 447.60, MCOs shall not impose any cost sharing obligations on enrollees except as set forth in 12VAC30-20-150 and 12VAC30-20-160.

J. An MCO may not prohibit, or otherwise restrict, a health care professional acting within the lawful scope of practice, from advising or advocating on behalf of an enrollee who is his patient in accordance with 42 CFR 438.102.

K. An MCO that would otherwise be required to reimburse for or provide coverage of a counseling or referral service is not required to do so if the MCO objects to the service on moral or religious grounds and furnishes information about the service it does not cover in accordance with 42 CFR 438.102.

VA.R. Doc. No. R07-262; Filed December 18, 2007; 10:36 a.m.

TITLE 16. LABOR AND EMPLOYMENT

APPRENTICESHIP COUNCIL

Proposed Regulation

Title of Regulation: **16VAC20-20. Regulations Governing the Administration of Apprenticeship Programs in the Commonwealth of Virginia (amending 16VAC20-20-20, 16VAC20-20-40, 16VAC20-20-50, 16VAC20-20-60, 16VAC20-20-80, 16VAC20-20-110).**

Statutory Authority: §§40.1-117 and 40.1-118 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public comments: Public comments may be submitted until March 7, 2008.

Agency Contact: Beverley G. Donati, Program Director, Department of Labor and Industry, Powers-Taylor Building, 13 South Thirteenth Street, Richmond, VA 23219, telephone (804) 225-4362, FAX (804) 786-8418, TTY (804) 786-2376, or email bev.donati@doli.virginia.gov.

Basis: The Virginia Voluntary Apprenticeship Act of April 1938 was promulgated after the National Apprenticeship Act (Fitzgerald Act) was passed in 1937. The purpose of the Virginia Act was to establish a recognized method of training the skilled workforce needed by manufacturers, the construction industry, defense industries and the shipbuilding industry.

29 CFR Part 29, Labor Standards for the Registration of Apprenticeship Programs, was published in the Federal Register in 1977, and established minimum standards that would have to be met by each state's council or agency to maintain or obtain recognition as a registration agency. Virginia's Voluntary Apprenticeship Act of 1938 was amended in 1978 so that the Virginia Apprenticeship Council would remain the authorized agency to register apprenticeship programs and apprentices in Virginia.

Sections 40.1-117 and 40.1-118 of the Code of Virginia require the Apprenticeship Council to establish standards for apprenticeship agreements. These standards shall not be lower than those prescribed by Chapter 6 (§40.1-117 et seq.) of Title 40.1 and those established pursuant to Article 3 (§54.1-1128 et seq.) of Chapter 11 of Title 54.1 of the Code of Virginia. This regulation establishes those standards and does not exceed the minimum requirements of the state or federal mandates.

Purpose: Although this regulation is mandated by §§40.1-117 and 40.1-118 of the Code of Virginia, the department has also determined that this regulation is essential to protect the health, safety, and welfare of the citizens of Virginia. To that end, the regulation has three goals, which are listed below.

1. To protect the economic welfare of Virginia's citizens by maintaining a highly skilled workforce to compete globally in a changing economy.
2. To provide a method of transition from school to work for high school graduates.
3. To protect public health, safety and welfare with the least possible intrusiveness and cost to citizens and businesses within Virginia.

Virginia remains competitive in construction, manufacturing, and shipbuilding industries. The Commonwealth's skilled workers contribute to national defense and make Virginia a viable choice of locations for industry and corporate headquarters. Graduates in such varied service areas as cosmetology, barbering, nail technicians, opticians, and culinary occupations also contribute to the skilled workforce. During the last three years, an average of more than 1,650 graduates per year have completed apprenticeship training in Virginia. In addition, apprenticeship training has produced many entrepreneurs who now operate businesses in Virginia.

Traditional apprenticeship and student apprenticeship programs also facilitate transition from school to work for

high school graduates. Student apprenticeships permit students to begin their training as part-time employees in local businesses and industries while they attend academic and vocational classes. For Virginia's high school graduates who do not attend a four-year college, a seamless process that eases them into the workforce will help Virginia to compete in a globally changing economy. At the end of the process, these skilled workers will earn reasonable incomes, which will enable them to support themselves and their families. They will support the economy by purchasing goods and services. They will contribute to the financial stability of the Commonwealth by paying taxes.

In addition, properly managed apprenticeship programs protect public health and safety by assuring that the training is conducted according to approved safety and health standards. Training that meets approved standards for compensation of apprentices protects the public welfare and well-being of Virginia's citizens.

Substance: The amendments add new definitions and clarifying language. Some language has been changed to update phrasing. For example, the phrase "supervisor of apprentices" will be deleted and, in its place, will be added "coordinator of apprenticeship."

Issues: The primary advantage to the public, the agency, the Commonwealth, and the regulated community is that the amendments add new definitions and clarifying language with updated phrasing. There are no disadvantages.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Apprenticeship Council (Council) proposes several wording changes to these regulations for clarity and to reflect modern terminology.

Result of Analysis. The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact. The Council proposes several wording changes to these regulations for clarity and to reflect modern terminology. None of the proposed word changes are intended or expected to have any impact.

Businesses and Entities Affected. According to the Department of Labor and Industry, there are approximately 2,000 Virginia employers in manufacturing, construction, service, and technology that currently use the Registered Apprenticeship Program.

Localities Particularly Affected. The proposed amendments will not disproportionately affect particular localities.

Projected Impact on Employment. The proposed amendments are not expected to affect employment.

Regulations

Effects on the Use and Value of Private Property. The proposed amendments are not expected to affect the use and value of private property.

Small Businesses: Costs and Other Effects. The proposed amendments will not affect costs for small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed amendments will not adversely affect small businesses.

Real Estate Development Costs. The proposed amendments will not affect real estate development costs.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with §2.2-4007.04 of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 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, §2.2-4007.04 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 Department of Planning and Budget's economic impact analysis.

Summary:

The proposed amendments add new definitions, modernize terminology, and clarify language.

16VAC20-20-20. Definitions.

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

"Apprentice" means a person as defined by §40.1-120 of the Code of Virginia. Virginia Apprenticeship Council considers all registered apprentices as apprentices until such times as

the apprentices have either satisfactorily completed their apprenticeship program or have been cancelled by the sponsor from the apprenticeship program.

"Apprenticeable occupation" means an occupation as defined by §40.1-120 of the Code of Virginia.

"Apprenticeship agreement" means a written agreement between an apprentice and a program sponsor, which agreement shall meet the criteria outlined in 16VAC20-20-50.

"Apprenticeship Council" or "council" means the Virginia Apprenticeship Council established pursuant to §40.1-117 of the Code of Virginia.

"Apprenticeship program" means a written plan conducted or sponsored by an employer, an association of employers, a joint apprenticeship committee or an organization of employees, which contains all terms and conditions as outlined in this chapter.

"Commissioner" means the Commissioner of the Virginia Department of Labor and Industry.

"Coordinator of apprenticeship" means the person designated by the sponsor to perform the duties outlined in the standards of apprenticeship.

"Job site" means:

Construction: New/renovation with an approved building permit, plan of development, contract number, or contractual agreement.

Nonconstruction: The physical area within the walls that services are offered. The location that is identified on the license issued by the licensing board and/or the political locality.

"Sponsor" means an employer, an association of employers, a joint apprenticeship committee or an organization of employees that has an approved apprenticeship program registered with the council.

"Supervision of apprentices" means any supervisor/foreman/journeyworker/highly skilled mentor may be counted for direct supervision of an apprentice as long as they are of the same trade or occupation as the apprentice.

~~"Supervisor of apprentices" means the person designated by the sponsor to perform the duties outlined in the standards of apprenticeship.~~

"Work processes" means a defined industry specific skill set that must be mastered in the work environment during the term of the apprenticeship.

16VAC20-20-40. Standards for apprenticeship programs.

An apprenticeship program to be eligible for registration with the Virginia Apprenticeship Council shall conform to the following standards:

A. The program is an organized written plan embodying the terms and conditions of employment, training and supervision of one or more apprentices in an apprenticeable occupation and subscribed to by a sponsor who has undertaken to carry out the apprentice training program.

B. The program standards contain the equal opportunity pledge and, when applicable, conform with all other requirements in accordance with the Virginia State Plan for Equal Employment Opportunity in Apprenticeship and provisions concerning the following:

1. The employment and training of the apprentice in an apprenticeable occupation.
2. A statement that on or after the date the standards of apprenticeship are duly executed, it shall be the policy of the sponsor that all apprentices employed in the occupation covered herein shall be governed by the terms and conditions of the standards of apprenticeship, a copy of which will be provided for the sponsor who will make it available to the apprentice for review, upon request.
3. The minimum qualifications required by a sponsor for persons entering the apprenticeship program, with an eligible starting age of not less than 16 years.
4. A provision for the granting of advanced standing or credit on the term of apprenticeship for previously acquired experience, training or skills for all applicants equally, with commensurate wages for any progression step so granted. Credit will be granted only after the record of the apprentice has been reviewed by the sponsor's supervisor of apprentices.
5. The placement of an apprentice under a written apprenticeship agreement, which agreement shall conform to the standards for apprenticeship agreements as stated in 16VAC20-20-50.
6. A term of apprenticeship of not less than 2,000 hours of work experience, consistent with training requirements as established by industry practice and a statement that overtime hours worked by the apprentice will or will not be credited to the term of apprenticeship.
7. Provisions for an initial probationary period of not less than 500 clock hours and no more than 2,000 clock hours of employment and training, during which time termination of the apprenticeship agreement may be effected by the council upon written notification from either party. Full credit will be given for the initial probationary period toward completion of the apprenticeship program.
8. The designation of the ~~supervisor of apprentices~~ coordinator of apprenticeship whose duties shall include:
 - a. Maintaining adequate records of the progress of each apprentice;

b. Assurance of qualified training personnel and adequate supervision on the job;

c. Making reports as required at specified intervals regarding the aptitude, skill and progress of each apprentice;

d. Assurance the apprentice is given instruction in safe working methods in each operation as it is encountered throughout the term of apprenticeship;

e. Making arrangements with the local ~~vocational education authorities~~ related instruction provider for the required related instruction;

f. Such other duties as may be necessary in developing and maintaining an effective apprenticeship program.

9. An outline of the work processes in which the apprentice will receive supervised work experience on the job and the allocation of the approximate time to be spent in each major process.

10. Provision for organized, related and supplemental instruction in technical subjects related to the trade. Such instruction may be given in a classroom through trade industrial courses or correspondence courses of equivalent value, or other forms of self-study. A minimum of 144 hours is recommended for each year of apprenticeship.

11. Provision for a periodic evaluation of each apprentice's progress in job performance and related instruction prior to the expiration of each wage period. Should such a review reveal a lack of interest or ability on the part of the apprentice, the apprentice will be informed of the deficiency and may be placed on probation for a sufficient period of time to determine improvement or failure. At the end of the probationary period, if the apprentice has not shown acceptable improvement, the apprentice agreement may be suspended or revoked. The sponsor will provide written notice of the final action taken to the apprentice and the Virginia Apprenticeship Council.

12. A statement that hours of work for apprentices shall be the same as for other employees in the trade and whether time spent at related instruction will or will not be considered as hours of work.

13. A progressively increasing schedule of wages to be paid the apprentice consistent with the skill acquired and established in accordance with federal and state wage laws.

14. Provisions concerning the ratio of apprentices to journeymen.

a. The minimum numeric ratio of apprentices to journeymen shall be 1:1 except as noted in subdivision B 14 b of this section. Individual program sponsors shall propose, as part of their apprenticeship standards, a ratio of apprentices to journeymen consistent with proper

Regulations

supervision, training, safety and continuity of employment, applicable provisions in collective bargaining agreements, and applicable requirements of recognized licensing boards or authorities.

The Department of Labor and Industry, Division of Registered Apprenticeship Training, will review and approve all ratio proposals based on the explanation and justification provided by each program sponsor. Consideration will be given, but not limited to, the following factors:

- (1) Evidence of ability to assure proper supervision, training, safety, and continuity of employment under the proposed ratio;
- (2) The specific nature of the industry and occupation involved;
- (3) Proposed hiring or upgrading of minorities, females, older workers, dislocated workers, exoffenders, the handicapped, and veterans;
- (4) Evidence of ability to train under the proposed ratio.

If a ratio proposal is disapproved by the division, the sponsor may appeal, in writing, the decision to the commissioner. If the commissioner upholds the decision of the ~~Apprenticeship Training~~ Division of Registered Apprenticeship, the sponsor may appeal to the State Apprenticeship Council. The decision of the council shall be final.

b. Apprenticeship ratio on Davis-Bacon worksites. Effective July 1, 1993, the minimum numeric ratio of apprentices to journeymen for individual program sponsors and for individual contractors signatory to joint and nonjoint apprenticeship programs performing work under the Davis-Bacon and related federal prevailing wage laws shall be worksite-specific and shall be as follows:

One apprentice to the first ~~journeyman~~; journeyworker (1:1);

Two apprentices to the first two ~~journeymen~~; journeyworkers (2:2);

Two apprentices to the first three ~~journeymen~~; journeyworkers (2:3);

Two apprentices to the first four ~~journeymen~~; and journeyworkers (2:4);

Two apprentices to the first five journeyworkers (2:5);

Three apprentices to the first six journeyworkers (3:6);

One additional apprentice for each two ~~journeymen~~ journeyworkers thereafter (3:7; 4:8; 5:10; 5:11; 6:12; etc.).

NOTE: The Virginia Apprenticeship Council considers all registered apprentices as apprentices until such times as the apprentices have either satisfactorily completed their apprenticeship program or have been cancelled by the sponsor from the apprenticeship program.

The ratio for service trucks on Davis-Bacon worksites shall be one apprentice to one journeyman.

Bids submitted for Davis-Bacon work on or after July 1, 1993, must observe these minimum ratio requirements.

These ratio provisions shall apply until either the Congress of the United States of the U.S. Department of Labor mandate different or uniform ratios for Davis-Bacon work.

c. Other requirements related to Davis-Bacon worksites. Sponsors shall notify the Virginia Apprenticeship Council within 30 days of receipt of a citation alleging a violation of the Davis-Bacon Act affecting an apprentice. The notice must be in a form specified by the policies of the Apprenticeship Council. Failure to report citations shall be an omission for which council may consider requiring a remedial action plan or deregistration of the sponsor's program.

The Apprenticeship Council may deregister sponsors who receive final orders of the U.S. Department of Labor or the courts confirming willful or repeated violations of the Davis-Bacon Act affecting registered apprentices.

The effectiveness of the numeric ratio approved for individual program sponsors will be examined every two years during the program sponsor evaluation process.

15. A procedure for lay-off, suspension, cancellation and reinstatement of apprentices. Apprentices may be laid off in the commensurate ratio of apprentices to journeymen. Provided, however, any apprentice laid off shall be offered reinstatement in the seniority standing before any new apprentices shall be registered. Where there is a collective bargaining agreement providing for lay-off procedures for apprentices, it shall prevail over the above stated procedures. The council will be notified in writing of all lay-offs, suspensions, cancellations and reinstatements. The notice will state the reason for the specific action.

16. A statement that if and when the sponsor is no longer able to fulfill his obligations for the training of an apprentice, the apprentice may be transferred or registered with credit for previous training to another sponsor.

17. A statement that the sponsor will notify the council of persons who have successfully completed the apprenticeship program and request the council to prepare a Certificate of Completion for issuance to each person.

18. A statement that the sponsor shall instruct the apprentice in safe and healthful work practices and shall

insure that the apprentice is trained in facilities and other environments that meet the Virginia Occupational Safety and Health Standards for General Industry and the Construction Industry, developed pursuant to the Federal Occupational Safety and Health Act.

19. A statement that in the event a difference of opinion should arise as to any provision of the apprenticeship agreement, either party to the apprenticeship agreement may consult with the council for clarification of the matter in question.

20. The sponsor's assurance that any modification or amendment of the apprenticeship program will be promptly submitted to the council. Any such modification shall be approved by the council and such modification shall not alter or affect apprenticeship agreements in effect without the consent of all parties affected.

21. A statement that the sponsor may have the program cancelled by submitting a written request to the council.

22. A statement that the apprenticeship program may be cancelled by the council if the program is not conducted in accordance with this chapter.

23. A statement identifying the Virginia Apprenticeship Council as the registration agency which agency is recognized by the Bureau of Apprenticeship and Training, United States Department of Labor.

24. A statement identifying the apprentice's responsibilities as an employee.

16VAC20-20-50. Standards for apprenticeship agreements.

The apprenticeship agreement shall contain explicitly or by reference:

1. Names and signatures of the contracting parties (apprentice and sponsor) and the signature of a parent or guardian if the apprentice is a minor.
2. The date of birth, sex, race, social security number and veteran status of the apprentice.
3. Name and address of the sponsor, apprentice and the Virginia Apprenticeship Council.
4. The trade ~~or~~ , craft, or occupation in which the apprentice is to be trained, and the beginning date and duration of the apprenticeship.
5. The number of hours to be spent by the apprentice in work on the job and the number of hours to be spent in related or supplemental instruction.
6. A schedule of the work processes in the trade ~~or~~ , industry divisions, or occupation in which the apprentice is to be trained and the approximate time to be spent at each process.

7. A graduated scale of wages to be paid the apprentice contingent upon satisfactory performance and whether or not the apprentice will be paid for attendance at related or supplemental instruction.

8. Statements providing:

a. For a specific initial probationary period conforming to subdivision B 7 of 16VAC20-20-40;

b. That after the initial probationary period, the apprenticeship agreement may be cancelled or suspended in accordance with subdivision B 11 of 16VAC20-20-40.

9. A reference incorporating as part of the agreement the standards of the apprenticeship program as it exists on the date of the agreement and as it may be amended or modified during the period of the agreement.

10. A statement that the employment and training of apprentices during their apprenticeship, shall be without discrimination because of race, color, religion, national origin, sex or physical handicap which is unrelated to the person's qualification and ability to perform the job.

11. The educational level of the apprentice.

12. Credit for previous experience granted the apprentice.

13. A provision that a sponsor who is unable to fulfill his obligation under the apprentice agreement may, with the approval of the council, transfer such contract to any other sponsor, provided the apprentice consents and such other sponsor agrees to assume the obligations of the apprentice agreement.

16VAC20-20-60. Deregistration procedure.

Deregistration of a program may be effected upon the voluntary action of the sponsor by a written request for cancellation of the registration or by the council instituting formal deregistration proceedings in accordance with the provisions of this section.

A. Voluntary deregistration. The council may cancel the registration of an apprenticeship program by a written acknowledgement of a request stating, but not limited to, the following matters:

1. The registration is cancelled at the sponsor's request, and the effective date thereof.

2. That within 15 days of the date of the acknowledgement, the sponsor shall:

a. Notify all apprentices of such cancellation and the effective date;

b. Inform each apprentice that such cancellation automatically deprives the apprentice of individual registration; and

Regulations

c. That the cancellation of the program removes the apprentice from coverage for federal and state purposes which require approval of an apprenticeship program.

B. Involuntary deregistration. Deregistration proceedings may be undertaken by the council when an apprenticeship program is not conducted, operated and administered in accordance with this chapter, except that deregistration proceedings for violation of equal opportunity requirements shall be processed in accordance with the provisions of the Virginia State Plan for Equal Employment Opportunity in Apprenticeship.

1. Council will notify the sponsor in writing of deregistration for one year after receiving substantial evidence in the record of either:

a. Exposing an apprentice to imminent danger in violation of state occupational safety and health standards;

b. Failure to provide supervision that is adequate for the period of training and the type of work being performed, sufficient to achieve the level of skill training of the trade, craft, or occupation and sufficient to reasonably protect the apprentice from serious occupational injury or illness; or

c. Failure to train an apprentice in accordance with approved apprenticeship program standards and knowingly or fraudulently certifying completion of training.

In lieu of deregistration, council may impose on the program sponsor a remedial action plan designed to bring the program sponsor into compliance with this chapter.

In cases where an employer or employers who are signatory to a joint or nonjoint apprenticeship agreement act in such a manner that the program is not conducted, operated, or administered in accordance with this chapter, council may impose on the joint or nonjoint apprenticeship program a remedial action plan designed to bring the individual member employer(s) into compliance with this chapter.

Prior to any vote by council to deregister an apprenticeship program, or to impose a formal remedial action plan, the program sponsor shall be:

a. Notified by registered mail that council intends to take such action, with the alleged infraction(s) indicated; and

b. Afforded the opportunity to present information to council which bears on the decision to deregister or impose a remedial action plan, either in writing or by personal appearance, within 30 days of receipt of notification by council.

The program sponsor shall be informed in writing of council's decision regarding deregistration or remedial action.

2. Implementation of involuntary deregistration. Council may delay the deregistration for six months to afford presently registered apprentices the opportunity to complete their training. No additional apprentices will be registered during this period.

Council may also award credit to apprentices in deregistered programs sufficient to complete their apprenticeship program.

In cases where apprentices choose to change employers, because deregistration will prevent them from completing their apprenticeship, the council, through the Department of Labor and Industry, will use all appropriate means to assist them in securing employment with a registered apprenticeship sponsor.

16VAC20-20-80. Hearings.

All hearings will be held in accordance with the provisions of §2.2-4019 of the Administrative Process Act, ~~Chapter 1.1-1, §9 6.14:11 of Title 9, of the Code of Virginia.~~

16VAC20-20-110. Program sponsor evaluation procedure.

Program sponsors will be evaluated once every two years to determine adequate compliance with the goal of training apprentices under proper supervision, in a safe environment, in such a manner as to acquire the skills of the ~~trade~~ occupation, with fair compensation based on individual progress consistent with average like compensation of similar industries in the area. Such evaluations will be conducted by the Apprenticeship Division staff pursuant to procedures and criteria established by the Virginia Apprenticeship Council. The council may cancel apprenticeship programs where preexisting criteria are not met.

VA.R. Doc. No. R07-259; Filed December 6, 2007, 12:55 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF ACCOUNTANCY

Proposed Regulation

Title of Regulation: **18VAC5-21. Board of Accountancy Regulations (amending 18VAC5-21-30).**

Statutory Authority: §§54.1-4402, 54.1-4403 and 54.1-4410 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public comments: Public comments may be submitted until 5 p.m. on March 7, 2008.

Agency Contact: Nancy Taylor Feldman, Executive Director, Board of Accountancy, 3600 West Broad Street, Suite 378, Richmond, VA 23230-4916, telephone (804) 367-8540, FAX (804) 367-2174, TTY (804) 367-9753, or email boa@boa.virginia.gov.

Basis: Section 54.1-4402 H of the Code of Virginia provides the board with the authority to establish regulations for the implementation of Chapter 44 (§54.1-4400 et seq.) of Title 54.1 of the Code of Virginia.

Subdivision 3 of §54.1-4403 of the Code of Virginia authorizes the board to promulgate regulations in accordance with the Administrative Process Act (§2.2-4000 et seq.) necessary to assure continued competency, to prevent deceptive or misleading practices by licensees, and to effectively administer the regulatory system.

Section 54.1-4410 of the Code of Virginia requires the board to establish by regulation a requirement for continuing professional education in ethics for CPAs.

Purpose: To fulfill the statutory mandate to ensure that a CPA license is issued to a person who meets the CPA exam requirements established in Virginia, and to provide clarification to those CPA candidates who qualified under the education requirements of the board to sit for the CPA exam prior to July 1, 2006, the Board of Accountancy 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 amendment to the existing regulations will provide the board with opportunity to continue to fulfill the statutory mandate to protect the citizens of the Commonwealth by regulating individual CPAs and CPA firms that provide public accountancy services in Virginia. Extensive research performed by the National Association of State Boards of Accountancy (NASBA) and other industry experts have determined the additional hours of education will significantly enhance the knowledge, skills, and abilities of those individuals seeking to practice public accounting.

Substance: The proposed amendments' principle focus is to provide an extension to those candidates who qualified under the education requirement prior to July 1, 2006. Significant increases in the requirements to effectively perform accounting and auditing tasks and the creation of new tax laws have expanded the required knowledge base that professional practice in accounting requires. Therefore in response, the Virginia Board of Accountancy implemented the 150 semester hour requirement. The goal of the extension is to provide those candidates who qualified for the exam

prior to the deadline an opportunity to pass the CPA exam under the previous guidelines.

The proposed amendment establishes a deadline of December 31, 2008, for those CPA candidates who qualified under the education requirements of the board to sit for the CPA exam prior to July 1, 2006.

Issues: The amendment to the existing regulations will provide the board with opportunity to continue to fulfill the statutory mandate to protect the citizens of the Commonwealth by regulating individual CPAs and CPA firms that provide public accountancy services in Virginia. Extensive research performed by the National Association of State Boards of Accountancy (NASBA) and other industry experts have determined the additional hours of education will significantly enhance the knowledge, skills, and abilities of those individuals seeking to practice public accounting.

After an in depth internal developmental review of the proposed regulatory change and an independent economic impact review by the Department of Planning and Budget, no disadvantages or potential issues have been identified associated with this proposed change.

The Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Accountancy (Board) proposes to require that any candidate for a certified public accountant (CPA) license who qualified to sit for the CPA exam under the education requirements prior to July 1, 2006, pass all sections of the CPA exam by December 31, 2008. If the candidate does not pass all sections of the CPA exam by December 31, 2008, s/he will lose all CPA exam credits and must qualify to sit for the exam using the requirements on or after July 1, 2006.

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

Estimated Economic Impact. Beginning July 1, 2006, the education requirements to sit for the CPA exam increased from at least 120 semester hours of education (including at least 24 semester hours of accounting and at least 18 semester hours in other business courses) to at least 150 semester hours of education (including at least 30 semester hours of accounting and at least 24 semester hours in other business courses). Under current regulation, any candidate who applied to sit for the CPA exam administered prior to July 1, 2006, needs to fulfill only the education required for qualification for the exam prior to July 1, 2006. In addition, under current regulation, candidates must pass all four sections of the CPA exam within the 18-month period that begins on the date that they pass at least one section. If they do not pass the exam within this 18-month period, the exam credit earned will

Regulations

expire. For candidates who fulfilled the requirements to take the exam under the 120-hour education requirement, this means that they would have to re-apply to take the exam after July 1, 2006, and therefore they would have to fulfill the 150-hour education requirement.

Under the proposed amendment, candidates who meet the education requirements of the Board for taking the CPA exam prior to July 1, 2006 (the 120-hour requirement) and who *sit for* at least one part of the CPA exam prior to July 1, 2006, shall pass all parts of the CPA exam by December 31, 2008. The candidates who fail to pass all parts of the exam by December 31, 2008, will lose all CPA exam credits and must meet the requirements of the Board to sit for a CPA exam effective on or after July 1, 2006 (the 150-hour requirement).

Legislation to change the education requirement from 120 semester hours to 150 semester hours was passed in 1999 (Chapter 950, Acts of Assembly 1999). In order to allow CPA candidates and educational institutions time to prepare for the change, the requirement was not instituted until July 1, 2006. The Board then publicized to CPA candidates that candidates would have to re-qualify under the new 150 semester-hour requirement if they had not passed the exam by July 1, 2007. Because the Board found that it would be impossible to finish the required regulatory process in time to institute the July 1, 2007, deadline, the deadline was changed to December 31, 2008. The Board feels that this deadline is necessary in order for it to continue to fulfill the statutory mandate to protect the citizens of the Commonwealth by regulating individual CPAs and CPA firms that provide public accountancy services in Virginia. The American Institute of Certified Public Accountants (AICPA), the National Association of State Boards of Accountancy, and other industry experts have determined that significant increases in the requirements to effectively perform accounting and auditing tasks, and the creation of new tax laws, have expanded the required knowledge base that professional practice in accounting requires. The Board feels that the additional hours of education will significantly enhance the knowledge, skills, and abilities of those individuals seeking to practice public accounting; therefore, it is important to ensure at some point that all CPAs have the necessary hours of education. The benefit of determining the deadline is to ensure that all CPAs have the required knowledge and expertise to practice accounting, which will positively impact the welfare of the public who use these services. In addition, imposing a deadline will ensure consistency across all CPA candidates and might reduce some record-keeping or paperwork for the state.

On July 1, 2006, 1763 candidates for the Uniform CPA exam were permitted by statute to continue under the 120 semester hour requirement. Since that time, 825 have successfully completed the exam and 938 candidates remain in the exam process. Of those 938 candidates, 670 had not passed any section of the exam prior to July 1, 2007. Because under

current regulation, candidates have 18 months from the time they pass a section of the exam to pass the entire exam, these 670 candidates are the only candidates for whom the constraint imposed by the amendment is binding. Under current regulation, these candidates have 18 months from when they pass at least one section of the exam to pass all sections of the exam before they would be subject to the 150-hour education requirement. Under the proposed regulation, these candidates must pass all sections of the exam by December 31, 2008, regardless of when they pass their first section of the exam. We do not know for how long those 670 candidates have been trying to pass the exam. At least one candidate has been trying to pass the exam for ten years.¹

The Board does not anticipate any additional cost to the Commonwealth to implement or enforce the proposed amendment. In addition, the Board does not anticipate a significant slowdown of new licensed CPAs entering the labor market as a result of the proposed deadline. (Since the proposed deadline only affects 38 percent of the original 1763 candidates, and there are currently 21,310 licensed CPAs in Virginia², this seems to be reasonable.) Therefore, the major cost of this amendment will be imposed solely upon the 670 candidates who will have less time to pass the exam. Cost will be imposed only if having to pass the exam in a shorter period of time itself imposes a cost, or if candidates are unable to pass the exam *because* their allowed time period was shortened. These costs are very difficult to quantify. For example, it is reasonable to think that a candidate who might have decided to work while studying for the exam will make the decision not to work in order to spend more time studying to pass the exam in a shorter time period. However, if the candidate passes the exam in a shorter time period, she might be able to make up those lost earnings by being able to work full-time as a licensed CPA earlier than she would have been able to without the proposed amendment.

Estimating the number of candidates who are not likely to pass the exam in a shorter time period is also difficult. Nationally, about 50 percent of all candidates who passed all four sections of the exam passed them after testing four times (i.e., one attempt per section).³ Approximately 31 percent required five or six testing sessions, and the remaining 19 percent required between seven and nineteen testing sessions.⁴ Because these 670 candidates have not passed any sections since July 1, 2006, however, they are likely to either fit into the 19 percent who take between seven and nineteen sessions to pass the exam, or not pass the exam at all.

In the worst case, none of the 670 candidates will pass all four sections of the exam by December 31, 2008. In other words, all 670 candidates will either have to gain 30 more semester-hours of education (including six semester hours of accounting and six semester hours of other business courses) or will have to pursue a different career. The latter will impose a cost on the candidate who will not be able to pursue the career that s/he intended to pursue; however, it could also

provide a monetary benefit to the individual (and the Commonwealth) since the person is likely to engage in full-time economic activity sooner. This argument is particularly compelling for those candidates who have been trying to pass the CPA exam for many years.

For those candidates who do choose to pursue the additional hours of education, the Board estimates that one semester-hour costs between about \$800 (at a four-year college) and \$250 (at a community college). Even if we could estimate the number who will choose to pursue the additional hours, the total cost is difficult to quantify, since, according to the Board, most candidates who qualified to sit for the CPA exam, even under the 120 education-hour requirement, completed 140+ semester hours. These candidates, then, would not need 30 additional semester hours, but ten or fewer semester hours. If, however, all 670 candidates decided to gain all 30 hours of additional semester hours at a four-year college, the total cost would be \$16,080,000.⁵ If all 670 candidates needed 10 additional semester-hours and got those hours at a community college, the total cost would be \$1,675,000.⁶ Either of these numbers represents a reasonable "outside" estimate of total cost of the amendment. However, it is important to note that 47 percent of the original 1763 candidates who qualified under the 120-hour requirement passed the exam since July 1, 2006, and an additional 15 percent have since passed at least one section of the exam. Since the remaining candidates have been attempting to pass the exam since July 1, 2006, it is reasonable to think that many of them will either pass the exam by December 31, 2008, or choose a different career path, making it unnecessary for them to pursue the additional education.

In sum, although there is insufficient data to accurately compare the magnitude of the costs versus the benefits, it seems likely that the benefit to the public outweighs the cost to the 670 affected candidates.

Businesses and Entities Affected. On July 1, 2006, 1763 candidates for the Uniform CPA exam were permitted by statute to continue under the 120 semester hour requirement. Since that time, 825 have successfully completed the exam and 938 candidates remain in the exam process. Of those 938 candidates, 670 had not passed any section of the exam prior to July 1, 2007. The proposed amendment will directly affect the 670 candidates who had not passed any section of the exam prior to July 1, 2007, and their prospective employers. The proposed amendment will also affect the Virginia citizen who uses CPA services.

Localities Particularly Affected. The proposal does not disproportionately affect specific localities.

Projected Impact on Employment. This amendment could affect the part-time employment of the 670 candidates while they are attempting to pass the exam in the shorter time period, and their full-time employment as CPAs should they

not be able to pass the exam in the shorter time period. The amendment should not impact employment in Virginia beyond that of those 670 CPA candidates.

Effects on the Use and Value of Private Property. The proposed amendment is not anticipated to have any negative effect on the use and value of private property.

Small Businesses: Costs and Other Effects. According to the Virginia Society of CPAs, there are 1500 small CPA firms in Virginia.

Small Businesses: Alternative Method that Minimizes Adverse Impact. There is no apparent alternative method that minimizes adverse impact while still accomplishing the intended positive policy goals.

Real Estate Development Costs. The proposed amendment does not create additional costs related to the development of real estate for commercial or residential purposes.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with §2.2-4007.04 of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 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, §2.2-4007.04 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.

¹ Source: Board of Accountancy

² Source: Board of Accountancy

³ There are four sections to the CPA exam that are offered in four two-month testing windows during the year. Candidates may take all four sections in one testing window, or take any one, two, or three sections in one window and the rest in subsequent windows. The only rule is that a candidate cannot retake a failed section in the same testing window; he must wait until the next window to retake a failed section.

⁴ Source: Board of Accountancy, Uniform CPA Exam, <http://www.cpa-exam.org/cpa/bibliography.html>

⁵ 670*30*800

Regulations

⁶ 670*10*250

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The responsible Virginia Board of Accountancy agency representatives have reviewed the Department of Planning and Budget's (DPB) Economic Impact Analysis of 18VAC5-21 relating to the Exam Deadline Extension of Prior Exam Requirements for Qualified Candidates. The agency feels the analysis is thorough and appropriately covers any and all predictable circumstances involving this proposed change in regulation. The agency is in agreement with DPB's analysis.

Summary:

The proposed amendments require that any candidate for a certified public accountant (CPA) license who qualified to sit for the CPA exam under the education requirements prior to July 1, 2006, pass all sections of the CPA exam by December 31, 2008. If the candidate does not pass all sections of the CPA exam by December 31, 2008, he will lose all CPA exam credits and must qualify to sit for the exam using the requirements on or after July 1, 2006.

Part II

Entry Requirements for CPA Certificate, Registration Certificate and CPA Supervising Services Involving the Practice of Public Accounting

18VAC5-21-30. Qualifications for CPA certificate.

A. Each applicant must be a person of good character as defined in 18VAC5-21-10.

B. Education prior to taking the CPA exam.

1. Each candidate whose application to sit for a CPA exam administered prior to July 1, 2006, shall have received a baccalaureate degree or its equivalent conferred by an accredited college or university as required by §54.1-4409 B 1 of the Code of Virginia and shall at the time the application is received have completed the following courses at the undergraduate or graduate level to meet the accounting concentration requirement of §54.1-4409 B 1 of the Code of Virginia:

- a. At least 24 semester hours of accounting including courses covering the subjects of financial accounting, auditing, taxation, and management accounting; and
- b. At least 18 semester hours in business courses (other than the courses described in subdivision 1 a of this subsection).

A candidate whose application is received under the requirements of this subdivision may take the CPA exam so long as the requirements of subsection C of this section are met.

2. Each candidate whose application to sit for a CPA exam administered on or after July 1, 2006, shall meet the requirements of §54.1-4409 B 2 of the Code of Virginia

and shall at the time the application is received have completed the following courses at the undergraduate or graduate level to meet the accounting concentration requirement of §54.1-4409 B 2 of the Code of Virginia:

- a. At least 30 semester hours of accounting, including courses covering the subjects of financial accounting, auditing, taxation, and management accounting; and
- b. At least 24 semester hours in business courses (other than the courses described in subdivision 2 a of this subsection).

3. A quarter hour of coursework shall be considered the equivalent of two-thirds of a semester hour of coursework.

4. Each candidate with a degree or coursework earned at a nonaccredited college or university shall, if credit for such degree or coursework is to be considered by the board, (i) have his educational credentials evaluated by an academic credentials service approved by the board or an accredited institution, as defined in 18VAC5-21-10, to determine the extent to which such credentials are equivalent to the education requirements set forth in subdivisions 1 and 2 of this subsection and (ii) submit such evaluations to the board, which may accept or reject the evaluator's recommendations in whole or in part.

5. Evidence of having obtained the required education shall be submitted in the form of official transcripts transmitted in a manner determined by the board. In unusual circumstances, the board may accept other evidence it deems to be substantially equivalent.

C. CPA exam.

1. Each candidate shall pass (i) a national uniform CPA exam, as approved by the board, in auditing and attestation, regulation, business environment and concepts, business law and professional responsibilities, accounting and reporting (taxation, managerial, governmental and not-for-profit organizations), financial accounting and reporting, and other such related subject areas as deemed appropriate by the board and (ii) an ethics exam approved by the board. Each part of the CPA exam must be passed by attaining a uniform passing grade established through a psychometrically acceptable standard-setting procedure approved by the board.

2. The following rules for granting CPA exam credits are applicable until the computer-based CPA exam becomes effective.

If at a given sitting of the CPA exam a candidate passes two or more but not all sections, then the candidate shall be given credit for those sections that the candidate has passed and need not sit for reexamination in those sections provided the following conditions are met:

- a. At that sitting, the candidate wrote all sections of the CPA exam for which the candidate did not have credit;
- b. The candidate attained a minimum grade of 50 on each section taken at that sitting when the first two sections were passed and in each subsequent sitting attains a minimum grade of 50 on all sections taken at that sitting;
- c. The candidate passes the remaining sections of the CPA exam within six consecutive CPA exams (irrespective of the date on which the CPA exam credit was earned) given after the one at which the first sections were passed; and
- d. At each subsequent sitting at which the candidate seeks to pass any additional sections, the candidate writes all sections for which the candidate does not have credit.

3. The following rules for granting CPA exam credits will take effect beginning with the first computer-based CPA exam:

a. Granting of credit.

- (1) Candidates will be allowed to sit for each section of the CPA exam individually and in any order.
- (2) Candidates will retain credit for any section(s) passed for 18 months, without having to attain a minimum score on failed sections and without regard to whether they have taken other sections. Candidates will not be allowed to retake a failed section(s) within the same CPA exam window.
- (3) Candidates must pass all four sections of the CPA exam within a "rolling" 18-month period, which begins on the date that the first section(s) passed is taken.
- (4) In the event all four sections of the CPA exam are not passed within the rolling 18-month period, credit for any section(s) passed outside that 18-month period will expire and that section(s) must be retaken.

b. Conditional CPA exam credits.

(1) Candidates who have earned conditional credits on the noncomputer-based CPA exam as of the date of the first computer-based CPA exam will be given credits for the corresponding sections of the computer-based CPA exam as follows:

Noncomputer-Based CPA Exam	Computer-Based CPA Exam
Auditing	Auditing and Attestation
Financial Accounting and Reporting (FARE)	Financial Accounting and Reporting

Accounting and Reporting (ARE)	Regulation
Business Law and Professional Responsibilities (LPR)	Business Environment and Concepts

(2) Candidates who have attained conditional status as of the launch date of the first computer-based CPA exam will be allowed a transition period to complete any remaining test sections of the CPA exam. The transition is the maximum number of opportunities that a candidate who has conditioned under the noncomputer-based CPA exam has remaining, at the launch of the computer-based CPA exam, to complete all remaining test sections, or the number of remaining opportunities under the noncomputer-based CPA exam, multiplied by six months, which is first exhausted.

4. The board may, at its discretion, waive any of the above requirements for carryover CPA exam credits, if such waiver is in the public interest.

5. Each candidate shall follow all rules and regulations established by the board with regard to conduct at the CPA exam. Such rules shall include instructions communicated prior to the CPA exam date and instructions communicated at the CPA exam site on the date of the CPA exam.

6. Failure to comply with the rules and regulations governing conduct in the CPA exam may result in the loss of established eligibility to sit for the CPA exam or credit for CPA exam parts passed.

7. A candidate to sit for the CPA exam shall obtain an application form from the board or its designee, complete the application in accordance with the instructions on the application, and submit the application together with all required documents to the board or its designee by the date determined by the board or its designee.

8. A candidate who fails to appear for the CPA exam or reexamination shall forfeit the fees charged for that CPA exam or reexamination unless excused by the board.

9. The fee to sit for the CPA exam is established in 18VAC5-21-20 G, whether paid directly to the board or to a designee under contract to the board.

10. The board or its designee will forward notification of eligibility for the computer-based CPA exam to NASBA's National Candidate Database.

11. Cheating by a candidate in applying for, taking or subsequent to the CPA exam will be deemed to invalidate any grade otherwise earned by a candidate on any test section of the CPA exam, and may warrant summary expulsion from the CPA exam site and disqualification from taking the CPA exam for a specified period of time.

Regulations

12. Notwithstanding any other provisions under these rules, the board may postpone scheduled CPA exams, the release of grades, or the issuance of certificates due to a breach of CPA exam security; unauthorized acquisition or disclosure of the contents of a CPA exam; suspected or actual negligence, errors, omissions, or irregularities in conducting a CPA exam; or for any other reasonable cause or unforeseen circumstances.

13. Candidates who meet the education requirements of the board for taking the CPA exam prior to July 1, 2006, and who sit for at least one part of the CPA exam prior to July 1, 2006, shall pass all parts of the CPA exam by December 31, 2008. Those candidates failing to pass all parts of the CPA exam by December 31, 2008, shall lose all CPA exam credits and shall meet the requirements of the board to sit for a CPA exam effective on or after July 1, 2006.

D. Experience.

1. Each applicant for initial issuance of a CPA certificate under this section shall provide documentation of having met the experience requirements established by §54.1-4409 C of the Code of Virginia, which requires at least one year of acceptable experience in accounting or a related field. The experience may include providing any type of service or advice involving the use of accounting, management, financial, tax, or consulting advisory skills or services. Acceptable experience shall include employment in government, industry, academia or public accounting or related services. The applicant's experience may be supervised by a non-CPA certificate holder, although, when completing the application for the CPA certificate, the experience must be verified by a CPA certificate holder.

2. One year of experience shall consist of full- or part-time employment that extends over a period of no less than a year and no more than three years and includes no fewer than 2,000 hours of performance of services described in subdivision 1 of this subsection.

VA.R. Doc. No. R07-211; Filed December 11, 2007, 9:53 a.m.

REAL ESTATE BOARD

Final Regulation

Title of Regulation: **18VAC135-60. Common Interest Community Management Information Fund Regulations (amending 18VAC135-60-60).**

Statutory Authority: §55-530 of the Code of Virginia.

Effective Date: March 1, 2008.

Agency Contact: Thomas K. Perry, Property Registration Administrator, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA

23233, telephone 804-367-8510, FAX 804-527-4298, or email progreg@dpor.virginia.gov.

Summary:

The amendments increase fees that common interest communities (property owners' associations, real estate cooperative associations and condominium associations) pay into the Common Interest Community Management Fund and institute a seven-tier graduated fee structure so that common interest communities with greater numbers of lots will proportionately pay higher fees.

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.

18VAC135-60-60. Filing Registration fee.

The filing fee for each annual report shall be \$25.

The following fee schedule is based upon the size of each residential common interest community. The application fee is different than the annual renewal fee. All fees are nonrefundable.

<u>Number of Lots/Units</u>	<u>Application Fee</u>	<u>Renewal Fee</u>
<u>1-50</u>	<u>\$45</u>	<u>\$30</u>
<u>51-100</u>	<u>\$65</u>	<u>\$50</u>
<u>101-200</u>	<u>\$100</u>	<u>\$80</u>
<u>201-500</u>	<u>\$135</u>	<u>\$115</u>
<u>501-1000</u>	<u>\$145</u>	<u>\$130</u>
<u>1001-5000</u>	<u>\$165</u>	<u>\$150</u>
<u>5001+</u>	<u>\$180</u>	<u>\$170</u>

Registration certificates are renewable the month following the association's annual meeting.

NOTICE: The forms used in administering the above regulation are not being published; however, the name of each form is listed below. The forms are available for public inspection by contacting the agency contact for this regulation, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

Real Estate Board Community Association Annual Report Registration Application, POAANRPT (4/29/02) ASSOCANRPT (4/06).

CIC Annual Renewal report, CICANRENRP (12/06).

VA.R. Doc. No. R06-230; Filed December 10, 2007, 12:48 p.m.

◆ ————— ◆

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Final Regulation

REGISTRAR'S NOTICE: The State Board of Social Services has claimed an exemption 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 or the appropriation act where no agency discretion is involved. The State Board of Social Services will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **22VAC40-470. Exemptions Applicable to Public Assistance Programs (amending 22VAC40-470-10).**

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

Effective Date: February 6, 2008.

Agency Contact: Walter S. Burton, Jr., Assistant Director for Benefit Programs, Department of Social Services, 7 North 8th Street, Richmond, VA 23219, telephone 804-726-7365, FAX 804-726-7357, toll-free 800-552-3431 or email walter.burton@dss.virginia.gov.

Summary:

The amendment updates an obsolete citation to the Code of Virginia due to the recodification of Title 63.1 of the Code of Virginia.

22VAC40-470-10. Foreign government restitution payments to Holocaust survivors.

The value of foreign government restitution payments made to Holocaust survivors on or after August 1, 1994, shall be disregarded in the determination of eligibility or amount of assistance for all public assistance programs as defined in ~~§63.1-87~~ §63.2-100 of the Code of Virginia.

VA.R. Doc. No. R08-1053; Filed December 18, 2007, 2:52 p.m.

Final Regulation

REGISTRAR'S NOTICE: The State Board of Social Services has claimed an exemption 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 or the appropriation act where no agency discretion is involved. The State Board of Social Services will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **22VAC40-685. Virginia Energy Assistance Program -- Home Energy Assistance Program (amending 22VAC40-685-30).**

Statutory Authority: §§63.2-217 and 63.2-805 of the Code of Virginia.

Effective Date: February 6, 2008.

Agency Contact: Sandy Graham, Energy Assistance Program Consultant, Department of Social Services, 7 North Eighth Street, Room 5214, Richmond, VA 23219, telephone (804) 726-7394, FAX (804) 726-7358, TTY (800) 828-1120, or email sandy.graham@dss.virginia.gov.

Summary:

The amendment changes the required date the Virginia Department of Social Services reports to the Governor and the General Assembly on the effectiveness of low-income energy assistance programs in meeting the needs of low-income Virginians from annually to biennially with no cessation date as required by §63.2-805 of the Code of Virginia.

22VAC40-685-30. Home Energy Assistance Program.

A. The department shall establish the Home Energy Assistance Program for the following purposes:

1. Administer available funds from the Home Energy Assistance Fund;
2. Coordinate energy assistance efforts among agencies of the Commonwealth and nonstate organizations electing to participate in the Home Energy Assistance Program;
3. Conduct research regarding available private and governmental resources for low-income Virginians in need of energy assistance; and
4. Collect data and report on the amounts of energy assistance provided through the department.

B. The Home Energy Assistance Program shall:

1. Disburse funds from the Home Energy Assistance Fund through the existing Virginia Energy Assistance Program.
2. Disburse funds from the Home Energy Assistance Fund by means other than the Virginia Energy Assistance Program at the discretion of the commissioner of the department.
3. Lead and facilitate meetings with other agencies of the Commonwealth and nonstate organizations participating in the Home Energy Assistance Program.
4. Conduct the necessary research to report ~~annually~~ to the Governor and General Assembly as required by §63.2-805 of the Code of Virginia on the effectiveness of low-income energy assistance programs in meeting the needs of low-income Virginians.

Regulations

C. Upon mutually agreed terms, the department may administer the low-income energy assistance programs of public agencies, private utility service providers, and charitable and community groups.

VA.R. Doc. No. R08-1080; Filed December 18, 2007, 12:41 p.m.



GENERAL NOTICES/ERRATA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Restore Water Quality - Amelia and Nottoway Counties

Public meeting: Amelia County Office Building, 16360 Dunn Street, Amelia, Virginia on January 17, 2008, from 7 p.m. to 9 p.m. In case of inclement weather, check the DEQ website for a rescheduled date.

Purpose of notice: The Virginia Department of Environmental Quality and the Department of Conservation and Recreation are announcing the finalizing of a study to restore water quality, a public comment opportunity, and public meeting.

Meeting description: Final public meeting to develop a TMDL implementation plan for restoring water quality.

Description of study: Virginia agencies are working to identify sources of the bacterial contamination in selected waterbodies located in Amelia and Nottoway counties.

Stream Name	Locality	Length (mi.)	Impairment
Nibbs Creek	Amelia	5.43	Bacteria
Flat Creek	Amelia	3.99	Bacteria
West Creek	Amelia	7.22	Bacteria
Deep Creek	Amelia & Nottoway	11.19	Bacteria

These streams are impaired for failure to meet the Primary Contact (Recreational) designated use because of bacterial standard violations.

A TMDL study was completed for these streams in 2004. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, bacterial levels have to be reduced to the TMDL amount. The TMDL Implementation Plan focuses on identifying the conservation efforts to meet the TMDL water quality goals.

How a decision is made: The development of a TMDL Implementation Plan includes a public comment period, including public meetings. After public comments have been considered and addressed, DEQ will submit the TMDL Implementation Plan report to the Virginia State Water Control Board 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, January 17, 2008, to February 19, 2008. DEQ also accepts written and oral comments at the public meeting announced in this notice.

Contact for additional information: Mark Alling, TMDL Manager, Virginia Department of Environmental Quality, Piedmont Regional Office, 4949A Cox Road, Glen Allen, VA 23060, telephone (804) 527-5021, FAX (804)-527-5106, or email msalling@deq.virginia.gov.

Restore Water Quality - James River

Public meeting: Goochland County Administration Building, 1800 Sandy Hook Road, Board Meeting Room 250, Goochland, Virginia, on January 21, 2008, from 7 p.m. to 9 p.m. A Technical Advisory meeting also will be held on January 21, 2008, in the Board Conference Room from 2 p.m. until 4 p.m. In case of inclement weather, check the DEQ website for a rescheduled date.

Purpose of notice: The Virginia Department of Environmental Quality and the Department of Conservation and Recreation are announcing the finalizing of a study to restore water quality, a public comment opportunity, a Technical Advisory Committee meeting, and public meeting.

Meeting description: Final technical advisory committee and public meetings on a study to restore water quality.

Description of study: Virginia agencies are working to identify sources of the bacterial contamination in the waters of the James River and its tributaries in the following jurisdictions:

Stream	County/City	Length (mi.)	Impairment
Byrd Creek	Fluvanna, Goochland, Louisa	25.97	Bacteria
Big & Little Lickinghole Creeks	Goochland	29.54	Bacteria
Fine Creek	Powhatan	10.34	Bacteria
Beaverdam Creek	Goochland, Louisa	8.73	Bacteria
James River	Fluvanna, Cumberland, Goochland, Powhatan	22.87	Bacteria
James River	Goochland, Powhatan	3.64	Bacteria

These streams are impaired for failure to meet the primary contact (recreational) designated use because of bacterial standard violations.

The study reports the sources of bacterial contamination and recommends total maximum daily loads, or TMDLs, for the impaired waters. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, bacterial levels have to be reduced to the TMDL amount.

General Notices/Errata

How a decision is made: The development of a TMDL includes a public comment period, including public meetings. 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, January 21, 2008, to February 20, 2008. DEQ also accepts written and oral comments at the public meeting announced in this notice.

Contact for additional information: Mark Alling, TMDL Manager, Virginia Department of Environmental Quality, Piedmont Regional Office, 4949A Cox Road, Glen Allen, VA 23060, telephone (804) 527-5021, FAX (804)-527-5106, or email msalling@deq.virginia.gov.

Fish Tissue and Sediments Data Available

Pursuant to §62.1-44.19:6 A 3 of the Code of Virginia the Department of Environmental Quality (DEQ) is giving notice that new data concerning the presence of toxic contaminants in fish tissue and sediments are available for the fish and sediment monitoring performed by DEQ in the calendar year 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, the Blackwater River basin and the Nottoway River basin, Lake Anna, and some other smaller waterbodies elsewhere in Virginia. All data on the concentrations of contaminants detected in the fish and sediment samples collected in 2006 have been posted on the DEQ website at <http://www.deq.virginia.gov/fishtissue/fishtissue.html>. All other data for fish and sediments analyzed by DEQ between 1993 and 2005 can also be found on this website.

Agency Contact: Alex Barron, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4119, FAX (804) 698-4416, or email ambarron@deq.virginia.gov.

Notice of Citizen Nomination of Surface Waters for Water Quality Monitoring

In accordance with §62.1-44.19:5 F of the Code of Virginia, the Water Quality Monitoring Information and Restoration Act, the Virginia Department of Environmental Quality (DEQ) has developed guidance for requests from the public regarding specific segments that can be nominated for consideration to be included in the Virginia DEQ's annual Water Quality Monitoring Plan.

Any citizen of the Commonwealth who wishes to nominate a water body or stream segment for inclusion in DEQ's Water Quality Monitoring Plan should refer to the guidance in

preparation and submittal of their requests. All nominations must be received by April 30, 2008, to be considered for the 2009 calendar year. Copies of the guidance document and nomination form are available online at <http://www.deq.virginia.gov/cmonitor/>.

Agency Contact: James Beckley, Water Quality Data Liaison, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4025, FAX (804) 698-4116, or email jebeckley@deq.virginia.gov.

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 regulations:

4VAC25-150, Gas and Oil Regulation

4VAC25-160, Virginia Gas and Oil Board Regulations

4VAC25-170, Geothermal Energy Regulations

The department will consider whether these existing regulations are essential to protecting the health, safety and welfare of the public. The department welcomes specific comments on the performance and effectiveness of these regulations and also requests suggestions to improve the content and organization of the regulations to make them more understandable and useful.

The comment period for this review begins on January 7, 2008, and ends at 5 p.m. on February 6, 2008. Comments may be submitted to Tabitha Hibbitts Peace, Policy Analyst, DMME Division of Administration, P.O. Drawer 900, Big Stone Gap, VA 24219-0900 or email tabitha.peace@dmme.virginia.gov.

Regulations may be viewed online at the Virginia Regulatory Town Hall site located at <http://www.townhall.virginia.gov/>, or copies will be sent upon request.

REAL ESTATE BOARD

Notice of Periodic Review of Regulation

The Real Estate Board invites public comment on 18VAC135-30, Condominium Regulations. This review is being conducted under Executive Order 36. The board welcomes written comments on the performance and effectiveness of this regulation in achieving the following goal:

To meet the notification requirements contained in the Administrative Process Act and to increase input into the

regulatory process in the most cost efficient manner possible.

Copies of the regulation may be obtained from the board or on-line at

<http://leg1.state.va.us/000/reg/TOC18135.HTM#C0030>.

Written or faxed comments may be submitted from January 7, 2008, through 5 p.m. on January 28, 2008. Comments or questions should be sent to Tom Perry, Property Registration Administrator, Real Estate Board, Perimeter Center, Suite 400, 9960 Mayland Drive, Richmond, VA 23233, telephone (804) 367-8510.

Notice of Periodic Review of Regulation

The Real Estate Board invites public comment on 18VAC135-40, Time-Share Regulations. This review is being conducted under Executive Order 36. The board welcomes written comments on the performance and effectiveness of this regulation in achieving the following goal:

To meet the notification requirements contained in the Administrative Process Act and to increase input into the regulatory process in the most cost efficient manner possible.

Copies of the regulation may be obtained from the board or on-line

<http://leg1.state.va.us/000/reg/TOC18135.HTM#C0040>.

Written or faxed comments may be submitted from January 7, 2008, through 5 p.m. on January 28, 2008. Comments or questions should be sent to Tom Perry, Property Registration Administrator, Real Estate Board, Perimeter Center, Suite 400, 9960 Mayland Drive, Richmond, VA 23233, telephone (804) 367-8510.

STATE WATER CONTROL BOARD

Proposed Consent Special Order - LSH Development of Richmond, LLC

Purpose of notice: To seek public comment on a proposed consent order from the Department of Environmental Quality for a project in Dinwiddie County, Virginia.

Public comment period: January 2, 2008, through February 6, 2008.

Consent order description: The Virginia State Water Control Board proposes to issue a consent order to LSH Development of Richmond, LLC, to address alleged violations of the Virginia State Water Control Law and the Virginia Water Protection Permit Regulations. The alleged violations occurred at the Lake Jordan Subdivision, located at the intersection of US 1 and SR 613. The consent order describes a settlement to resolve unauthorized impacts to wetlands and

streams, requires payment of a civil charge and the restoration and mitigation of wetland and stream impacts.

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: Allison C. Dunaway, Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, telephone (804) 527-5086, FAX (804) 527-5106, or email acdunaway@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.

Filing Material for Publication in the Virginia Register of Regulations

Agencies are required to use the Regulation Information System (RIS) when filing regulations for publication in the Virginia Register of Regulations. The Office of the Virginia Register of Regulations implemented a web-based application called RIS for filing regulations and related items for publication in the Virginia Register. The Registrar's office has worked closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.

General Notices/Errata

The Office of the Virginia Register is working toward the eventual elimination of the requirement that agencies file print copies of regulatory packages. Until that time, agencies may file petitions for rulemaking, notices of intended regulatory actions and general notices in electronic form only; however, until further notice, agencies must continue to file print copies of proposed, final, fast-track and emergency regulatory packages.

ERRATA

STATE BOARD OF CORRECTIONS

Title of Regulation: 6VAC15-62. Standards for State Community Corrections Units (adding 6VAC15-62-10 through 6VAC15-62-140).

Publication: 24:8 VA.R. 970-979 December 24, 2007.

Correction to final regulation:

Change sections being added to 6VAC15-62-10 through 6VAC15-62-120.

VA.R. Doc. No. R08-1050