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Virginia Register of Regulations

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TABLE OF CONTENTS

Register Information Page 2021
Publication Schedule and Deadlines 2022
Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed 2023
Notices of Intended Regulatory Action 2040
Regulations 2041
2VAC20-20. Rules and Regulations for Enforcement of the Virginia Pesticide Law (Final) 2041
2VAC20-30. Rules and Regulations Governing the Pesticide Fees Charged by the Department of Agriculture and Consumer Services Under the Virginia Pesticide Control Act (Final) 2043
2VAC20-40. Regulations Governing Licensing of Pesticide Businesses Operating Under Authority of the Virginia Pesticide Control Act (Final) 2044
3VAC5-70. Other Provisions (Proposed) 2045
4VAC20-270. Pertaining to Crabbing (Final) 2048
4VAC20-1190. Pertaining to Gill Net Control Date (Final) 2048
4VAC25-130. Coal Surface Mining Reclamation Regulations (Final) 2049
9VAC5-10. General Definitions (Fast-Track) 2059
9VAC5-20. General Provisions (Final) 2068
9VAC5-30. Ambient Air Quality Standards (Final) 2068
9VAC5-50. New and Modified Stationary Sources (Final) 2073
9VAC5-60. Hazardous Air Pollutant Sources (Final) 2073
9VAC5-40. Existing Stationary Sources (Final) 2088
9VAC5-130. Regulation for Open Burning (Final) 2088
9VAC5-140. Regulation for Emissions Trading Programs (Final) 2106
9VAC25-260. Water Quality Standards (Final) 2133
9VAC25-720. Water Quality Management Planning Regulation (Fast-Track) 2247
12VAC30-80. Methods and Standards for Establishing Payment Rates; Other Types of Care (Fast-Track) 2251
14VAC5-319. Life Insurance Reserves (Proposed) 2253
14VAC5-322. Use of the 2001 CSO Preferred Class Structure Mortality Table in Determining Reserve Liabilities (Proposed) 2253
18VAC10-20. Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects Regulations (Final) 2258
18VAC50-22. Board for Contractors Regulations (Proposed) 2262
18VAC50-30. Individual License and Certification Regulations (Proposed) 2266
19VAC30-200. Approved Helmets for All-Terrain Vehicles and Mopeds (Fast-Track) 2272
23VAC10-70. Virginia Slaughter Hog and Feeder Pig Excise Tax Regulations (Proposed) 2273
23VAC10-210. Retail Sales and Use Tax (Proposed) 2275
23VAC10-210. Retail Sales and Use Tax (Proposed) 2277
General Notices/Errata 2282

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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 on 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

Pursuant to § 2.2-4011 of the Code of Virginia, an agency, upon consultation with the Attorney General, and at the discretion of the Governor, may adopt emergency regulations that are necessitated by an emergency situation. An agency may also adopt an emergency regulation when Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment. 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 no more than 12 months in duration; however, may be extended for six months under certain circumstances as provided for in § 2.2-4011 D. Emergency regulations are published as soon as possible in the *Register*.

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

STATEMENT

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

CITATION TO THE *VIRGINIA REGISTER*

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

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

PUBLICATION SCHEDULE AND DEADLINES

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

February 2009 through November 2009

Volume: Issue	Material Submitted By Noon*	Will Be Published On
INDEX 1 Volume 25		**January 2009**
25:12	January 28, 2009	February 16, 2009
25:13	February 11, 2009	March 2, 2009
25:14	February 25, 2009	March 16, 2009
INDEX 2 Volume 25		**April 2009**
25:15	March 11, 2009	March 30, 2009
25:16	March 25, 2009	April 13, 2009
25:17	April 8, 2009	April 27, 2009
25:18	April 22, 2009	May 11, 2009
25:19	May 6, 2009	May 25, 2009
25:20	May 20, 2009	June 8, 2009
INDEX 3 Volume 25		**July 2009**
25:21	June 3, 2009	June 22, 2009
25:22	June 17, 2009	July 6, 2009
25:23	July 1, 2009	July 20, 2009
25:24	July 15, 2009	August 3, 2009
25:25	July 29, 2009	August 17, 2009
25:26	August 12, 2009	August 31, 2009
FINAL INDEX Volume 25		**October 2009**
26:1	August 26, 2009	September 14, 2009
26:2	September 9, 2009	September 28, 2009
26:3	September 23, 2009	October 12, 2009
26:4	October 7, 2009	October 26, 2009
26:5	October 21, 2009	November 9, 2009

*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 2008 VAC Supplement includes final regulations published through *Virginia Register* Volume 24, Issue 24, dated August 4, 2008). 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 17-10-10 through 1 VAC 17-10-90	Repealed	25:8 VA.R. 1484	1/21/09
1 VAC 17-11-10 through 1 VAC 17-11-110	Added	25:8 VA.R. 1484-1487	1/21/09
1 VAC 30-10-10 through 1 VAC 30-10-70	Repealed	25:8 VA.R. 1487	1/21/09
1 VAC 30-11-10 through 1 VAC 30-11-110	Erratum	25:9 VA.R. 1827	--
1 VAC 30-11-10 through 1 VAC 30-11-110	Added	25:8 VA.R. 1488-1490	1/21/09
1 VAC 30-45-10 through 1 VAC 30-45-860	Added	25:7 VA.R. 1409-1413	1/1/09
1 VAC 30-46-10 through 1 VAC 30-46-210	Added	25:7 VA.R. 1413-1417	1/1/09
1 VAC 50-10-60 through 1 VAC 50-10-150	Repealed	25:2 VA.R. 119	10/29/08
1 VAC 50-11-10 through 1 VAC 50-11-110	Added	25:2 VA.R. 119-122	10/29/08
1 VAC 55-10-10 through 1 VAC 55-10-50	Repealed	25:2 VA.R. 122	10/29/08
1 VAC 55-11-10 through 1 VAC 55-11-110	Added	25:2 VA.R. 122-125	10/29/08
1 VAC 75-10-10 through 1 VAC 75-10-40	Repealed	24:25 VA.R. 3523	9/17/08
1 VAC 75-11-10 through 1 VAC 75-11-110	Added	24:25 VA.R. 3523-3526	9/17/08
Title 2. Agriculture			
2 VAC 5-10-10 through 2 VAC 5-10-70	Repealed	25:3 VA.R. 342	11/12/08
2 VAC 5-11-10 through 2 VAC 5-11-110	Added	25:3 VA.R. 343-345	11/12/08
2 VAC 5-60-10	Amended	25:11 VA.R. 1889	3/4/09
2 VAC 5-190-30	Amended	25:11 VA.R. 1890	3/4/09
2 VAC 5-205-20	Amended	25:11 VA.R. 1890	3/4/09
2 VAC 5-206-10 through 2 VAC 5-206-50	Added	24:25 VA.R. 3527-3531	10/3/08
2 VAC 5-210-20	Amended	25:11 VA.R. 1891	3/4/09
2 VAC 5-230-30	Amended	25:11 VA.R. 1892	3/4/09
2 VAC 5-230-50	Amended	25:11 VA.R. 1892	3/4/09
2 VAC 5-230-60	Amended	25:11 VA.R. 1892	3/4/09
2 VAC 5-300-50	Amended	25:11 VA.R. 1924	3/4/09
2 VAC 5-320-10	Amended	25:11 VA.R. 1892	3/4/09
2 VAC 5-325-10	Amended	25:11 VA.R. 1893	3/4/09
2 VAC 5-330-10	Amended	25:11 VA.R. 1893	3/4/09
2 VAC 5-330-30	Amended	25:2 VA.R. 126	10/15/08
2 VAC 5-335-10 through 2 VAC 5-335-130	Added	25:2 VA.R. 126-129	10/15/08
2 VAC 5-340-140	Amended	25:11 VA.R. 1894	3/4/09
2 VAC 5-340-170	Amended	25:11 VA.R. 1895	3/4/09
2 VAC 5-340-180	Amended	25:11 VA.R. 1896	3/4/09
2 VAC 5-350-10 through 2 VAC 5-350-60	Amended	25:11 VA.R. 1896-1898	3/4/09
2 VAC 5-350-80	Amended	25:11 VA.R. 1898	3/4/09
2 VAC 5-360-10	Amended	25:11 VA.R. 1899	3/4/09
2 VAC 5-360-50	Amended	25:11 VA.R. 1900	3/4/09
2 VAC 5-370-10	Amended	25:11 VA.R. 1901	3/4/09
2 VAC 5-380-10	Amended	25:11 VA.R. 1901	3/4/09

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
2 VAC 5-380-60	Amended	25:11 VA.R. 1901	3/4/09
2 VAC 5-390-20	Amended	25:11 VA.R. 1902	3/4/09
2 VAC 5-390-30	Amended	25:11 VA.R. 1902	3/4/09
2 VAC 5-390-40	Amended	25:11 VA.R. 1903	3/4/09
2 VAC 5-390-60	Amended	25:11 VA.R. 1903	3/4/09
2 VAC 5-390-70	Amended	25:11 VA.R. 1903	3/4/09
2 VAC 5-390-80	Amended	25:11 VA.R. 1904	3/4/09
2 VAC 5-390-100	Amended	25:11 VA.R. 1904	3/4/09
2 VAC 5-390-110	Amended	25:11 VA.R. 1904	3/4/09
2 VAC 5-390-120	Amended	25:11 VA.R. 1906	3/4/09
2 VAC 5-390-160	Amended	25:11 VA.R. 1906	3/4/09
2 VAC 5-390-170	Amended	25:11 VA.R. 1906	3/4/09
2 VAC 5-390-180	Amended	25:11 VA.R. 1906	3/4/09
2 VAC 5-400-10	Amended	25:11 VA.R. 1907	3/4/09
2 VAC 5-400-30	Amended	25:11 VA.R. 1907	3/4/09
2 VAC 5-400-90	Amended	25:11 VA.R. 1908	3/4/09
2 VAC 5-440-20	Amended	25:11 VA.R. 1909	3/4/09
2 VAC 5-440-110	Amended	25:11 VA.R. 1909	3/4/09
2 VAC 5-450-20	Amended	25:11 VA.R. 1909	3/4/09
2 VAC 5-490-10	Amended	25:11 VA.R. 1909	3/4/09
2 VAC 5-490-31	Amended	25:11 VA.R. 1915	3/4/09
2 VAC 5-501-30	Amended	25:11 VA.R. 1917	3/4/09
2 VAC 5-501-60	Amended	25:11 VA.R. 1919	3/4/09
2 VAC 5-501-70	Amended	25:11 VA.R. 1922	3/4/09
2 VAC 5-570-70	Amended	25:11 VA.R. 1923	3/4/09
2 VAC 5-620-20	Amended	25:11 VA.R. 1924	3/4/09
2 VAC 5-620-100	Amended	25:11 VA.R. 1924	3/4/09
2 VAC 15-11-10 through 2 VAC 15-11-120	Repealed	25:4 VA.R. 576	11/26/08
2 VAC 15-12-10 through 2 VAC 15-12-110	Added	25:4 VA.R. 577-579	11/26/08
2 VAC 15-20-90	Amended	25:10 VA.R. 1847	2/18/09
2 VAC 15-20-110	Amended	25:10 VA.R. 1848	2/18/09
2 VAC 15-20-120	Amended	25:10 VA.R. 1848	2/18/09
2 VAC 20-10-10 through 2 VAC 20-10-120	Repealed	25:5 VA.R. 792	12/10/08
2 VAC 20-11-10 through 2 VAC 20-11-110	Added	25:5 VA.R. 792-795	12/10/08
2 VAC 20-51-10 through 2 VAC 20-51-50	Amended	25:3 VA.R. 346-350	12/1/08
2 VAC 20-51-70	Amended	25:3 VA.R. 350	12/1/08
2 VAC 20-51-90	Amended	25:3 VA.R. 351	12/1/08
2 VAC 20-51-100	Amended	25:3 VA.R. 351	12/1/08
2 VAC 20-51-160	Amended	25:3 VA.R. 351	12/1/08
2 VAC 20-51-170	Amended	25:3 VA.R. 352	12/1/08
2 VAC 20-51-200	Amended	25:3 VA.R. 352	12/1/08
2 VAC 20-51-210	Amended	25:3 VA.R. 352	12/1/08
Title 3. Alcoholic Beverages			
3 VAC 5-10	Erratum	25:9 VA.R. 1826	--
3 VAC 5-10-480	Repealed	25:6 VA.R. 1173	12/24/08
3 VAC 5-11-10 through 3 VAC 5-11-110	Added	25:6 VA.R. 1175-1178	12/24/08
3 VAC 5-50-40	Amended	25:11 VA.R. 1926	3/4/09
3 VAC 5-50-50	Amended	25:11 VA.R. 1926	3/4/09
3 VAC 5-50-80	Amended	25:11 VA.R. 1926	3/4/09
3 VAC 5-50-100	Amended	25:11 VA.R. 1927	3/4/09
3 VAC 5-50-130	Amended	25:11 VA.R. 1928	3/4/09

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
3 VAC 5-50-140 emer	Amended	25:11 VA.R. 1925	1/9/08-6/30/09
3 VAC 5-50-140	Amended	25:11 VA.R. 1929	3/4/09
3 VAC 5-50-230 emer	Added	25:11 VA.R. 1929	1/13/09-1/12/10
Title 4. Conservation and Natural Resources			
4 VAC 3-10-10	Repealed	25:2 VA.R. 129	10/29/08
4 VAC 3-10-20	Repealed	25:2 VA.R. 129	10/29/08
4 VAC 3-10-30	Repealed	25:2 VA.R. 129	10/29/08
4 VAC 3-11-10 through 4 VAC 3-11-110	Added	25:2 VA.R. 130-132	10/29/08
4 VAC 5-10-10	Repealed	25:2 VA.R. 132	10/29/08
4 VAC 5-10-20	Repealed	25:2 VA.R. 132	10/29/08
4 VAC 5-10-30	Repealed	25:2 VA.R. 132	10/29/08
4 VAC 5-11-10 through 4 VAC 5-11-110	Added	25:2 VA.R. 133-136	10/29/08
4 VAC 5-36-50	Amended	25:6 VA.R. 1178	1/1/09
4 VAC 5-36-60	Amended	25:6 VA.R. 1183	1/1/09
4 VAC 5-36-70	Amended	25:6 VA.R. 1184	1/1/09
4 VAC 5-36-90	Amended	25:6 VA.R. 1185	1/1/09
4 VAC 5-36-100	Amended	25:6 VA.R. 1187	1/1/09
4 VAC 5-36-110	Amended	25:6 VA.R. 1191	1/1/09
4 VAC 5-36-115	Added	25:6 VA.R. 1192	1/1/09
4 VAC 5-36-120	Amended	25:6 VA.R. 1192	1/1/09
4 VAC 5-36-140	Amended	25:6 VA.R. 1193	1/1/09
4 VAC 5-36-150	Amended	25:6 VA.R. 1195	1/1/09
4 VAC 5-36-180	Amended	25:6 VA.R. 1198	1/1/09
4 VAC 5-36-200	Amended	25:6 VA.R. 1199	1/1/09
4 VAC 5-36-210	Amended	25:6 VA.R. 1204	1/1/09
4 VAC 10-10-10 through 4 VAC 10-10-30	Repealed	25:6 VA.R. 1208	12/24/08
4 VAC 10-11-10 through 4 VAC 10-11-110	Added	25:6 VA.R. 1209-1212	12/24/08
4 VAC 15-450-10 through 4 VAC 15-450-40	Added	25:10 VA.R. 1849-1850	1/1/09
4 VAC 20-20-50	Amended	25:6 VA.R. 1212	11/1/08
4 VAC 20-252-90	Amended	25:6 VA.R. 1213	11/1/08
4 VAC 20-252-100	Amended	25:6 VA.R. 1213	11/1/08
4 VAC 20-260-35 emer	Amended	25:3 VA.R. 353	10/1/08-10/31/08
4 VAC 20-260-35	Amended	25:6 VA.R. 1213	11/1/08
4 VAC 20-260-40 emer	Amended	25:3 VA.R. 353	10/1/08-10/31/08
4 VAC 20-260-40	Amended	25:6 VA.R. 1213	11/1/08
4 VAC 20-620-20	Amended	25:3 VA.R. 354	10/1/08
4 VAC 20-620-30	Amended	25:3 VA.R. 354	10/1/08
4 VAC 20-620-40	Amended	25:3 VA.R. 355	10/1/08
4 VAC 20-720-20	Amended	25:3 VA.R. 357	10/1/08
4 VAC 20-720-40	Amended	25:3 VA.R. 359	10/1/08
4 VAC 20-720-50	Amended	25:3 VA.R. 360	10/1/08
4 VAC 20-720-60	Amended	25:3 VA.R. 360	10/1/08
4 VAC 20-720-70	Amended	25:3 VA.R. 360	10/1/08
4 VAC 20-720-75	Amended	25:3 VA.R. 361	10/1/08
4 VAC 20-720-80	Amended	25:3 VA.R. 361	10/1/08
4 VAC 20-720-95	Amended	25:3 VA.R. 361	10/1/08
4 VAC 20-720-100	Amended	25:3 VA.R. 361	10/1/08
4 VAC 20-720-106 emer	Amended	25:1 VA.R. 24	9/1/08-9/30/08
4 VAC 20-720-106	Amended	25:3 VA.R. 361	10/1/08
4 VAC 20-751-10 emer	Amended	25:3 VA.R. 362	9/29/08-10/28/08
4 VAC 20-751-15 emer	Amended	25:3 VA.R. 362	9/29/08-10/28/08

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
4 VAC 20-751-20 emer	Amended	25:3 VA.R. 362	9/29/08-10/28/08
4 VAC 20-751-20	Amended	25:6 VA.R. 1214	10/29/08
4 VAC 20-910-45	Amended	24:25 VA.R. 3537	8/1/08
4 VAC 20-910-45	Amended	25:6 VA.R. 1214	11/1/08
4 VAC 20-950-47	Amended	25:8 VA.R. 1491	1/1/09
4 VAC 20-950-48	Amended	25:8 VA.R. 1491	1/1/09
4 VAC 20-1040-20	Amended	25:8 VA.R. 1492	11/30/08
4 VAC 20-1040-25	Added	25:8 VA.R. 1493	11/30/08
4 VAC 20-1150-10	Added	24:25 VA.R. 3538	8/1/08
4 VAC 20-1150-20	Added	24:25 VA.R. 3538	8/1/08
4 VAC 20-1170-10	Added	25:6 VA.R. 1215	12/1/08
4 VAC 20-1170-20	Added	25:6 VA.R. 1215	12/1/08
4 VAC 20-1180-10 through 4 VAC 20-1180-60	Added	25:9 VA.R. 1680-1681	12/22/08
4 VAC 25-10-10 through 4 VAC 25-10-90	Repealed	25:5 VA.R. 795	12/25/08
4 VAC 25-11-10 through 4 VAC 25-11-120	Added	25:5 VA.R. 797-800	12/25/08
4 VAC 50-10-10	Repealed	25:2 VA.R. 137	10/29/08
4 VAC 50-10-20	Repealed	25:2 VA.R. 137	10/29/08
4 VAC 50-10-30	Repealed	25:2 VA.R. 137	10/29/08
4 VAC 50-11-10 through 4 VAC 50-11-110	Added	25:2 VA.R. 138-141	10/29/08
4 VAC 50-20-20 through 4 VAC 50-20-90	Amended	24:25 VA.R. 3539-3554	9/26/08
4 VAC 50-20-51	Added	24:25 VA.R. 3544	9/26/08
4 VAC 50-20-52	Added	24:25 VA.R. 3545	9/26/08
4 VAC 50-20-54	Added	24:25 VA.R. 3545	9/26/08
4 VAC 50-20-58	Added	24:25 VA.R. 3546	9/26/08
4 VAC 50-20-59	Added	24:25 VA.R. 3546	9/26/08
4 VAC 50-20-100 through 4 VAC 50-20-140	Repealed	24:25 VA.R. 3554-3558	9/26/08
4 VAC 50-20-105	Added	24:25 VA.R. 3554	9/26/08
4 VAC 50-20-125	Added	24:25 VA.R. 3557	9/26/08
4 VAC 50-20-150 through 4 VAC 50-20-240	Amended	24:25 VA.R. 3558-3563	9/26/08
4 VAC 50-20-155	Added	24:25 VA.R. 3558	9/26/08
4 VAC 50-20-165	Added	24:25 VA.R. 3559	9/26/08
4 VAC 50-20-175	Added	24:25 VA.R. 3560	9/26/08
4 VAC 50-20-177	Added	24:25 VA.R. 3561	9/26/08
4 VAC 50-20-250	Repealed	24:25 VA.R. 3564	9/26/08
4 VAC 50-20-260 through 4 VAC 50-20-320	Amended	24:25 VA.R. 3564-3565	9/26/08
4 VAC 50-20-330 through 4 VAC 50-20-400	Added	24:25 VA.R. 3565-3567	9/26/08
Title 6. Criminal Justice and Corrections			
6 VAC 15-10-10 through 6 VAC 15-10-100	Repealed	25:3 VA.R. 363	11/15/08
6 VAC 15-11-10 through 6 VAC 15-11-110	Added	25:3 VA.R. 363-366	11/15/08
6 VAC 15-31-320	Amended	24:25 VA.R. 3568	9/18/08
6 VAC 15-70-10	Amended	25:3 VA.R. 367	11/15/08
6 VAC 15-70-40 through 6 VAC 15-70-130	Amended	25:3 VA.R. 367-372	11/15/08
6 VAC 15-70-160	Amended	25:3 VA.R. 372	11/15/08
6 VAC 20-10-10 through 6 VAC 20-10-50	Repealed	25:10 VA.R. 1850	2/20/09
6 VAC 20-11-10 through 6 VAC 20-11-110	Added	25:10 VA.R. 1851-1853	2/20/09
6 VAC 20-160-10	Amended	25:2 VA.R. 141	10/29/08
6 VAC 20-160-20	Amended	25:2 VA.R. 142	10/29/08
6 VAC 20-160-30	Amended	25:2 VA.R. 142	10/29/08
6 VAC 20-160-40	Amended	25:2 VA.R. 143	10/29/08
6 VAC 20-160-60	Amended	25:2 VA.R. 144	10/29/08
6 VAC 20-160-70	Amended	25:2 VA.R. 144	10/29/08

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
6 VAC 20-160-80	Amended	25:2 VA.R. 144	10/29/08
6 VAC 20-160-100	Amended	25:2 VA.R. 145	10/29/08
6 VAC 20-160-120	Amended	25:2 VA.R. 145	10/29/08
6 VAC 35-10-10 through 6 VAC 35-10-150	Repealed	24:25 VA.R. 3573	9/17/08
6 VAC 35-11-10 through 6 VAC 35-11-110	Added	24:25 VA.R. 3574-3576	9/17/08
6 VAC 35-20-37 emer	Amended	25:3 VA.R. 373	8/1/07-1/31/09
6 VAC 35-20-37	Amended	25:4 VA.R. 626	12/12/08
6 VAC 35-51-10 through 6 VAC 35-51-1100	Added	24:25 VA.R. 3577-3610	9/17/08
6 VAC 35-140-46	Added	25:3 VA.R. 376	12/12/08
6 VAC 40-10-10 through 6 VAC 40-10-90	Repealed	25:2 VA.R. 146	10/30/08
6 VAC 40-11-10 through 6 VAC 40-110	Added	25:2 VA.R. 147-149	10/30/08
6 VAC 40-20-30	Amended	24:26 VA.R. 3718	10/16/08
6 VAC 40-20-120	Amended	24:26 VA.R. 3718	10/16/08
6 VAC 40-20-130	Amended	24:26 VA.R. 3718	10/16/08
6 VAC 40-20-160	Amended	24:26 VA.R. 3718	10/16/08
Title 7. Economic Development			
7 VAC 10-20-10 through 7 VAC 10-20-350	Repealed	24:26 VA.R. 3719	9/1/08
7 VAC 10-21-10 through 7 VAC 10-21-610	Added	24:26 VA.R. 3719-3729	9/1/08
Title 8. Education			
8 VAC 20-10-10	Repealed	25:11 VA.R. 1930	3/19/09
8 VAC 20-11-10 through 8 VAC 20-11-110	Added	25:11 VA.R. 1932-1935	3/19/09
8 VAC 35-60-20	Amended	25:5 VA.R. 800	11/10/08
8 VAC 40-10-10 through 8 VAC 40-10-90	Repealed	25:3 VA.R. 376	1/1/09
8 VAC 40-11-10 through 8 VAC 40-11-110	Added	25:3 VA.R. 377-379	1/1/09
Title 9. Environment			
9 VAC 5-5-10 through 9 VAC 5-5-110	Added	25:5 VA.R. 801-804	1/1/09
9 VAC 5-80-5	Added	25:6 VA.R. 1231	12/31/08
9 VAC 5-80-15	Added	25:6 VA.R. 1234	12/31/08
9 VAC 5-80-25	Added	25:6 VA.R. 1234	12/31/08
9 VAC 5-80-35	Added	25:6 VA.R. 1235	12/31/08
9 VAC 5-80-150	Amended	25:6 VA.R. 1237	12/31/08
9 VAC 5-80-230	Amended	25:6 VA.R. 1237	12/31/08
9 VAC 5-80-270	Amended	25:6 VA.R. 1238	12/31/08
9 VAC 5-80-510	Amended	25:6 VA.R. 1239	12/31/08
9 VAC 5-80-590	Amended	25:6 VA.R. 1241	12/31/08
9 VAC 5-80-670	Amended	25:6 VA.R. 1241	12/31/08
9 VAC 5-80-670	Erratum	25:8 VA.R. 1644	--
9 VAC 5-80-860	Amended	25:6 VA.R. 1243	12/31/08
9 VAC 5-80-990	Amended	25:6 VA.R. 1243	12/31/08
9 VAC 5-80-1020	Amended	25:6 VA.R. 1244	12/31/08
9 VAC 5-80-1100	Amended	25:6 VA.R. 1258	12/31/08
9 VAC 5-80-1110	Amended	25:6 VA.R. 1259	12/31/08
9 VAC 5-80-1160	Amended	25:6 VA.R. 1244	12/31/08
9 VAC 5-80-1170	Amended	25:6 VA.R. 1245	12/31/08
9 VAC 5-80-1290	Amended	25:6 VA.R. 1246	12/31/08
9 VAC 5-80-1320	Amended	25:6 VA.R. 1264	12/31/08
9 VAC 5-80-1450	Amended	25:6 VA.R. 1247	12/31/08
9 VAC 5-80-1450	Erratum	25:8 VA.R. 1644	--
9 VAC 5-80-1460	Amended	25:6 VA.R. 1248	12/31/08
9 VAC 5-80-1615	Amended	25:6 VA.R. 1218	12/31/08
9 VAC 5-80-1695	Amended	25:6 VA.R. 1229	12/31/08

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
9 VAC 5-80-1765	Amended	25:6 VA.R. 1249	12/31/08
9 VAC 5-80-1773	Added	25:6 VA.R. 1251	12/31/08
9 VAC 5-80-1775	Amended	25:6 VA.R. 1251	12/31/08
9 VAC 5-80-1955	Amended	25:6 VA.R. 1253	12/31/08
9 VAC 5-80-2060	Amended	25:6 VA.R. 1254	12/31/08
9 VAC 5-80-2070	Amended	25:6 VA.R. 1255	12/31/08
9 VAC 5-80-2230	Amended	25:6 VA.R. 1256	12/31/08
9 VAC 5-91-20	Amended	25:6 VA.R. 1268	12/31/08
9 VAC 5-140-900	Amended	25:6 VA.R. 1275	12/31/08
9 VAC 5-140-920	Amended	25:6 VA.R. 1275	12/31/08
9 VAC 5-140-930	Amended	25:6 VA.R. 1275	12/31/08
9 VAC 5-151-10	Amended	25:6 VA.R. 1276	12/31/08
9 VAC 5-151-20	Amended	25:6 VA.R. 1278	12/31/08
9 VAC 5-151-40	Amended	25:6 VA.R. 1279	12/31/08
9 VAC 5-151-61	Repealed	25:6 VA.R. 1279	12/31/08
9 VAC 5-151-70	Amended	25:6 VA.R. 1280	12/31/08
9 VAC 5-170-20	Amended	25:5 VA.R. 804	1/1/09
9 VAC 5-170-30	Amended	25:6 VA.R. 1256	12/31/08
9 VAC 5-170-40	Amended	25:5 VA.R. 806	1/1/09
9 VAC 5-170-80	Amended	25:5 VA.R. 807	1/1/09
9 VAC 5-170-90	Repealed	25:5 VA.R. 807	1/1/09
9 VAC 5-170-100	Repealed	25:5 VA.R. 807	1/1/09
9 VAC 5-170-110	Repealed	25:5 VA.R. 809	1/1/09
9 VAC 5-170-180	Amended	25:6 VA.R. 1256	12/31/08
9 VAC 5-170-190	Amended	25:6 VA.R. 1257	12/31/08
9 VAC 5-170-200	Amended	25:6 VA.R. 1257	12/31/08
9 VAC 10-10-10	Repealed	25:4 VA.R. 627	11/26/08
9 VAC 10-10-20	Repealed	25:4 VA.R. 627	11/26/08
9 VAC 10-10-30	Repealed	25:4 VA.R. 627	11/26/08
9 VAC 10-11-10 through 9 VAC 10-11-110	Added	25:4 VA.R. 627-630	11/26/08
9 VAC 15-10-10 through 9 VAC 15-10-40	Repealed	25:5 VA.R. 809	1/1/09
9 VAC 15-11-10 through 9 VAC 15-11-110	Added	25:5 VA.R. 810-813	1/1/09
9 VAC 20-10-10 through 9 VAC 20-10-40	Repealed	25:9 VA.R. 1681	2/4/09
9 VAC 20-11-10 through 9 VAC 20-11-110	Added	25:9 VA.R. 1682-1685	2/4/09
9 VAC 20-80-10	Amended	25:2 VA.R. 150	11/1/08
9 VAC 20-80-60	Amended	25:2 VA.R. 160	11/1/08
9 VAC 20-80-250	Amended	25:2 VA.R. 166	11/1/08
9 VAC 20-80-260	Amended	25:2 VA.R. 176	11/1/08
9 VAC 20-80-270	Amended	25:2 VA.R. 183	11/1/08
9 VAC 20-80-280	Amended	25:2 VA.R. 191	11/1/08
9 VAC 20-80-485	Amended	25:2 VA.R. 193	11/1/08
9 VAC 20-80-500	Amended	25:2 VA.R. 200	11/1/08
9 VAC 20-80-510	Amended	25:2 VA.R. 203	11/1/08
9 VAC 25-10-10 through 9 VAC 25-10-40	Repealed	25:5 VA.R. 813	1/1/09
9 VAC 25-11-10 through 9 VAC 25-11-110	Added	25:5 VA.R. 813-816	1/1/09
9 VAC 25-210-10	Amended	25:5 VA.R. 894	12/10/08
9 VAC 25-210-50	Amended	25:5 VA.R. 898	12/10/08
9 VAC 25-210-60	Amended	25:5 VA.R. 898	12/10/08
9 VAC 25-210-130	Erratum	25:9 VA.R. 1826	--
9 VAC 25-210-130	Amended	25:5 VA.R. 902	12/10/08
9 VAC 25-210-220	Amended	25:5 VA.R. 903	12/10/08

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
9 VAC 25-260-30	Amending	24:26 VA.R. 3747	8/12/08
9 VAC 25-260-30	Amended	25:5 VA.R. 904	10/22/08
9 VAC 25-640 Appendices I through IX	Amended	25:2 VA.R. 217-231	11/1/08
9 VAC 25-640-10	Amended	25:2 VA.R. 206	11/1/08
9 VAC 25-640-20	Amended	25:2 VA.R. 209	11/1/08
9 VAC 25-640-30	Amended	25:2 VA.R. 209	11/1/08
9 VAC 25-640-50	Amended	25:2 VA.R. 210	11/1/08
9 VAC 25-640-70 through 9 VAC 25-640-120	Amended	25:2 VA.R. 210-213	11/1/08
9 VAC 25-640-130	Repealed	25:2 VA.R. 213	11/1/08
9 VAC 25-640-150 through 9 VAC 25-640-230	Amended	25:2 VA.R. 213-217	11/1/08
9 VAC 25-640-250	Amended	25:2 VA.R. 217	11/1/08
9 VAC 25-740-10 through 9 VAC 25-740-210	Added	24:26 VA.R. 3748-3773	10/1/08
9 VAC 25-790 (Forms)	Added	25:6 VA.R. 1285	--
9 VAC 25-860-10 through 9 VAC 25-860-70	Added	25:6 VA.R. 1285-1295	12/24/08
Title 10. Finance and Financial Institutions			
10 VAC 5-160-10	Amended	24:26 VA.R. 3775	8/10/08
10 VAC 5-160-70	Added	24:26 VA.R. 3776	8/10/08
10 VAC 5-160-80	Added	24:26 VA.R. 3776	8/10/08
10 VAC 5-200-10	Amended	25:4 VA.R. 637	1/1/09
10 VAC 5-200-20	Amended	25:4 VA.R. 637	1/1/09
10 VAC 5-200-33	Added	25:4 VA.R. 638	1/1/09
10 VAC 5-200-35	Added	25:4 VA.R. 639	1/1/09
10 VAC 5-200-40	Amended	25:4 VA.R. 641	1/1/09
10 VAC 5-200-60	Amended	25:4 VA.R. 642	1/1/09
10 VAC 5-200-70	Amended	25:4 VA.R. 642	1/1/09
10 VAC 5-200-80	Amended	25:4 VA.R. 643	1/1/09
10 VAC 5-200-110	Added	25:4 VA.R. 646	1/1/09
10 VAC 5-200-115	Added	25:4 VA.R. 651	1/1/09
10 VAC 5-200-120	Added	25:4 VA.R. 650	1/1/09
Title 11. Gaming			
11 VAC 10-10-10 through 11 VAC 10-10-70	Repealed	25:5 VA.R. 904	12/10/08
11 VAC 10-11-10 through 11 VAC 10-11-110	Added	25:5 VA.R. 905-907	12/10/08
11 VAC 15-12-10	Repealed	25:4 VA.R. 651	11/26/08
11 VAC 15-12-20	Repealed	25:4 VA.R. 651	11/26/08
11 VAC 15-13-10 through 11 VAC 15-13-110	Added	25:4 VA.R. 652-654	11/26/08
Title 12. Health			
12 VAC 5-10-10 through 12 VAC 5-10-80	Repealed	25:4 VA.R. 654	1/1/09
12 VAC 5-11-10 through 12 VAC 5-11-110	Added	25:4 VA.R. 655-657	1/1/09
12 VAC 5-67-10 emer	Added	25:4 VA.R. 658	11/1/08-10/31/09
12 VAC 5-67-20 emer	Added	25:4 VA.R. 658	11/1/08-10/31/09
12 VAC 5-67-30 emer	Added	25:4 VA.R. 658	11/1/08-10/31/09
12 VAC 5-90-80	Amended	25:11 VA.R. 1935	3/4/09
12 VAC 5-220-110	Amended	25:1 VA.R. 26	10/15/08
12 VAC 5-220-160	Amended	25:1 VA.R. 25	10/15/08
12 VAC 5-220-200	Amended	25:1 VA.R. 26	10/15/08
12 VAC 5-230-10	Amended	25:9 VA.R. 1707	2/15/09
12 VAC 5-230-10	Erratum	25:11 VA.R. 2018	--
12 VAC 5-230-20	Repealed	25:9 VA.R. 1711	2/15/09
12 VAC 5-230-30	Amended	25:9 VA.R. 1712	2/15/09
12 VAC 5-230-40 through 12 VAC 5-230-1000	Added	25:9 VA.R. 1713-1742	2/15/09
12 VAC 5-230-60	Erratum	25:11 VA.R. 2018	--

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 5-230-70	Erratum	25:11 VA.R. 2018	--
12 VAC 5-230-80	Erratum	25:11 VA.R. 2018	--
12 VAC 5-230-110	Erratum	25:11 VA.R. 2018	--
12 VAC 5-230-340	Erratum	25:11 VA.R. 2018	--
12 VAC 5-230-870	Erratum	25:11 VA.R. 2018	--
12 VAC 5-240-10 through 12 VAC 5-240-60	Repealed	25:9 VA.R. 1706	2/15/09
12 VAC 5-250-10 through 12 VAC 5-250-120	Repealed	25:9 VA.R. 1706	2/15/09
12 VAC 5-260-10 through 12 VAC 5-260-130	Repealed	25:9 VA.R. 1706	2/15/09
12 VAC 5-270-10 through 12 VAC 5-270-60	Repealed	25:9 VA.R. 1706	2/15/09
12 VAC 5-280-10 through 12 VAC 5-280-70	Repealed	25:9 VA.R. 1706	2/15/09
12 VAC 5-290-10 through 12 VAC 5-290-70	Repealed	25:9 VA.R. 1706	2/15/09
12 VAC 5-300-10 through 12 VAC 5-300-70	Repealed	25:9 VA.R. 1706	2/15/09
12 VAC 5-310-10 through 12 VAC 5-310-70	Repealed	25:9 VA.R. 1706	2/15/09
12 VAC 5-320-10 through 12 VAC 5-320-480	Repealed	25:9 VA.R. 1706	2/15/09
12 VAC 5-330-10 through 12 VAC 5-330-70	Repealed	25:9 VA.R. 1706	2/15/09
12 VAC 5-340-10 through 12 VAC 5-340-120	Repealed	25:9 VA.R. 1706	2/15/09
12 VAC 5-350-10 through 12 VAC 5-350-60	Repealed	25:9 VA.R. 1707	2/15/09
12 VAC 5-360-10 through 12 VAC 5-360-70	Repealed	25:9 VA.R. 1707	2/15/09
12 VAC 5-481-10	Amended	25:2 VA.R. 231	11/1/08
12 VAC 5-481-390	Amended	25:2 VA.R. 256	11/1/08
12 VAC 5-481-400	Amended	25:2 VA.R. 256	11/1/08
12 VAC 5-481-450	Amended	25:2 VA.R. 257	11/1/08
12 VAC 5-481-451	Added	24:25 VA.R. 3612	10/3/08
12 VAC 5-481-480	Amended	25:2 VA.R. 260	11/1/08
12 VAC 5-481-2870	Amended	25:2 VA.R. 267	11/1/08
12 VAC 5-481-3160	Amended	25:2 VA.R. 267	11/1/08
12 VAC 5-481-3710	Amended	25:2 VA.R. 267	11/1/08
12 VAC 5-490-10	Amended	25:11 VA.R. 1942	3/4/09
12 VAC 5-490-20	Amended	25:11 VA.R. 1942	3/4/09
12 VAC 5-490-30	Added	25:11 VA.R. 1939	3/4/09
12 VAC 5-490-40	Added	25:11 VA.R. 1939	3/4/09
12 VAC 5-590-10	Amended	25:5 VA.R. 908	12/10/08
12 VAC 5-590-370	Amended	25:5 VA.R. 916	12/10/08
12 VAC 5-590-410	Amended	25:5 VA.R. 955	12/10/08
12 VAC 5-590-420	Amended	25:5 VA.R. 959	12/10/08
12 VAC 5-590-440	Amended	25:5 VA.R. 994	12/10/08
12 VAC 5-590-500	Amended	25:5 VA.R. 998	12/10/08
12 VAC 5-590-530	Amended	25:5 VA.R. 999	12/10/08
12 VAC 5-590-540	Amended	25:5 VA.R. 1011	12/10/08
12 VAC 5-590-545	Amended	25:5 VA.R. 1016	12/10/08
12 VAC 5-590-550	Amended	25:5 VA.R. 1021	12/10/08
12 VAC 30-5-10 through 12 VAC 30-5-110	Added	25:3 VA.R. 380-383	11/12/08
12 VAC 30-10-815	Added	25:4 VA.R. 662	11/26/08
12 VAC 30-40-280	Amended	25:11 VA.R. 1945	3/19/09
12 VAC 30-40-290 emer	Amended	25:1 VA.R. 35	8/27/08-8/26/09
12 VAC 30-40-345	Amended	25:11 VA.R. 1946	3/19/09
12 VAC 30-50-130	Amended	25:5 VA.R. 1041	12/10/08
12 VAC 30-50-140 emer	Amended	25:3 VA.R. 393	7/1/07-12/29/08
12 VAC 30-50-150 emer	Amended	25:3 VA.R. 393	7/1/07-12/29/08
12 VAC 30-50-180 emer	Amended	25:3 VA.R. 393	7/1/07-12/29/08
12 VAC 30-50-228 emer	Added	25:3 VA.R. 393	7/1/07-12/29/08

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 30-50-229.1	Repealed	25:5 VA.R. 1045	12/10/08
12 VAC 30-50-320	Amended	25:8 VA.R. 1515	2/5/09
12 VAC 30-50-330 through 12 VAC 30-50-360	Added	25:8 VA.R. 1515-1520	2/5/09
12 VAC 30-50-491 emer	Added	25:3 VA.R. 393	7/1/07-12/29/08
12 VAC 30-50-530	Amended	25:5 VA.R. 1049	12/10/08
12 VAC 30-60-180 emer	Added	25:3 VA.R. 393	7/1/07-12/29/08
12 VAC 30-60-185 emer	Added	25:3 VA.R. 393	7/1/07-12/29/08
12 VAC 30-60-500 emer	Added	25:3 VA.R. 384	8/8/07-2/7/09
12 VAC 30-70-70	Amended	25:3 VA.R. 387	11/27/08
12 VAC 30-70-261	Amended	25:3 VA.R. 388	11/27/08
12 VAC 30-70-271	Amended	25:3 VA.R. 388	11/27/08
12 VAC 30-70-311	Amended	24:26 VA.R. 3778	10/15/08
12 VAC 30-70-321	Amended	24:26 VA.R. 3778	10/15/08
12 VAC 30-70-500	Repealed	25:3 VA.R. 389	11/27/08
12 VAC 30-80-32 emer	Added	25:3 VA.R. 393	7/1/07-12/29/08
12 VAC 30-80-40 emer	Amended	24:25 VA.R. 3617	8/4/08-8/3/09
12 VAC 30-80-190 emer	Amended	25:1 VA.R. 41	8/27/08-8/26/09
12 VAC 30-90-41	Amended	24:26 VA.R. 3778	10/15/08
12 VAC 30-90-264	Amended	25:3 VA.R. 390	11/27/08
12 VAC 30-100-10 through 12 VAC 30-100-60	Repealed	25:3 VA.R. 383-384	11/12/08
12 VAC 30-100-170	Amended	24:25 VA.R. 3622	10/2/08
12 VAC 30-120-61 through 12 VAC 30-120-68	Repealed	25:8 VA.R. 1520-1526	2/5/09
12 VAC 30-120-100	Amended	24:26 VA.R. 3781	10/15/08
12 VAC 30-120-310 emer	Amended	25:3 VA.R. 393	7/1/07-12/29/08
12 VAC 30-120-370 emer	Amended	25:3 VA.R. 393	9/1/07-3/3/09
12 VAC 30-120-370	Amended	25:11 VA.R. 1947	3/4/09
12 VAC 30-120-380 emer	Amended	25:3 VA.R. 393	9/1/07-3/3/09
12 VAC 30-120-380 emer	Amended	25:3 VA.R. 393	7/1/07-12/29/08
12 VAC 30-120-380	Amended	25:11 VA.R. 1950	3/4/09
12 VAC 30-135-10	Amended	24:26 VA.R. 3783	10/16/08
12 VAC 30-135-20	Amended	24:26 VA.R. 3783	10/16/08
12 VAC 30-135-30	Amended	24:26 VA.R. 3783	10/16/08
12 VAC 30-135-40	Amended	24:26 VA.R. 3783	10/16/08
12 VAC 30-135-70	Amended	24:26 VA.R. 3784	10/16/08
12 VAC 30-141-660 emer	Amended	25:10 VA.R. 1854	12/22/08-12/21/09
12 VAC 35-11-10 through 12 VAC 35-11-110	Repealed	25:2 VA.R. 271	10/29/08
12 VAC 35-12-10 through 12 VAC 35-12-110	Added	25:2 VA.R. 271-274	10/29/08
Title 13. Housing			
13 VAC 5-10-10 through 13 VAC 5-10-120	Repealed	25:4 VA.R. 666	11/26/08
13 VAC 5-11-10 through 13 VAC 5-11-110	Added	25:4 VA.R. 667-669	11/26/08
13 VAC 5-51-81	Amended	24:25 VA.R. 3622	10/1/08
13 VAC 5-200-10	Amended	24:26 VA.R. 3784	10/1/08
13 VAC 5-200-40 through 13 VAC 5-200-80	Amended	24:26 VA.R. 3784-3785	10/1/08
13 VAC 5-200-100	Amended	24:26 VA.R. 3785	10/1/08
13 VAC 6-10-10 through 13 VAC 6-10-120	Repealed	25:3 VA.R. 394	11/13/08
13 VAC 6-11-10 through 13 VAC 6-11-110	Added	25:3 VA.R. 394-397	11/13/08
13 VAC 10-20-40	Amended	25:9 VA.R. 1743	12/15/08
13 VAC 10-180-40	Amended	25:7 VA.R. 1418	1/1/09
13 VAC 10-180-50	Amended	25:7 VA.R. 1419	1/1/09
13 VAC 10-180-60	Amended	25:7 VA.R. 1421	1/1/09
Title 14. Insurance			

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
14 VAC 5-323-10 through 14 VAC 5-323-70	Added	25:8 VA.R. 1527-1528	1/1/09
14 VAC 5-395-40	Amended	24:26 VA.R. 3811	8/29/08
Title 16. Labor and Employment			
16 VAC 15-10-10 through 16 VAC 15-10-100	Repealed	25:4 VA.R. 672	11/26/08
16 VAC 15-11-10 through 16 VAC 15-11-110	Added	25:4 VA.R. 672-675	11/26/08
16 VAC 15-30-40	Amended	24:25 VA.R. 3632	9/18/08
16 VAC 20-10-10 through 16 VAC 20-10-100	Repealed	25:4 VA.R. 675	11/27/08
16 VAC 20-11-10 through 16 VAC 20-11-110	Added	25:4 VA.R. 676-678	11/27/08
16 VAC 25-10-10 through 16 VAC 25-10-120	Repealed	24:26 VA.R. 3811	10/1/08
16 VAC 25-11-10 through 16 VAC 25-11-110	Added	24:26 VA.R. 3811-3814	10/1/08
16 VAC 25-20-10	Amended	25:8 VA.R. 1529	2/1/09
16 VAC 30-11-10 through 16 VAC 30-11-30	Repealed	25:6 VA.R. 1307	12/24/08
16 VAC 30-12-10 through 16 VAC 30-12-110	Added	25:6 VA.R. 1307-1310	12/24/08
16 VAC 30-90-10 through 16 VAC 30-90-80	Repealed	25:11 VA.R. 1951	3/4/09
16 VAC 30-91-10	Added	25:11 VA.R. 1951	3/4/09
16 VAC 30-91-20	Added	25:11 VA.R. 1952	3/4/09
Title 17. Libraries and Cultural Resources			
17 VAC 5-10-10 through 17 VAC 5-10-40	Repealed	25:6 VA.R. 1310	12/24/08
17 VAC 5-11-10 through 17 VAC 5-11-110	Added	25:6 VA.R. 1311-1313	12/24/08
17 VAC 10-10-10 through 17 VAC 10-10-40	Repealed	25:6 VA.R. 1313	12/24/08
17 VAC 10-11-10 through 17 VAC 10-11-110	Added	25:6 VA.R. 1314-1316	12/24/08
17 VAC 15-10-10	Repealed	25:5 VA.R. 1064	12/10/08
17 VAC 15-11-10 through 17 VAC 15-11-110	Added	25:5 VA.R. 1065-1067	12/10/08
17 VAC 15-120-10	Added	25:6 VA.R. 1317	12/24/08
17 VAC 15-120-20	Added	25:6 VA.R. 1317	12/24/08
17 VAC 15-120-30	Added	25:6 VA.R. 1317	12/24/08
Title 18. Professional and Occupational Licensing			
18 VAC 5-10-10 through 18 VAC 5-10-90	Repealed	25:4 VA.R. 678	11/26/08
18 VAC 5-11-10 through 18 VAC 5-11-110	Added	25:4 VA.R. 679-682	11/26/08
18 VAC 10-10-10 through 18 VAC 10-10-90	Repealed	25:4 VA.R. 682	11/27/08
18 VAC 10-11-10 through 18 VAC 10-11-110	Added	25:4 VA.R. 682-685	11/27/08
18 VAC 10-20-10	Amended	25:3 VA.R. 397	12/1/08
18 VAC 10-20-120	Amended	25:3 VA.R. 399	12/1/08
18 VAC 10-20-120	Amended	25:5 VA.R. 1068	1/1/09
18 VAC 10-20-140	Amended	25:5 VA.R. 1068	1/1/09
18 VAC 10-20-280	Amended	25:3 VA.R. 399	12/1/08
18 VAC 10-20-295	Amended	25:3 VA.R. 400	12/1/08
18 VAC 10-20-310	Amended	25:3 VA.R. 400	12/1/08
18 VAC 10-20-310	Erratum	25:7 VA.R. 1451	--
18 VAC 10-20-340	Amended	25:3 VA.R. 401	12/1/08
18 VAC 10-20-350	Amended	25:3 VA.R. 401	12/1/08
18 VAC 10-20-360	Amended	25:3 VA.R. 401	12/1/08
18 VAC 10-20-380	Amended	25:3 VA.R. 402	12/1/08
18 VAC 10-20-382	Added	25:3 VA.R. 403	12/1/08
18 VAC 10-20-392	Added	25:3 VA.R. 404	12/1/08
18 VAC 10-20-395	Added	25:3 VA.R. 404	12/1/08
18 VAC 10-20-760	Amended	25:3 VA.R. 404	12/1/08
18 VAC 15-10-10 through 18 VAC 15-10-90	Repealed	25:1 VA.R. 55	10/15/08
18 VAC 15-11-10 through 18 VAC 15-11-110	Added	25:1 VA.R. 55-58	10/15/08
18 VAC 25-10-10 through 18 VAC 25-10-90	Repealed	25:6 VA.R. 1318	12/24/08
18 VAC 25-11-10 through 18 VAC 25-11-110	Added	25:6 VA.R. 1319-1321	12/24/08

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 25-21-20	Amended	25:7 VA.R. 1431	2/1/09
18 VAC 25-21-40	Amended	25:7 VA.R. 1432	2/1/09
18 VAC 25-21-50	Amended	25:7 VA.R. 1432	2/1/09
18 VAC 25-21-60	Amended	25:7 VA.R. 1432	2/1/09
18 VAC 25-21-110	Amended	25:7 VA.R. 1433	2/1/09
18 VAC 25-21-120	Amended	25:7 VA.R. 1433	2/1/09
18 VAC 25-21-150	Amended	25:7 VA.R. 1433	2/1/09
18 VAC 25-21-170	Amended	25:7 VA.R. 1434	2/1/09
18 VAC 25-21-180	Amended	25:7 VA.R. 1434	2/1/09
18 VAC 25-21-185	Added	25:7 VA.R. 1435	2/1/09
18 VAC 30-10-10 through 18 VAC 30-10-120	Repealed	25:5 VA.R. 1070	12/10/08
18 VAC 30-11-10 through 18 VAC 30-11-110	Added	25:5 VA.R. 1070-1073	12/10/08
18 VAC 30-20 (Forms)	Amended	24:26 VA.R. 3814	--
18 VAC 41-10-10 through 18 VAC 41-10-90	Repealed	25:6 VA.R. 1321	12/24/08
18 VAC 41-11-10	Erratum	25:9 VA.R. 1826	--
18 VAC 41-11-20	Erratum	25:9 VA.R. 1826	--
18 VAC 41-11-10 through 18 VAC 41-11-110	Added	25:6 VA.R. 1322-1325	12/24/08
18 VAC 45-10-10 through 18 VAC 45- 10-90	Repealed	24:26 VA.R. 3815	10/2/08
18 VAC 45-11-10 through 18 VAC 45-11-110	Added	24:26 VA.R. 3815-3818	10/2/08
18 VAC 47-10-10 through 18 VAC 47-10-90	Repealed	25:6 VA.R. 1325	12/24/08
18 VAC 47-11-10 through 18 VAC 47-11-110	Added	25:6 VA.R. 1325-1328	12/24/08
18 VAC 48-10-10 through 18 VAC 48-10-110	Added	25:3 VA.R. 411-414	11/13/08
18 VAC 48-20-10 through 18 VAC 48-20-730 emer	Added	25:5 VA.R. 1074-1093	11/13/08-11/12/09
18 VAC 48-40-10 through 18 VAC 48-40-110	Added	25:4 VA.R. 685-688	11/27/08
18 VAC 48-50-10 through 18 VAC 48-50-200 emer	Added	25:5 VA.R. 1095-1100	11/13/08-11/12/09
18 VAC 48-60-10 through 18 VAC 48-60-60	Added	25:4 VA.R. 688-689	11/27/08
18 VAC 50-10-10 through 18 VAC 50-10-90	Repealed	25:6 VA.R. 1328	12/24/08
18 VAC 50-11-10 through 18 VAC 50-11-110	Added	25:6 VA.R. 1328-1331	12/24/08
18 VAC 50-22-40	Amended	25:3 VA.R. 415	12/1/08
18 VAC 50-22-50	Amended	25:3 VA.R. 415	12/1/08
18 VAC 50-22-60	Amended	25:3 VA.R. 416	12/1/08
18 VAC 50-22-300 through 18 VAC 50-22-350	Added	25:3 VA.R. 417-418	12/1/08
18 VAC 60-10-10 through 18 VAC 60-10-120	Repealed	25:3 VA.R. 418	11/12/08
18 VAC 60-11-10 through 18 VAC 60-11-110	Added	25:3 VA.R. 419-422	11/12/08
18 VAC 60-20 (Forms)	Amended	25:1 VA.R. 58	--
18 VAC 62-10-10 through 18 VAC 62-10-110	Added	25:6 VA.R. 1332-1334	12/24/08
18 VAC 65-10-10 through 18 VAC 65-10-120	Repealed	25:2 VA.R. 291	10/29/08
18 VAC 65-11-10 through 18 VAC 65-11-110	Added	25:2 VA.R. 291-294	10/29/08
18 VAC 65-20 (Forms)	Amended	24:26 VA.R. 3818	--
18 VAC 65-40 (Forms)	Amended	24:26 VA.R. 3818	--
18 VAC 70-10-10 through 18 VAC 70-10-90	Repealed	25:5 VA.R. 1100	12/10/08
18 VAC 70-11-10 through 18 VAC 70-11-110	Added	25:5 VA.R. 1100-1103	12/10/08
18 VAC 75-10-10 through 18 VAC 75-10-120	Repealed	25:2 VA.R. 294	10/29/08
18 VAC 75-11-10 through 18 VAC 75-11-110	Added	25:2 VA.R. 295-297	10/29/08
18 VAC 75-20 (Forms)	Amended	24:25 VA.R. 3632	--
18 VAC 76-20 (Forms)	Amended	24:26 VA.R. 3819	--
18 VAC 76-30-10 through 18 VAC 76-30-120	Repealed	24:25 VA.R. 3632	9/17/08
18 VAC 76-31-10 through 18 VAC 76-31-110	Added	24:25 VA.R. 3633-3635	9/17/08
18 VAC 76-40 (Forms)	Amended	24:26 VA.R. 3820	--
18 VAC 80-10-10 through 18 VAC 80-10-90	Repealed	25:6 VA.R. 1334	12/24/08
18 VAC 80-11-10 through 18 VAC 80-11-110	Added	25:6 VA.R. 1335-1338	12/24/08

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 85-10-10 through 18 VAC 85-10-110	Repealed	24:26 VA.R. 3820	10/1/08
18 VAC 85-11-10 through 18 VAC 85-11-110	Added	24:26 VA.R. 3820	10/1/08
18 VAC 85-20 (Forms)	Amended	24:26 VA.R. 3823	--
18 VAC 85-40 (Forms)	Amended	24:26 VA.R. 3823	--
18 VAC 85-50 (Forms)	Amended	24:26 VA.R. 3823	--
18 VAC 85-80 (Forms)	Amended	24:26 VA.R. 3823	--
18 VAC 85-80-10 emer	Amended	25:5 VA.R. 1104	11/1/08-10/31/09
18 VAC 85-80-26 emer	Amended	25:5 VA.R. 1104	11/1/08-10/31/09
18 VAC 85-80-40 emer	Amended	25:5 VA.R. 1104	11/1/08-10/31/09
18 VAC 85-80-45 emer	Amended	25:5 VA.R. 1105	11/1/08-10/31/09
18 VAC 85-80-50 emer	Amended	25:5 VA.R. 1105	11/1/08-10/31/09
18 VAC 85-80-61 emer	Repealed	25:5 VA.R. 1105	11/1/08-10/31/09
18 VAC 85-80-65 emer	Amended	25:5 VA.R. 1105	11/1/08-10/31/09
18 VAC 85-80-70 emer	Amended	25:5 VA.R. 1105	11/1/08-10/31/09
18 VAC 85-80-72 emer	Amended	25:5 VA.R. 1105	11/1/08-10/31/09
18 VAC 85-80-73 emer	Amended	25:5 VA.R. 1106	11/1/08-10/31/09
18 VAC 85-80-80 emer	Amended	25:5 VA.R. 1106	11/1/08-10/31/09
18 VAC 85-80-90 emer	Amended	25:5 VA.R. 1106	11/1/08-10/31/09
18 VAC 85-80-100 emer	Amended	25:5 VA.R. 1107	11/1/08-10/31/09
18 VAC 85-80-110 emer	Amended	25:5 VA.R. 1107	11/1/08-10/31/09
18 VAC 85-80-111 emer	Added	25:5 VA.R. 1108	11/1/08-10/31/09
18 VAC 85-101 (Forms)	Amended	24:26 VA.R. 3823	--
18 VAC 85-110 (Forms)	Amended	24:26 VA.R. 3823	--
18 VAC 85-120 (Forms)	Amended	24:26 VA.R. 3823	--
18 VAC 85-130 (Forms)	Amended	24:26 VA.R. 3823	--
18 VAC 90-10-10 through 18 VAC 90-10-120	Repealed	24:25 VA.R. 3635	9/17/08
18 VAC 90-11-10 through 18 VAC 90-11-110	Added	24:25 VA.R. 3636-3639	9/17/08
18 VAC 90-20 (Forms)	Amended	25:1 VA.R. 59	--
18 VAC 90-25 (Forms)	Amended	25:1 VA.R. 59	--
18 VAC 90-30 (Forms)	Amended	25:1 VA.R. 59	--
18 VAC 90-30-10	Amended	25:5 VA.R. 1111	12/25/08
18 VAC 90-30-20	Amended	25:5 VA.R. 1112	12/25/08
18 VAC 90-30-30	Amended	25:5 VA.R. 1112	12/25/08
18 VAC 90-30-80	Amended	25:5 VA.R. 1112	12/25/08
18 VAC 90-30-85	Amended	25:5 VA.R. 1112	12/25/08
18 VAC 90-30-100	Amended	25:5 VA.R. 1113	12/25/08
18 VAC 90-30-105	Amended	25:5 VA.R. 1113	12/25/08
18 VAC 90-30-110	Amended	25:5 VA.R. 1113	12/25/08
18 VAC 90-30-120	Amended	25:5 VA.R. 1114	12/25/08
18 VAC 90-30-121	Amended	25:5 VA.R. 1114	12/25/08
18 VAC 90-30-220	Amended	25:5 VA.R. 1115	12/25/08
18 VAC 90-30-230	Amended	25:5 VA.R. 1115	12/25/08
18 VAC 90-40 (Forms)	Amended	25:1 VA.R. 59	--
18 VAC 90-40-10	Amended	25:5 VA.R. 1115	12/25/08
18 VAC 90-40-20	Amended	25:5 VA.R. 1116	12/25/08
18 VAC 90-40-40	Amended	25:5 VA.R. 1116	12/25/08
18 VAC 90-40-50	Amended	25:5 VA.R. 1116	12/25/08
18 VAC 90-40-55	Amended	25:5 VA.R. 1116	12/25/08
18 VAC 90-40-60	Amended	25:5 VA.R. 1117	12/25/08
18 VAC 90-40-90	Amended	25:5 VA.R. 1117	12/25/08
18 VAC 90-40-100	Amended	25:5 VA.R. 1117	12/25/08

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 90-40-121	Added	25:5 VA.R. 1118	12/25/08
18 VAC 90-40-130	Amended	25:5 VA.R. 1118	12/25/08
18 VAC 90-40-140	Amended	25:5 VA.R. 1118	12/25/08
18 VAC 90-50 (Forms)	Amended	25:1 VA.R. 59	--
18 VAC 90-50-10	Amended	25:4 VA.R. 691	12/11/08
18 VAC 90-50-40	Amended	25:4 VA.R. 691	12/11/08
18 VAC 90-50-75	Amended	25:4 VA.R. 691	12/11/08
18 VAC 90-50-80	Amended	25:4 VA.R. 692	12/11/08
18 VAC 90-50-90	Amended	25:4 VA.R. 692	12/11/08
18 VAC 90-60 (Forms)	Amended	25:1 VA.R. 59	--
18 VAC 95-10-10 through 18 VAC 95-10-120	Repealed	25:6 VA.R. 1338	12/24/08
18 VAC 95-11-10 through 18 VAC 95-11-110	Added	25:6 VA.R. 1338-1341	12/24/08
18 VAC 95-20 (Forms)	Amended	24:26 VA.R. 3827	--
18 VAC 95-20-80	Amended	24:16 VA.R. 2264	5/14/08
18 VAC 95-20-225	Amended	25:6 VA.R. 1341	12/24/08
18 VAC 95-30 (Forms)	Amended	24:26 VA.R. 3827	--
18 VAC 100-10-10 through 18 VAC 100-10-90	Repealed	25:6 VA.R. 1342	12/24/08
18 VAC 100-11-10 through 18 VAC 100-11-110	Added	25:6 VA.R. 1342-1345	12/24/08
18 VAC 105-10-10 through 18 VAC 105-10-120	Repealed	24:26 VA.R. 3828	10/1/08
18 VAC 105-11-10 through 18 VAC 105-11-110	Added	24:26 VA.R. 3828-3831	10/1/08
18 VAC 105-20 (Forms)	Amended	24:25 VA.R. 3639	--
18 VAC 110-10-10 through 18 VAC 110-10-120	Repealed	25:2 VA.R. 298	10/29/08
18 VAC 110-11-10 through 18 VAC 110-11-110	Added	25:2 VA.R. 298-301	10/29/08
18 VAC 110-20 (Forms)	Amended	24:25 VA.R. 3640	--
18 VAC 110-20-20 emer	Amended	25:3 VA.R. 464	9/23/08-9/22/09
18 VAC 110-20-220	Amended	25:4 VA.R. 694	12/11/08
18 VAC 110-20-230	Repealed	25:4 VA.R. 695	12/11/08
18 VAC 110-30 (Forms)	Amended	24:25 VA.R. 3640	--
18 VAC 110-50 (Forms)	Amended	24:25 VA.R. 3640	--
18 VAC 110-50-20 emer	Amended	25:3 VA.R. 466	9/23/08-9/22/09
18 VAC 112-10-10 through 18 VAC 112-10-120	Repealed	25:1 VA.R. 61	10/15/08
18 VAC 112-11-10 through 18 VAC 112-11-110	Added	25:1 VA.R. 62-64	10/15/08
18 VAC 112-20 (Forms)	Amended	24:26 VA.R. 3831	--
18 VAC 112-20-81 emer	Added	25:3 VA.R. 467	11/1/07-4/29/09
18 VAC 112-20-90 emer	Amended	25:3 VA.R. 467	11/1/07-4/29/09
18 VAC 112-20-130 emer	Amended	25:3 VA.R. 467	11/1/07-4/29/09
18 VAC 112-20-131 emer	Amended	25:3 VA.R. 467	11/1/07-4/29/09
18 VAC 112-20-150 emer	Amended	25:3 VA.R. 467	11/1/07-4/29/09
18 VAC 115-10-10 through 18 VAC 115-10-120	Repealed	24:26 VA.R. 3832	10/1/08
18 VAC 115-11-10 through 18 VAC 115-11-110	Added	24:26 VA.R. 3832-3835	10/1/08
18 VAC 115-20 (Forms)	Amended	25:1 VA.R. 65	--
18 VAC 115-30 (Forms)	Amended	25:1 VA.R. 65	--
18 VAC 115-40 (Forms)	Amended	25:1 VA.R. 65	--
18 VAC 115-50 (Forms)	Amended	25:1 VA.R. 65	--
18 VAC 115-60 (Forms)	Amended	25:1 VA.R. 65	--
18 VAC 120-10-100 through 18 VAC 120-10-180	Repealed	24:26 VA.R. 3835	10/2/08
18 VAC 120-11-10 through 18 VAC 120-11-110	Added	24:26 VA.R. 3836-3838	10/2/08
18 VAC 125-10-10 through 18 VAC 125-10-120	Repealed	25:4 VA.R. 699	11/26/08
18 VAC 125-11-10 through 18 VAC 125-11-110	Added	25:4 VA.R. 699-702	11/26/08
18 VAC 125-20 (Forms)	Amended	25:1 VA.R. 66	--
18 VAC 125-30 (Forms)	Amended	25:1 VA.R. 66	--

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 130-10-10 through 18 VAC 130-10-90	Repealed	25:6 VA.R. 1345	12/24/08
18 VAC 130-11-10 through 18 VAC 130-11-110	Added	25:6 VA.R. 1345-1348	12/24/08
18 VAC 135-10-10 through 18 VAC 135-10-90	Repealed	25:6 VA.R. 1348	12/24/08
18 VAC 135-11-10 through 18 VAC 135-11-110	Added	25:6 VA.R. 1348-1351	12/24/08
18 VAC 140-10-10 through 18 VAC 140-10-120	Repealed	24:25 VA.R. 3641	9/17/08
18 VAC 140-11-10 through 18 VAC 140-11-110	Added	24:25 VA.R. 3641-3644	9/17/08
18 VAC 140-20 (Forms)	Amended	25:1 VA.R. 67	--
18 VAC 140-20-10	Amended	25:4 VA.R. 703	11/26/08
18 VAC 140-20-40	Amended	25:4 VA.R. 703	11/26/08
18 VAC 140-20-50	Amended	25:4 VA.R. 703	11/26/08
18 VAC 140-20-51	Added	25:4 VA.R. 705	11/26/08
18 VAC 140-20-60	Amended	25:4 VA.R. 705	11/26/08
18 VAC 140-20-105	Amended	25:4 VA.R. 706	11/26/08
18 VAC 140-20-140	Repealed	25:4 VA.R. 707	11/26/08
18 VAC 140-20-150	Amended	25:4 VA.R. 707	11/26/08
18 VAC 140-20-160	Amended	25:4 VA.R. 709	11/26/08
18 VAC 145-10-10 through 18 VAC 145-10-90	Repealed	25:6 VA.R. 1351	12/24/08
18 VAC 145-11-10 through 18 VAC 145-11-110	Added	25:6 VA.R. 1352-1355	12/24/08
18 VAC 150-10-10 through 18 VAC 150-10-120	Repealed	25:1 VA.R. 68	10/15/08
18 VAC 150-11-10 through 18 VAC 150-11-110	Added	25:1 VA.R. 68-71	10/15/08
18 VAC 150-20 (Forms)	Amended	24:26 VA.R. 3838	--
18 VAC 155-10-5 through 18 VAC 155-10-80	Repealed	25:6 VA.R. 1355	12/24/08
18 VAC 155-11-10 through 18 VAC 155-11-110	Added	25:6 VA.R. 1355-1358	12/24/08
18 VAC 160-10-10 through 18 VAC 160-10-90	Repealed	25:4 VA.R. 709	11/26/08
18 VAC 160-11-10 through 18 VAC 160-11-110	Added	25:4 VA.R. 709-712	11/26/08
Title 19. Public Safety			
19 VAC 15-10-10 through 19 VAC 15-10-50	Repealed	25:5 VA.R. 1118	12/10/08
19 VAC 15-11-10 through 19 VAC 15-11-110	Added	25:5 VA.R. 1119-1121	12/10/08
19 VAC 30-10-10 through 19 VAC 30-10-40	Repealed	24:26 VA.R. 3839	10/1/08
19 VAC 30-11-10 through 19 VAC 30-11-110	Added	24:26 VA.R. 3839-3842	10/1/08
19 VAC 30-20-40	Amended	25:11 VA.R. 1968	3/4/09
19 VAC 30-20-60	Amended	25:11 VA.R. 1968	3/4/09
19 VAC 30-20-80	Amended	25:11 VA.R. 1968	3/4/09
19 VAC 30-20-270 through 19 VAC 30-20-300	Added	25:11 VA.R. 1968-1969	3/4/09
Title 20. Public Utilities and Telecommunications			
20 VAC 5-200-30	Repealed	25:9 VA.R. 1768	1/1/09
20 VAC 5-201-10 through 20 VAC 5-201-110	Added	25:9 VA.R. 1768-1816	1/1/09
20 VAC 5-302-10 through 20 VAC 5-302-35	Amended	25:10 VA.R. 1859-1863	1/15/09
20 VAC 5-312-10	Amended	25:8 VA.R. 1534	1/1/09
20 VAC 5-312-20	Amended	25:8 VA.R. 1535	1/1/09
20 VAC 5-312-60	Amended	25:8 VA.R. 1537	1/1/09
20 VAC 5-312-80	Amended	25:8 VA.R. 1538	1/1/09
20 VAC 5-312-90	Amended	25:8 VA.R. 1540	1/1/09
20 VAC 5-312-120	Repealed	25:8 VA.R. 1542	1/1/09
20 VAC 5-313-10	Amended	25:8 VA.R. 1543	1/1/09
20 VAC 5-313-20	Amended	25:8 VA.R. 1543	1/1/09
20 VAC 5-313-30	Repealed	25:8 VA.R. 1544	1/1/09
20 VAC 5-315-10	Amended	24:26 VA.R. 3845	8/25/08
20 VAC 5-315-20	Amended	24:26 VA.R. 3845	8/25/08
20 VAC 5-315-40	Amended	24:26 VA.R. 3846	8/25/08
20 VAC 5-315-50	Amended	24:26 VA.R. 3847	8/25/08

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
20 VAC 5-403-70	Amended	25:9 VA.R. 1816	1/1/09
20 VAC 5-414-10 through 20 VAC 5-414-70	Added	25:7 VA.R. 1437-1438	12/1/08
Title 22. Social Services			
22 VAC 5-10-10 through 22 VAC 5-10-110	Repealed	25:5 VA.R. 1122	1/1/09
22 VAC 5-11-10 through 22 VAC 5-11-110	Added	25:5 VA.R. 1122-1125	1/1/09
22 VAC 5-30-10 through 22 VAC 5-30-60	Added	24:25 VA.R. 3665-3669	1/1/09
22 VAC 15-10-10 through 22 VAC 15-10-70	Repealed	25:4 VA.R. 712	1/1/09
22 VAC 15-11-10 through 22 VAC 15-11-110	Added	25:4 VA.R. 713-715	1/1/09
22 VAC 20-10-10 through 22 VAC 20-10-100	Repealed	25:7 VA.R. 1438	1/7/09
22 VAC 20-11-10 through 22 VAC 20-11-110	Added	25:7 VA.R. 1439-1441	1/7/09
22 VAC 27-10-10 through 22 VAC 27-10-110	Added	25:7 VA.R. 1442-1445	1/7/09
22 VAC 30-10-10	Repealed	25:1 VA.R. 71	10/15/08
22 VAC 30-10-20	Repealed	25:1 VA.R. 71	10/15/08
22 VAC 30-10-40	Repealed	25:1 VA.R. 71	10/15/08
22 VAC 30-10-50	Repealed	25:1 VA.R. 71	10/15/08
22 VAC 30-10-60	Repealed	25:1 VA.R. 71	10/15/08
22 VAC 30-11-10 through 22 VAC 30-11-110	Added	25:1 VA.R. 72-74	10/15/08
22 VAC 40-11-10 through 22 VAC 40-11-70	Repealed	25:1 VA.R. 74	1/1/09
22 VAC 40-12-10 through 22 VAC 40-12-110	Added	25:1 VA.R. 74-78	1/1/09
22 VAC 40-72-10	Amended	25:8 VA.R. 1592	2/5/09
22 VAC 40-72-30	Repealed	25:8 VA.R. 1598	2/5/09
22 VAC 40-72-50	Amended	25:8 VA.R. 1598	2/5/09
22 VAC 40-72-90	Amended	25:8 VA.R. 1599	2/5/09
22 VAC 40-72-100	Amended	25:8 VA.R. 1600	2/5/09
22 VAC 40-72-150	Amended	25:8 VA.R. 1600	2/5/09
22 VAC 40-72-190	Repealed	25:8 VA.R. 1600	2/5/09
22 VAC 40-72-191	Added	25:8 VA.R. 1601	2/5/09
22 VAC 40-72-200	Repealed	25:8 VA.R. 1601	2/5/09
22 VAC 40-72-201	Added	25:8 VA.R. 1602	2/5/09
22 VAC 40-72-210	Amended	25:8 VA.R. 1603	2/5/09
22 VAC 40-72-220	Amended	25:8 VA.R. 1603	2/5/09
22 VAC 40-72-230	Amended	25:8 VA.R. 1605	2/5/09
22 VAC 40-72-260	Amended	25:8 VA.R. 1606	2/5/09
22 VAC 40-72-290	Amended	25:8 VA.R. 1606	2/5/09
22 VAC 40-72-340	Amended	25:8 VA.R. 1607	2/5/09
22 VAC 40-72-390	Amended	25:8 VA.R. 1609	2/5/09
22 VAC 40-72-420	Amended	25:8 VA.R. 1610	2/5/09
22 VAC 40-72-430	Amended	25:8 VA.R. 1610	2/5/09
22 VAC 40-72-440	Amended	25:8 VA.R. 1611	2/5/09
22 VAC 40-72-630	Amended	25:8 VA.R. 1612	2/5/09
22 VAC 40-72-660	Amended	25:8 VA.R. 1613	2/5/09
22 VAC 40-72-670	Amended	25:8 VA.R. 1613	2/5/09
22 VAC 40-72-910	Amended	25:8 VA.R. 1615	2/5/09
22 VAC 40-72-920	Amended	25:8 VA.R. 1615	2/5/09
22 VAC 40-72-930	Amended	25:8 VA.R. 1615	2/5/09
22 VAC 40-72-950	Amended	25:8 VA.R. 1616	2/5/09
22 VAC 40-72-960	Amended	25:8 VA.R. 1616	2/5/09
22 VAC 40-72-970	Amended	25:8 VA.R. 1617	2/5/09
22 VAC 40-72-1010	Amended	25:8 VA.R. 1617	2/5/09
22 VAC 40-72-1120	Amended	25:8 VA.R. 1618	2/5/09
22 VAC 40-151-10 through 22 VAC 40-151-1020	Added	25:3 VA.R. 482-512	1/1/09

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
22 VAC 40-705-10	Amended	25:11 VA.R. 1993	3/4/09
22 VAC 40-705-30	Amended	25:11 VA.R. 1996	3/4/09
22 VAC 40-705-40	Amended	25:11 VA.R. 1997	3/4/09
22 VAC 40-705-50	Amended	25:11 VA.R. 1999	3/4/09
22 VAC 40-705-70	Amended	25:11 VA.R. 2000	3/4/09
22 VAC 40-705-80	Amended	25:11 VA.R. 2000	3/4/09
22 VAC 40-705-120	Amended	25:11 VA.R. 2001	3/4/09
22 VAC 40-705-140	Amended	25:11 VA.R. 2002	3/4/09
22 VAC 40-705-150	Amended	25:11 VA.R. 2003	3/4/09
22 VAC 40-705-180	Amended	25:11 VA.R. 2003	3/4/09
22 VAC 45-11-10 through 22 VAC 45-11-90	Repealed	25:5 VA.R. 1125	12/1/08
22 VAC 45-12-10 through 22 VAC 45-12-110	Added	25:5 VA.R. 1125-1128	12/1/08
Title 23. Taxation			
23 VAC 10-10-10 through 23 VAC 10-10-80	Repealed	25:4 VA.R. 730	1/10/09***
23 VAC 10-11-10 through 23 VAC 10-11-110	Added	25:4 VA.R. 732-735	1/10/09***
23 VAC 10-20-155	Added	24:26 VA.R. 3848	10/1/08
23 VAC 10-20 (Forms)	Amended	25:5 VA.R. 1128	--
23 VAC 10-20-20	Amended	25:11 VA.R. 2004	3/4/09
23 VAC 10-20-80	Amended	25:11 VA.R. 2004	3/4/09
23 VAC 10-20-90	Amended	25:11 VA.R. 2004	3/4/09
23 VAC 10-20-110	Amended	25:11 VA.R. 2004	3/4/09
23 VAC 10-20-130	Amended	25:11 VA.R. 2005	3/4/09
23 VAC 10-20-160	Amended	25:8 VA.R. 1620	3/8/09
23 VAC 10-20-165	Added	25:8 VA.R. 1622	3/8/09
23 VAC 10-20-170	Repealed	25:8 VA.R. 1627	3/8/09
23 VAC 10-20-180	Amended	25:8 VA.R. 1628	3/8/09
23 VAC 10-20-190	Amended	25:8 VA.R. 1628	3/8/09
23 VAC 10-20-200	Amended	25:11 VA.R. 2005	3/4/09
23 VAC 10-55 (Forms)	Amended	25:5 VA.R. 1129	--
23 VAC 10-60 (Forms)	Amended	25:5 VA.R. 1129	--
23 VAC 10-65 (Forms)	Amended	25:5 VA.R. 1129	--
23 VAC 10-75 (Forms)	Amended	25:5 VA.R. 1129	--
23 VAC 10-210 (Forms)	Amended	25:6 VA.R. 1358	--
23 VAC 10-210-20	Repealed	24:26 VA.R. 3849	10/1/08
23 VAC 10-210-170	Repealed	25:4 VA.R. 736	11/26/08
23 VAC 10-210-220	Amended	25:11 VA.R. 2006	3/4/09
23 VAC 10-210-250	Amended	25:11 VA.R. 2007	3/4/09
23 VAC 10-210-595	Added	25:4 VA.R. 736	11/26/08
23 VAC 10-210-870	Repealed	25:4 VA.R. 736	11/26/08
23 VAC 10-210-3080	Amended	25:11 VA.R. 2007	3/4/09
23 VAC 10-210-4010	Repealed	25:4 VA.R. 736	11/26/08
23 VAC 10-210-6060	Amended	25:8 VA.R. 1632	3/8/09
23 VAC 10-220 (Forms)	Amended	25:5 VA.R. 1129	--
23 VAC 10-230 (Forms)	Amended	25:5 VA.R. 1129	--
23 VAC 10-230-20	Amended	25:8 VA.R. 1633	3/8/09
23 VAC 10-230-30	Amended	25:8 VA.R. 1633	3/8/09
23 VAC 10-230-40	Amended	25:8 VA.R. 1635	3/8/09
23 VAC 10-230-70	Added	25:8 VA.R. 1637	3/8/09
23 VAC 10-230-75	Added	25:8 VA.R. 1637	3/8/09

*** See erratum (25:6 VA.R. 1375) for effective date

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
23 VAC 10-230-80	Amended	25:8 VA.R. 1637	3/8/09
23 VAC 10-230-90	Amended	25:8 VA.R. 1638	3/8/09
23 VAC 10-230-110	Amended	25:8 VA.R. 1639	3/8/09
23 VAC 10-230-120	Amended	25:8 VA.R. 1639	3/8/09
23 VAC 10-240 (Forms)	Amended	25:6 VA.R. 1359	--
23 VAC 10-300 (Forms)	Amended	25:5 VA.R. 1129	--
23 VAC 10-310 (Forms)	Amended	25:5 VA.R. 1129	--
23 VAC 10-330 (Forms)	Amended	25:5 VA.R. 1129	--
23 VAC 10-350 (Forms)	Amended	25:5 VA.R. 1129	--
23 VAC 10-370 (Forms)	Amended	25:5 VA.R. 1129	--
23 VAC 10-390 (Forms)	Amended	25:5 VA.R. 1130	--
Title 24. Transportation and Motor Vehicles			
24 VAC 20-10-10 through 24 VAC 20-10-140	Repealed	25:6 VA.R. 1360	12/24/08
24 VAC 20-11-10 through 24 VAC 20-11-110	Added	25:6 VA.R. 1361-1364	12/24/08
24 VAC 22-10-10 through 24 VAC 22-10-140	Repealed	25:4 VA.R. 752	11/26/08
24 VAC 22-11-10 through 24 VAC 22-11-110	Added	25:4 VA.R. 753-755	11/26/08
24 VAC 25-5-10 through 24 VAC 25-5-110	Added	25:7 VA.R. 1445-1448	1/7/09
24 VAC 25-10-10	Repealed	25:3 VA.R. 519	10/13/08
24 VAC 25-20-10	Repealed	25:3 VA.R. 519	10/13/08
24 VAC 27-10-10 through 24 VAC 27-10-120	Repealed	25:6 VA.R. 1364	12/24/08
24 VAC 27-11-10 through 24 VAC 27-11-110	Added	25:6 VA.R. 1364-1367	12/24/08
24 VAC 27-30-10 through 24 VAC 27-30-190	Added	25:1 VA.R. 78-89	10/15/08
24 VAC 30-10-10 through 24 VAC 30-10-70	Repealed	25:6 VA.R. 1367	12/24/08
24 VAC 30-11-10 through 24 VAC 30-11-110	Added	25:6 VA.R. 1367-1370	12/24/08
24 VAC 30-15-10	Repealed	25:10 VA.R. 1863	2/18/09
24 VAC 30-16-10	Repealed	25:3 VA.R. 520	11/12/08
24 VAC 30-380-10	Amended	25:5 VA.R. 1130	10/22/08
24 VAC 35-10-10 through 24 VAC 35-10-70	Repealed	25:5 VA.R. 1131	12/10/08
24 VAC 35-11-10 through 24 VAC 35-11-110	Added	25:5 VA.R. 1132-1134	12/10/08

TITLE 3. ALCOHOLIC BEVERAGES

ALCOHOLIC BEVERAGE CONTROL BOARD

Withdrawal of Notice of Intended Regulatory Action

The Alcoholic Beverage Control Board has WITHDRAWN the Notice of Intended Regulatory Action for the regulation titled**, 3VAC5-50, Retail Operations**, which was published in 14:3 VA.R. 389 October 27, 1997.

Agency Contact: W. Curtis Coleburn III, Chief Operating Officer, Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, VA 23220, telephone (804) 213-4409, FAX (804) 213-4411, TTY (804) 213-4687, or email curtis.coleburn@abc.virginia.gov.

VA.R. Doc. No. R98-66; Filed January 15, 2009, 12:11 p.m.

Withdrawal of Notice of Intended Regulatory Action

The Alcoholic Beverage Control Board has WITHDRAWN the Notice of Intended Regulatory Action for the regulation titled, **3VAC5-70, Other Provisions**, which was published in 14:3 VA.R. 389 October 27, 1997.

Agency Contact: W. Curtis Coleburn III, Chief Operating Officer, Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, VA 23220, telephone (804) 213-4409, FAX (804) 213-4411, TTY (804) 213-4687, or email curtis.coleburn@abc.virginia.gov.

VA.R. Doc. No. R98-65; Filed January 15, 2009, 12:11 p.m.

TITLE 2. AGRICULTURE

PESTICIDE CONTROL BOARD

REGISTRAR'S NOTICE: The Pesticide Control Board is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 3 of the Code of Virginia, which excludes regulations that consist only of changes in style or form or corrections of technical errors. The Pesticide Control Board will receive, consider and respond to petitions from any interested person at any time with respect to reconsideration or revision.

Final Regulation

Title of Regulation: **2VAC20-20. Rules and Regulations for Enforcement of the Virginia Pesticide Law (amending 2VAC20-20-10, 2VAC20-20-30, 2VAC20-20-120).**

Statutory Authority: § 3.2-3906 of the Code of Virginia.

Effective Date: March 18, 2009.

Agency Contact: Liza Fleeson, Program Manager, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 371-6559, FAX (804) 786-9149, TTY (800) 828-1120, or email liza.fleeson@vdacs.virginia.gov.

Summary:

The amendments update citations to reflect the recodification of Title 3.1 to Title 3.2 of the Code of Virginia, which became effective October 1, 2008.

2VAC20-20-10. Definitions.

The following words and terms~~,~~ when used in this chapter~~,~~ shall have the following ~~meaning,~~ meanings unless the context clearly indicates otherwise. Words used in singular form in this chapter include the plural, and vise versa, as appropriate.

"Active ingredient" means an ingredient which:

1. Is independently capable of:

a. Preventing, destroying, repelling, or mitigating insects, fungi, rodents, weeds, nematodes, or other pests; or

b. Altering through physiological action the behavior of ornamental or crop plants or their produce; or

c. Causing leaves or foliage to drop from a plant; or

d. Artificially accelerating the drying of plant tissue.

2. Is present in the product in an amount sufficient to be effective; and

3. Is not antagonistic to the activity of the principal active ingredients. The commissioner may require an ingredient to be designated as an active ingredient if, in his opinion, it sufficiently increases the effectiveness of the pesticide to warrant such action.

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

"Herbicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any weed, including any algae or other aquatic weed.

"Law" means Chapter ~~14.1~~ 39 (§ ~~3.1-249.27~~ 3.2-3900 et seq.) of Title ~~3.1~~ 3.2 of the Code of Virginia, known as the Virginia Pesticide Control Act.

"Rodent" means any animal of the order Rodentia including, but not limited to, rats, mice, rabbits, gophers, prairie dogs, and squirrels.

2VAC20-20-30. Label.

A. The name and address of the manufacturer shall appear on the label. If the registrant's name appears on the label and the registrant is not the manufacturer, or if the name of the person for whom the pesticide was manufactured appears on the label, it must be qualified by appropriate wording such as "Packed for . . .," "Distributed by . . .," or "Sold by . . .," to show that the name is not that of the manufacturer.

B. The name, brand, or trademark of the pesticide appearing on the label shall be that under which the pesticide is registered.

C. The net content declaration shall comply with the Weights and Measures Act of Virginia, Chapter ~~35~~ 56 (§ ~~3.1-919~~ 3.2-5600 et seq.) of Title ~~3.1~~ 3.2 of the Code of Virginia and its regulations.

D. Directions for use are required for the protection of the public. The public includes not only users of pesticides, but also those who handle them or may be affected by their use, handling, or storage. Pesticides restricted by this chapter shall be registered only for their permitted uses, and the label shall have a prominent statement to the effect that the product is to be used only as directed. Directions for use are considered necessary in the case of most retail containers, with the following exceptions.

Directions may be omitted:

1. If the pesticide is to be used by manufacturers in their regular manufacturing processes, provided that the label clearly shows that the product is intended for use only in manufacturing processes, and bears an ingredient statement giving the name and percentage of each of the active ingredients.

2. If the pesticide is sold to distributors for dilution or mixing with carriers to prepare pesticides for sale to the public, provided that the label bears an ingredient statement giving the name and percentage of each of the active ingredients; and the pesticide is a well-known substance or mixture of substances; and there is readily available general knowledge of the composition, methods of use, and effectiveness of the product for pesticide purposes.

2VAC20-20-120. Products for experimental use.

A. Articles for which no permit is required.

1. A substance or mixture of substances being tested only to determine its value as a pesticide, or to determine its toxicity or other properties, and is not considered a pesticide within the meaning of § ~~3.1-249.27~~ 3.2-3900 of the Code of Virginia.

2. A pesticide shipped or delivered for experimental use by or under the supervision of any federal or state agency authorized by law to conduct research in the field of economic poisons shall not be subject to the provisions of the law and this chapter.

B. Articles for which permit is required.

1. A pesticide shipped or delivered for experimental use by other qualified persons shall be exempt from the provisions of the law and of this chapter if a permit is obtained beforehand. Permits may be either, specific or general. A specific permit will be issued to cover a particular shipment on a specified date to a named person. A general permit will be issued to cover more than one shipment over a period of time to different persons.

2. If a pesticide is to be tested for a use which is likely to leave residue on or in food or feed, a permit for shipment or delivery will be issued only when:

a. The food or feed product will only be used as food or feed for laboratory or experimental animals, or

b. Convincing evidence is submitted by the applicant that the proposed use will not produce an amount of residue which would be hazardous to humans or animals.

3. All applications for permits covering shipments for experimental use shall include:

a. Name and address of the shipper and places from which the shipment will be made.

b. Proposed date of shipment or proposed shipping period, not to exceed one year.

c. A statement of the composition of material to be covered by the permit which should apply to a single material or group of closely allied formulations of the material.

d. A statement of the approximate quantity to be shipped.

e. A statement of the nature of the proposed experimental program, including the type of pests or organisms to be experimented with, the crops or animals for which the pesticide is to be used, the areas where the program will be conducted, and the results of previous tests, where necessary, to justify the quantity requested.

f. The percentage of the total quantity specified under ~~subparagraph~~ subdivision 3 d of this ~~paragraph~~ subsection which will be supplied without charge to the user.

g. A statement that the pesticide is intended for experimental use only.

h. Proposed labeling, which must bear:

(1) The prominent statement "For experimental use only" on the container label and any accompanying circular or other labeling,

(2) A warning or caution statement which may be necessary and if complied with, adequate for the protection of those who may handle or be exposed to the experimental substance,

(3) The name and address of the applicant for the permit,

(4) The name or designation of the substance, and

(5) If the pesticide is to be sold, a statement of the names and percentages of the principal active ingredients in the product.

If the shipper submits a copy of the valid experimental permit and accepted labeling issued under the provisions of the Federal Insecticide, Fungicide and Rodenticide Act, the commissioner may exempt the shipper from submitting the data and information specified in ~~subparagraphs (c) through (h)~~ subdivisions 3 e through h of this subsection.

4. The commissioner may limit the quantity of a pesticide covered by a permit if the available information on effectiveness, toxicity, or other hazards is not sufficient to justify the scope of the proposed experiment and he may impose other limitations in the permit for the protection of the public.

C. Cancellation of permits. Any permit for shipment for experimental use may be cancelled at any time for any violation of its terms.

VA.R. Doc. No. R09-1691; Filed January 26, 2009, 2:53 p.m.

Final Regulation

Title of Regulation: **2VAC20-30. Rules and Regulations Governing the Pesticide Fees Charged by the Department of Agriculture and Consumer Services Under the Virginia Pesticide Control Act (amending 2VAC20-30-10, 2VAC20-30-30, 2VAC20-30-40).**

Statutory Authority: § 3.2-3906 of the Code Virginia.

Effective Date: March 18, 2009.

Agency Contact: Liza Fleeson, Program Manager, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 371-6559, FAX (804) 786-9149, TTY (800) 828-1120, or email liza.fleeson@vdacs.virginia.gov.

Summary:

The amendments update citations to reflect the recodification of Title 3.1 to Title 3.2 of the Code of Virginia, which became effective October 1, 2008.

CHAPTER 30
~~RULES AND~~ REGULATIONS GOVERNING ~~THE~~ PESTICIDE FEES CHARGED BY THE DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES ~~UNDER THE VIRGINIA PESTICIDE CONTROL ACT~~

Part I
Definitions

2VAC20-30-10. Definitions.

The following words and terms~~,~~ when used in this chapter~~,~~ shall have the following ~~meaning,~~ meanings unless the context clearly indicates otherwise. All terms defined in ~~the Virginia Pesticide Control Act,~~ Chapter ~~14.1 (§ 3.1-249.27~~ 39 (§ 3.2-3900 et seq.) of Title ~~3.1~~ 3.2 of the Code of Virginia are hereby incorporated by reference in this chapter.

"Board" means the Pesticide Control Board.

"Brand" means any word, name, symbol, device, or any combination thereof, which serves to distinguish a pesticide product manufactured, distributed, sold, or offered for sale by one person from that manufactured, distributed, sold, or offered for sale by any other person.

"COB" means close-of-business.

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

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

"Grade" means formulation of a pesticide, except that the addition of pigments solely for color shall not constitute a change in the formulation such as to constitute a new grade requiring registration.

"Limited quantities" means purchases, at cost, for resale, of less than $50,000 annually per outlet of products containing nonrestricted use pesticide active ingredients.

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

2VAC20-30-30. Commercial applicator certificate fee.

Any person applying for a certificate as a commercial applicator shall pay to the department an initial nonrefundable certificate fee of $70 and a biennial nonrefundable renewal fee of $70 thereafter. All certificates shall expire at midnight on June 30 in the second year after issuance unless suspended or revoked for cause. All certificates not suspended or revoked for cause will be renewed upon receipt of the biennial renewal fee. If the applicator does not file an application for renewal of his certificate prior to COB June 30, the commissioner shall assess a late filing fee of 20% that shall be added to the renewal fee. The applicant shall pay the total fee prior to the commissioner's issuance of the renewal. However, if the certificate is not renewed within 60 days following the expiration of the certificate, then such certificate holder shall be required to take another examination. The fee for this reexamination or for any commercial applicator reexamination pursuant to subsection C of § ~~3.1-249.52~~ 3.2-3930 of the Code of Virginia shall be $70 and shall be nonrefundable. Any person applying to add a category or subcategory to his certificate shall pay to the department a nonrefundable fee of $35. Federal, state, and local government employees certified to use, or supervise the use of, pesticides in government programs shall be exempt from any certification fees.

2VAC20-30-40. Registered technician certificate fee.

Any person applying for a certificate as a registered technician shall pay to the department an initial nonrefundable certificate fee of $30 and a biennial nonrefundable renewal fee of $30 thereafter. All certificates shall expire at midnight on June 30 in the second year after issuance unless suspended or revoked for cause. A certificate not suspended or revoked for cause will be renewed upon receipt of the biennial renewal fee. If the application for renewal of any certificate is not filed prior to COB June 30, a late filing fee of 20% shall be assessed and added to the renewal fee and shall be paid by the applicant before the renewal shall be issued. If the certificate is not renewed within 60 days following the expiration of the certificate, then such certificate holder shall be required to take another examination. The fee for this reexamination pursuant to subsection C of § ~~3.1-249.52~~ 3.2-3930 of the Code of

Virginia shall be $30 and shall be nonrefundable. Federal, state and local government employees certified to use pesticides in government programs shall be exempt from any certification fees.

VA.R. Doc. No. R09-1692; Filed January 26, 2009, 2:54 p.m.

Final Regulation

Title of Regulation: **2VAC20-40. Regulations Governing Licensing of Pesticide Businesses Operating Under Authority of the Virginia Pesticide Control Act (amending 2VAC20-40-10, 2VAC20-40-90).**

Statutory Authority: § 3.2-3906 of the Code of Virginia.

Effective Date: March 18, 2009.

Agency Contact: Liza Fleeson, Program Manager, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 371-6559, FAX (804) 786-9149, TTY (800) 828-1120, or email liza.fleeson@vdacs.virginia.gov.

Summary:

The amendments update citations to reflect the recodification of Title 3.1 to Title 3.2 of the Code of Virginia, which became effective October 1, 2008.

Part I
Definitions

2VAC20-40-10. Definition of terms.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise. An asterisk following a definition denotes that the definition has been taken from § 3.2-100 or Article 1 ~~(§ 3.1-249.27 et seq.) of Chapter 14.1~~ (§ 3.2-3900 et seq.) of Chapter 39 of Title ~~3.1~~ 3.2 of the Code of Virginia.

~~"Act" means the Virginia Pesticide Control Act.~~

"Board" means the Pesticide Control Board.*

"Bulk pesticide" means any registered pesticide concentrate which is transported or held in an individual container in undivided quantities of greater than 55 U.S. gallons liquid measure or greater than 100 pounds net dry weight.

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

"Commercial applicator" means any person who has completed the requirements for certification as determined by the board to use or supervise the use of any pesticide for any purpose or on any property other than as provided in the definition of private applicator.*

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

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

"EPA" means the United States Environmental Protection Agency.

"FIFRA" means ~~The~~ the Federal Insecticide, Fungicide, and Rodenticide Act as amended, and herein incorporated by reference.

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

"Limited quantities" means purchases, at cost, for resale, of less than $50,000 annually per outlet of products containing nonrestricted use pesticide active ingredients.

"Pest management consultant" means any person, who may or may not apply pesticides himself, who has obtained a business license in accordance with the requirements listed below, and who is authorized by this chapter to provide technical advice, supervision or aid, or recommendations for pesticide application commercially in Virginia.

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

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

"Pesticide business location" means any fixed location of a pesticide business with either a telephone that is used to transact business or give advice, or where products, supplies or business mail is delivered. Residences of service technicians who are employed by a licensed pesticide business are exempt, if no business solicitation is conducted from that location.

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

"Restricted use pesticide" or "pesticide classified for restricted use" means any pesticide classified as restricted by the Administrator of the United States Environmental Protection Agency.*

"Virginia Pesticide Control Act" or "Act" means Chapter 39 (§ 3.2-3900 et seq.) of Title 3.2 of the Code of Virginia.

Part V
Revocation, Suspension or Denial of Business Licenses

2VAC20-40-90. Revocation of a business license.

In addition to the violative acts listed under § ~~3.1-249.63 B~~ 3.2-3940 A of the ~~Act~~ Code of Virginia, the following are grounds for revocation by the board of a business license:

1. Failure to (i) submit records to the commissioner upon written request; or (ii) to permit any person designated by the commissioner to have access to, and to copy such records of business transactions as may be essential to carrying out the purposes of the Act.

2. Operation of a pesticide business location or outlet without a certified commercial applicator assigned to the location or outlet as required by this chapter.

3. Interference with the commissioner or his duly authorized agents in carrying out the duties imposed by the Act.

4. Conduct by a licensee, as determined during the course of a hearing, which has or might have resulted at any time in substantial danger to, or in unreasonable adverse effects on, the public health, safety, or the environment.

5. Failure of a licensee to notify the department of any change in financial responsibility as specified in 2VAC20-40-80 C.

6. Multiple violations of the Act or regulations pursuant thereto within a three-year period.

VA.R. Doc. No. R09-1693; Filed January 26, 2009, 2:54 p.m.

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TITLE 3. ALCOHOLIC BEVERAGES

ALCOHOLIC BEVERAGE CONTROL BOARD

Proposed Regulation

Title of Regulation: **3VAC5-70. Other Provisions (adding 3VAC5-70-225).**

Statutory Authority: §§ 4.1-103, 4.1-111 and 4.1-212.1 of the Code of Virginia.

Public Hearing Information:

March 18, 2009 - 10 a.m. - Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, VA

Public Comments: Public comments may be submitted until 5 p.m. on April 17, 2009.

Agency Contact: Jeffrey L. Painter, Legislative and Regulatory Coordinator, Department of Alcoholic Beverage Control, P.O. Box 27491, Richmond, VA 23261, telephone (804) 213-4621, FAX (804) 213-4411, TTY (804) 213-4687, or email jeffrey.painter@abc.virginia.gov.

Basis: Title 4.1 of the Code of Virginia gives the Alcoholic Beverage Control Board general authority to regulate the manufacture, distribution and sale of alcoholic beverages within the Commonwealth, including the authority to promulgate regulations that it deems necessary to carry out the provisions of Title 4.1 of the Code of Virginia, in accordance with the Administrative Process Act. Section 4.1-212.1, which creates the delivery permit, provides that the board may adopt such regulations as it reasonably deems necessary to implement the provisions of this section. Such regulations shall include provisions that require (i) the recipient to demonstrate, upon delivery, that he is at least 21 years of age; and (ii) the recipient to sign an electronic or paper form or other acknowledgement of receipt as approved by the board.

Purpose: By statute, delivery permittees are required to require recipients to demonstrate that they are at least 21 years of age, maintain records of their deliveries, report deliveries monthly to the board, collect wine or beer taxes and state sales taxes on each sale, and forward collected taxes to the appropriate state agency. The goal of the regulation is to provide the administrative framework for carrying out the legislation's requirements. The proposed regulatory action is essential to ensure that alcoholic beverages are only delivered to adults of legal drinking age, and that the appropriate taxes are collected on all such beverages sold in the Commonwealth.

Substance: This action creates a new section, setting forth regulations applicable to holders of permits authorizing the delivery of wine or beer, pursuant to § 4.1-212.1 of the Code of Virginia. The new regulation specifies the application

process, recordkeeping, and reporting requirements for permit holders.

Issues: The primary advantages of the proposed regulatory action to the public, the agency, and the Commonwealth are the collection of appropriate taxes on alcoholic beverages and the prevention of the delivery of alcoholic beverages to those under the legal age. The primary disadvantage of the proposed regulatory action will be minimal recordkeeping and reporting requirements for delivery permit holders. There are no other disadvantages to the public or the Commonwealth.

The Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapters 99 and 799 of the 2007 Acts of the General Assembly, the Alcoholic Beverage Control Board (ABC) proposes to promulgate a new regulation for a new, statute-created, delivery permit.

Result of Analysis. The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact. In 2007, the General Assembly passed legislation that allowed wineries, farm wineries and breweries, as well as wine and beer retailers, to apply for delivery permits. These permits normally allow delivery of up to four cases of wine and/or beer to a customer at one time; the statute allows delivery of more than four cases of beer and/or wine so long as the permittee notifies ABC in writing at least one day before the delivery is made. By statute, permittees must verify that anyone accepting delivery of wine or beer is at least 21 years old. Permittees must also collect state wine or beer and sales taxes and forward tax monies to the appropriate state agency, maintain delivery records and report deliveries to ABC on a monthly basis.

Earlier this year, ABC promulgated an emergency regulation to implement these statutory changes. This proposed regulation, once promulgated, will replace the emergency regulation that is set to expire on January 2, 2009.

This proposed regulation does not vary in any substantive way from its originating statute except that it lists the information that permittees must include in their monthly reports to ABC. These reports must include:

- The number of containers delivered,
- Volume of each container delivered,
- Brand of each container delivered,
- Names and addresses of recipients of each delivery,
- Signature of any recipients and
- The price charged for the wine or beer delivered.

All of the information that ABC is asking permittees to include is likely necessary to verify that permittees are in compliance with the Code of Virginia; having the number of containers listed in reports, for instance, will allow ABC to verify that permittees are not delivering more than four cases of wine and/or beer at a time to anyone person without notifying ABC in writing before delivery. Consequently, regulated entities are unlikely to incur any additional costs on account of this proposed regulation. Regulated entities are likely to benefit from knowing exactly what they are expected to report to ABC as this will reduce the chances of them accidentally failing to comply with their lawful obligations.

Businesses and Entities Affected. ABC reports that over 7,000 businesses in Virginia are eligible to apply for delivery permits but only 241 businesses have applied for and received such permits.

Localities Particularly Affected. No locality will be particularly affected by this proposed regulatory action.

Projected Impact on Employment. This regulatory action will likely have no impact on employment in the Commonwealth.

Effects on the Use and Value of Private Property. This regulatory action will likely have no effect on the use or value of private property in the Commonwealth.

Small Businesses: Costs and Other Effects. Small businesses in the Commonwealth are unlikely to incur any costs on account of this regulatory action.

Small Businesses: Alternative Method that Minimizes Adverse Impact. Small businesses in the Commonwealth are unlikely to incur any costs on account of this regulatory action.

Real Estate Development Costs. This regulatory action will likely have no effect on real estate development costs in the Commonwealth.

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 Alcoholic Beverage Control Board concurs with the economic impact analysis of the Department of Planning and Budget.

Summary:

Chapters 99 and 799 of the 2007 Acts of the General Assembly are identical enactments, creating a new delivery permit that may be issued by the Department of Alcoholic Beverage Control to certain alcoholic beverage manufacturers or retailers. The proposed regulation details the application, recordkeeping, and reporting requirements for delivery permittees.

3VAC5-70-225. Delivery permits; application process; records and reports.

A. Any person or entity qualified for a delivery permit pursuant to § 4.1-212.1 of the Code of Virginia must apply for such permit by submitting Form 805-52, Retail License Application. The applicant shall attach (i) a photocopy of its current license as a winery, farm winery, brewery, or alcoholic beverage retailer that is authorized to sell wine or beer at retail for off-premises consumption, issued by the appropriate authority for the location from which deliveries will be made and (ii) evidence of the applicant's registration with the Virginia Department of Taxation for the collection of Virginia retail sales tax.

B. Delivery permittees shall maintain for two years complete and accurate records of all deliveries made under the privileges of such permits, including for each delivery:

1. Number of containers delivered;

2. Volume of each container delivered;

3. Brand of each container delivered;

4. Names and addresses of recipients;

5. Signature of recipient; and

6. Price charged for the wine or beer delivered.

The records required by this subsection shall be made available for inspection and copying by any member of the board or its special agents upon request.

C. On or before the 15th day of each month, each delivery permittee shall file with the Supervisor, Tax Management Section, a report of activity for the previous calendar month, if any deliveries were made during the month. Such report shall include the following information for each delivery:

1. Number of containers delivered;

2. Volume of each container delivered;

3. Brand of each container delivered;

4. Names and addresses of recipients; and

5. Price charged for the wine or beer delivered.

Unless previously paid, payment of the appropriate beer or wine tax imposed by § 4.1-234 or 4.1-236 of the Code of Virginia shall accompany each report. If no wine or beer was sold and delivered in any month, the permittee shall not be required to submit a report for that month; however, every permittee must submit a report no less frequently than once every 12 months even if no sales or deliveries have been made in the preceding 12 months.

D. All deliveries by holders of delivery permits shall be performed by the owner or any agent, officer, director, shareholder, or employee of the permittee.

E. No more than four cases of wine nor more than four cases of beer may be delivered at one time to any person, except that a permittee may deliver more than four cases of wine or more than four cases of beer if he notifies the Supervisor, Tax Management Section, in writing at least one business day in advance of such delivery. Any notice given pursuant to this section shall include the number of containers to be delivered, the volume of each container to be delivered, the brand of each container to be delivered, and the name and address of the intended recipient.

F. When attempting to deliver wine or beer pursuant to a delivery permit, an owner, agent, officer, director, shareholder or employee of the permittee shall require:

1. The recipient to demonstrate, upon delivery, that he is at least 21 years of age; and

2. The recipient to sign an electronic or paper form or other acknowledgment of receipt that allows the maintenance of the records required by this section.

The owner, agent, officer, director, shareholder or employee of the permittee shall refuse delivery when the proposed recipient appears to be under the age of 21 years and refuses to present valid identifications. All permittees delivering wine or beer pursuant to this section shall affix a conspicuous notice in 16-point type or larger to the outside of each package of wine or beer delivered in the Commonwealth, in a conspicuous location stating: "CONTAINS ALCOHOLIC BEVERAGES; SIGNATURE OF PERSON AGED 21 YEARS OR OLDER REQUIRED FOR DELIVERY." Such notice shall also contain the delivery permit number of the delivering permittee.

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 (3VAC5-70)

Order and Permit for Transportation of Alcohol, #703-69 (eff. 11/87).

Order and Permit for Transportation of Alcoholic Beverages, #703-73.

Mixed Beverage Annual Review-Instructions for Completion, #805-44 (rev. 11/06).

Application for Off Premises Keg Permit, #805-45 (eff. 1/93).

Retail License Application, #805-52 (rev. 7/08).

Application for Grain Alcohol Permit, #805-75.

Special Event License Application Addendum-Notice to Special Event Licenses Applicants, Form SE-1 (rev.08/02).

Statement of Income & Expenses for Special Event Licenses (with instructions), Form SE-2 (rev.08/02).

VA.R. Doc. No. R08-928; Filed January 28, 2009, 1:54 p.m.

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TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

REGISTRAR'S NOTICE: The following regulations filed by the Marine Resources Commission are exempt from the Administrative Process Act in accordance with § 2.2-4006 A 12 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Final Regulation

Title of Regulation: **4VAC20-270. Pertaining to Crabbing (amending 4VAC20-270-40).**

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

Effective Date: February 1, 2009.

Agency Contact: Jane Warren, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email betty.warren@mrc.virginia.gov.

Summary:

This amendment allows the setting of fish pots in Virginia waters located upriver of the following boundary from March 12 through March 16: In the Potomac River the boundary line shall be the Route 301 bridge that extends from Newberg, Maryland, to Dahlgren, Virginia.

4VAC20-270-40. Season limits.

A. The lawful season for the harvest of male crabs shall be March 17, 2008, through November 30, 2008. The lawful season for the harvest of female crabs shall be March 17, 2008, through October 26, 2008.

B. It shall be unlawful for any person to harvest crabs or to possess crabs on board a vessel, except during the lawful season, as described in subsection A of this section.

C. It shall be unlawful for any person knowingly to place, set, fish or leave any hard crab pot or peeler crab pot in any tidal waters of Virginia from December 1, 2008, through March 16, 2009.

D. It shall be unlawful for any person knowingly to place, set, fish or leave any fish pot in any tidal waters from March 12 through March 16, except as provided in subdivisions 1 and 2 of this subsection.

1. It shall be lawful for any person to place, set, or fish any fish pot in those Virginia waters located upriver of the following boundary lines:

a. In the James River the boundary shall be a line connecting Hog Point and the downstream point at the mouth of College Creek.

b. In the York River the boundary lines shall be the Route 33 bridges at West Point.

c. In the Rappahannock River the boundary line shall be the Route 360 bridge at Tappahannock.

d. In the Potomac River the boundary line shall be the Route 301 bridge that extends from Newberg, Maryland, to Dahlgren, Virginia.

2. This subsection shall not apply to lawful eel pots as described in 4VAC20-500-50.

VA.R. Doc. No. R09-1765; Filed January 30, 2009, 9:20 a.m.

Final Regulation

Title of Regulation: **4VAC20-1190. Pertaining to Gill Net Control Date (adding 4VAC20-1190-10, 4VAC20-1190-20).**

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

Effective Date: February 1, 2009.

Agency Contact: Jane Warren, Agency Regulatory Coordinator, Marine Resources Commission, 2600

Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email betty.warren@mrc.virginia.gov.

Summary

This chapter establishes a control date of December 31, 2005, for the conservation and management of all commercial gill net fisheries under the jurisdiction of Virginia.

CHAPTER 1190
PERTAINING TO GILL NET CONTROL DATE

4VAC20-1190-10. Purpose.

The purpose of this chapter is to establish a control date for conservation and management of the gill net fishery.

4VAC20-1190-20. Control date.

The commission hereby establishes December 31, 2005, as the control date for management of all commercial gill net fisheries under its jurisdiction. Participation by any individual in a gill net fishery after the control date will not be considered in the calculation or distribution of gill net rights should any entry limitations be established. Any individual entering the gill net fishery after the control date will have no right to future participation in the gill net fishery should any entry limitations be established.

VA.R. Doc. No. R09-1772; Filed January 30, 2009, 9:21 a.m.

DEPARTMENT OF MINES, MINERALS AND ENERGY

Final Regulation

Title of Regulation: **4VAC25-130. Coal Surface Mining Reclamation Regulations (amending 4VAC25-130-816.22, 4VAC25-130-816.43, 4VAC25-130-816.116, 4VAC25-130-817.22, 4VAC25-130-817.43, 4VAC25-130-817.116, 4VAC25-130-842.15).**

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

Effective Date: March 18, 2009.

Agency Contact: David Spears, Regulatory Coordinator, Department of Mines, Minerals and Energy, 202 North Ninth Street, 8th Floor, Richmond, VA 23219-3402, telephone (804) 692-3212, FAX (804) 692-3237, TTY (800) 828-1120, or email david.spears@dmme.virginia.gov.

Summary:

The amendments will maintain consistency with corresponding federal regulations, allow more natural design of stream restoration channels, and clarify requirements for requesting reviews of decisions not to inspect or enforce. The sections being amended for consistency with federal regulations deal with redistribution of topsoil and topsoil substitutes, and measuring success of revegetation efforts.

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.

4VAC25-130-816.22. Topsoil and subsoil.

(a) Removal.

(1)(i) All topsoil shall be removed as a separate layer from the area to be disturbed, and segregated.

(ii) Where the topsoil is of insufficient quantity or poor quality for sustaining vegetation, the materials approved by the division in accordance with Paragraph (b) of this section shall be removed as a separate layer from the area to be disturbed, and segregated.

(2) If topsoil is less than 6 inches thick, the permittee may remove the topsoil and the unconsolidated materials immediately below the topsoil and treat the mixture as topsoil.

(3) The division may choose not to require the removal of topsoil for minor disturbances which--

(i) Occur at the site of small structures, such as power poles, signs, or fence lines; or

(ii) Will not destroy the existing vegetation and will not cause erosion.

(4) Timing. All material to be removed under this section shall be removed after the vegetative cover that would interfere with its salvage is cleared from the area to be disturbed, but before any drilling, blasting, mining, or other surface disturbance takes place.

(b) Substitutes and supplements.

(1) Selected overburden materials may be substituted for, or used as a supplement to topsoil if the permittee demonstrates to the division, in accordance with 4VAC25-130-780.18, that the resulting soil medium is equal to, or more suitable for sustaining vegetation than, the existing topsoil, and the resulting soil medium is the best available in the permit area to support revegetation.

(2) Substituted or supplemental material shall be removed, segregated, and replaced in compliance with the requirements of this section for topsoil.

(3) Selected overburden materials may be substituted for or used as a supplement to topsoil, if the slope of the land containing the topsoil is greater than 60 percent (3v:5h) and the selected overburden materials satisfy the following criteria:

(i) The results of the analyses of the overburden required in 4VAC25-130-780.18 demonstrates the feasibility of using the overburden materials.

(ii) The substitute material has a pH greater than 5.0, has a net acidity of less than five tons per 1,000 tons of material or a net alkalinity, and is suitable for sustaining vegetation consistent with the standards for vegetation in 4VAC25-130-816.111 through 4VAC25-130-816.116, and the approved postmining land use.

(c) Storage.

(1) Materials removed under Paragraph (a) of this section shall be segregated and stockpiled when it is impractical to redistribute such materials promptly on regraded areas.

(2) Stockpiled materials shall--

(i) Be selectively placed on a stable site within the permit area;

(ii) Be protected from contaminants and unnecessary compaction that would interfere with revegetation;

(iii) Be protected from wind and water erosion through prompt establishment and maintenance of an effective, quick growing vegetative cover or through other measures approved by the division; and

(iv) Not be moved until required for redistribution unless approved by the division.

(3) When long-term surface disturbances will result from facilities such as support facilities and preparation plants and where stockpiling of materials removed under Paragraph (a)(1) of this section would be detrimental to the quality or quantity of those materials, the division may approve the temporary distribution of the soil materials so removed to an approved site within the permit area to enhance the current use of that site until the materials are needed for later reclamation, provided that--

(i) Such action will not permanently diminish the capability of the topsoil of the host site; and

(ii) The material will be retained in a condition more suitable for redistribution than if stockpiled.

(d) Redistribution.

(1) Topsoil materials and substitutes removed under Paragraph (a) and (b) of this section shall be redistributed in a manner that--

(i) Achieves an approximately uniform, stable thickness when consistent with the approved postmining land use, contours, and surface-water drainage systems. Soil thickness may also be varied to the extent such variations help meet the specific revegetation goals identified in the permit;

(ii) Prevents excess compaction of the materials; and

(iii) Protects the materials from wind and water erosion before and after seeding and planting.

(2) Before redistribution of the material removed under Paragraph (a) of this section, the regraded land shall be treated if necessary to reduce potential slippage of the redistributed material and to promote root penetration. If no harm will be caused to the redistributed material and reestablished vegetation, such treatment may be conducted after such material is replaced.

(3) The division may choose not to require the redistribution of topsoil or topsoil substitutes on the approved postmining embankments of permanent impoundments or of roads if it determines that--

(i) Placement of topsoil or topsoil substitutes on such embankments is inconsistent with the requirement to use the best technology currently available to prevent sedimentation; and

(ii) Such embankments will be otherwise stabilized.

(4) Nutrients and soil amendments shall be applied to the initially redistributed material when necessary to establish the vegetative cover. The types and amounts of nutrients and soil amendments shall be determined by soil tests performed by a qualified laboratory using standard methods which are approved by the division. If seeding is done without a site specific soil test--

(i) Fertilization rates of 300 pounds of 16-27-14 or 500 pounds of 10-20-10 or equivalents per acre shall be used.

(ii) Liming rates shall be in accordance with the following table:

Mine Spoil pH	Tons of Lime Needed per Acre to Increase pH to:					
	5.1 - 5.5			5.6 - 6.2		
Test	Sandstone	Shale	Mixed	Sandstone	Shale	Mixed
4.0 - 4.5	2	3	2	3	5	4
4.6 - 5.0	1	3	2	2	4	3
5.1 - 5.5	0	2	1	1	3	2
5.6 - 6.0	0	1	0	0	2	1

(iii) Soil tests shall be performed promptly after topsoiling but before application of any supplementary nutrients and any additional lime and fertilizer applied as necessary.

(e) Subsoil segregation. The division may require that the B horizon, C horizon, or other underlying strata, or portions thereof, be removed and segregated, stockpiled, and redistributed as subsoil in accordance with the requirements of Paragraphs (c) and (d) of this section if it finds that such subsoil layers are necessary to comply with the revegetation requirements of 4VAC25-130-816.111, 4VAC25-130-816.113, 4VAC25-130-816.114 and 4VAC25-130-816.116.

4VAC25-130-816.43. Diversions.

(a) General requirements.

(1) With the approval of the division, any flow from mined areas abandoned before May 3, 1978, and any flow from undisturbed areas or reclaimed areas, after meeting the criteria of 4VAC25-130-816.46 for siltation structure removal, may be diverted from disturbed areas by means of temporary or permanent diversions. All diversions shall be designed to minimize adverse impacts to the hydrologic balance within the permit and adjacent areas, to prevent material damage outside the permit area and to assure the safety of the public. Diversions shall not be used to divert water into underground mines without approval of the division under 4VAC25-130-816.41(i).

(2) The diversion and its appurtenant structures shall be designed, located, constructed, maintained, and used to--

(i) Be stable;

(ii) Provide protection against flooding and resultant damage to life and property;

(iii) Prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow outside the permit area; and

(iv) Comply with all applicable local, State and Federal laws and regulations.

(3) Temporary diversions shall be removed promptly when no longer needed to achieve the purpose for which they were authorized. The land disturbed by the removal process shall be restored in accordance with this Part. Before diversions are removed, downstream water-treatment facilities previously protected by the diversion shall be modified or removed, as necessary, to prevent overtopping or failure of the facilities. This requirement shall not relieve the permittee from maintaining water-treatment facilities as otherwise required. A permanent diversion or a stream channel reclaimed after the removal of a temporary diversion shall be designed and constructed so as to restore or approximate the premining characteristics of the original stream channel including the natural riparian vegetation to promote the recovery and the enhancement of the aquatic habitat.

(4) Diversions which convey water continuously or frequently shall be ~~lined with rock rip-rap to at least the normal flow depth, including an allowance for freeboard. Diversions constructed in competent bedrock and portions of channels above normal flow depth shall comply with the velocity limitations of Paragraph (5) below~~ designed by a qualified registered professional engineer and constructed to ensure stability and compliance with the standards of this Part and any other criteria set by the division.

~~(5) The maximum permissible velocity for the following methods of stabilization are:~~

~~Vegetated channel constructed in soil~~	~~3.5 feet per second~~
~~Vegetated channel with jute netting~~	~~5.0 feet per second~~
~~Rock rip-rap lined channel~~	~~16.0 feet per second~~
~~Channel constructed in competent bedrock~~	~~No limit~~

~~(6)~~ (5) Channel side slopes shall be no steeper than 1.5h:1v in soil.

~~(7)~~ (6) Adequate freeboard shall be provided to prevent overtopping. A minimum of 0.3 feet shall be included, with additional freeboard provided at curves, transitions, and other critical sections as required.

~~(8)~~ (7) When rock rip rap lining is used, consideration shall be given to rip rap size, bedding, and filter material. Rock used for rip rap shall be non-degradable, and non-acid forming such as natural sand and gravel,sandstone or limestone. No clay, shale, or coal shall be used.

~~(9)~~ (8) Sediment and other debris shall be removed and the diversion maintained to provide the design requirements throughout its operation.

~~(10)~~ (9) The division may specify other criteria for diversions to meet the requirements of this section.

(b) Diversion of perennial and intermittent streams.

(1) Diversion of perennial and intermittent streams within the permit area may be approved by the division after making the finding relating to stream buffer zones called for in 4VAC25-130-816.57 that the diversion will not adversely affect the water quantity and quality and related environmental resources of the stream.

(2) The design capacity of channels for temporary and permanent stream channel diversions shall be at least equal to the capacity of the unmodified stream channel immediately upstream and downstream from the diversion.

(3) The requirements of Paragraph (a)(2)(ii) of this section shall be met when the temporary and permanent diversions for perennial and intermittent streams are designed so that the combination of channel, bank and flood-plain configuration is adequate to pass safely the peak runoff of a 10-year, 6-hour precipitation event for a temporary diversion and a 100-year, 6-hour precipitation event for a permanent diversion.

(4) The design and construction of all stream channel diversions of perennial and intermittent streams shall be certified by a qualified registered professional engineer as meeting the standards of this Part and any other criteria set by the division.

(5) Channels which are constructed in backfilled material shall be formed during the backfilling and grading of the area. Unless the backfill material is of sufficiently low permeability, the channel shall be lined to prevent saturation of the backfill, loss of stream flow, or degradation of groundwater quality.

(6) Rock rip rap lining shall be placed in the channels of all diversions of perennial and intermittent streams to the normal flow depth, including adequate freeboard. Channels constructed in competent bedrock need not be rip rap lined.

(c) Diversion of miscellaneous flows.

(1) Miscellaneous flows, which consist of all flows except for perennial and intermittent streams, may be diverted away from disturbed areas if required or approved by the division. Miscellaneous flows shall include ground-water discharges and ephemeral streams.

(2) The design, location, construction, maintenance, and removal of diversions of miscellaneous flows shall meet all of the performance standards set forth in Paragraph (a) of this section.

(3) The requirements of Paragraph (a)(2)(ii) of this section shall be met when the temporary and permanent diversions for miscellaneous flows are designed to pass safely the peak runoff of a 2-year, 6-hour precipitation event for a temporary diversion and a 10-year, 6-hour precipitation event for a permanent diversion.

(d) Steep slope conveyances.

(1) A steep slope conveyance, including but not limited to a rock rip rap flume, concrete flume, or a pipe, shall be used to convey water down steep slopes to stable natural or constructed drainways. Steep slope conveyances shall be constructed at locations where concentrated flows may cause erosion.

(2) The capacity of the conveyance shall be equal to or greater than the capacity of the inlet ditch or drainage structure associated with it.

4VAC25-130-816.116. Revegetation; standards for success.

(a) Success of revegetation shall be judged on the effectiveness of the vegetation for the approved postmining land use, the extent of cover compared to the cover occurring in natural vegetation of the area, and the general requirements of 4VAC25-130-816.111.

(1) Statistically valid sampling techniques shall be used for measuring success.

(2) Ground cover, production, or stocking shall be considered equal to the approved success standard when they are not less than 90% of the success standard. The sampling techniques for measuring success shall use a 90% statistical confidence interval (i.e., one-sided test with a 0.10 alpha error). Sampling techniques for measuring woody plant stocking, ground cover, and production shall be in accordance with techniques approved by the division.

(b) Standards for success shall be applied in accordance with the approved postmining land use and, at a minimum, the following conditions:

(1) For areas developed for use as grazing land or pasture land, the ground cover and production of living plants on the revegetated area shall be at least equal to that of a reference area or if approved by the division, a vegetative ground cover of 90% for areas planted only in herbaceous species and productivity at least equal to the productivity of the premining soils may be achieved. Premining productivity shall be based upon data of the U.S. Natural Resources Conservation Service and measured in such

units as weight of material produced per acre or animal units supported.

(2) For areas developed for use as cropland, crop production on the revegetated area shall be at least equal to that of a reference area or if approved by the division, crop yields shall be at least equal to the yields for reference crops from unmined lands. Reference crop yields shall be determined from the current yield records of representative local farms in the surrounding area or from the average county yields recognized by the U.S. Department of Agriculture.

(3) For areas to be developed for fish and wildlife habitat, undeveloped land, recreation, shelter belts, or ~~forest products, success of vegetation shall be determined on the basis of tree and shrub~~ forestry, the stocking ~~and vegetative ground cover~~ of woody plants must be at least equal to the rates specified in the approved reclamation plan. To minimize competition with woody plants, herbaceous ground cover should be limited to that necessary to control erosion and support the postmining land use. Seed mixtures and seeding rates will be specified in the approved reclamation plan. Such parameters are described as follows:

(i) Minimum stocking and planting arrangements shall be specified by the division on the basis of local and regional conditions and after consultation with and approval by the state agencies responsible for the administration of forestry and wildlife programs. Consultation and approval may occur on either a program wide or a permit specific basis.

(ii) Trees and shrubs that will be used in determining the success of stocking and the adequacy of the plant arrangement shall have utility for the approved postmining land use. Trees and shrubs counted in determining such success shall be healthy and have been in place for not less than two growing seasons. At the time of bond release, at least 80% of the trees and shrubs used to determine such success shall have been in place for at least three years. Root crown or sprouts over one foot in height shall count as one toward meeting the stocking requirements. Where multiple stems occur, only the tallest stem will be counted.

(iii) Vegetative ground cover shall not be less than that required to control erosion and achieve the approved postmining land use.

(iv) Where commercial forest land is the approved postmining land use:

(A) The area shall have a minimum stocking of 400 trees per acre.

(B) All countable trees shall be commercial species and shall be well distributed over each acre stocked.

(C) Additionally, the area shall have an average of at least 40 wildlife food-producing shrubs per acre. The shrubs shall be suitably located for wildlife enhancement, and may be distributed or clustered.

(v) Where woody plants are used for wildlife management, recreation, shelter belts, or forest uses other than commercial forest land:

(A) The stocking of trees, shrubs, half-shrubs and the ground cover established on the revegetated area shall approximate the stocking and ground cover on the surrounding unmined area and shall utilize local and regional recommendations regarding species composition, spacing and planting arrangement;

(B) Areas planted only in herbaceous species shall sustain a vegetative ground cover of 90%;

(C) Areas planted with a mixture of herbaceous and woody species shall sustain a herbaceous vegetative ground cover ~~of 90%~~ in accordance with guidance provided by the division and the approved forestry reclamation plan and establish an average of 400 woody plants per acre. At least 40 of the woody plants for each acre shall be wildlife food-producing shrubs located suitably for wildlife enhancement, which may be distributed or clustered on the area.

(4) For areas to be developed for industrial, commercial, or residential use less than two years after regrading is completed, the vegetative ground cover shall not be less than that required to control erosion.

(5) For areas previously disturbed by mining that were not reclaimed to the requirements of this subchapter and that are remined or otherwise redisturbed by surface coal mining operations, as a minimum, the vegetative ground cover shall be not less than the ground cover existing before redisturbance, and shall be adequate to control erosion.

(c) (1) The period of extended responsibility for successful revegetation shall begin after the last year of augmented seeding, fertilizing, irrigation, or other work, excluding husbandry practices that are approved by the division in accordance with subdivision (c)(3) of this section.

(2) The period of responsibility shall continue for a period of not less than:

(i) Five full years except as provided in subdivision (c)(2)(ii) of this section. The vegetation parameters identified in subsection (b) of this section for grazing land or pastureland and cropland shall equal or exceed the approved success standard during the growing seasons of any two years of the responsibility period, except the first year. Areas approved for the other uses identified in subsection (b) of this section shall equal or exceed the applicable success standard during the

growing season of the last year of the responsibility period.

(ii) Two full years for lands eligible for remining. To the extent that the success standards are established by subdivision (b)(5) of this section, the lands shall equal or exceed the standards during the growing season of the last year of the responsibility period.

(3) The division may approve selective husbandry practices, excluding augmented seeding, fertilization, or irrigation, without extending the period of responsibility for revegetation success and bond liability, if such practices can be expected to continue as part of the postmining land use or if discontinuance of the practices after the liability period expires will not reduce the probability of permanent revegetation success. Approved practices shall be normal conservation practices within the region for unmined lands having land uses similar to the approved postmining land use of the disturbed area, including such practices as disease, pest, and vermin control; and any pruning, reseeding and/or transplanting specifically necessitated by such actions.

4VAC25-130-817.22. Topsoil and subsoil.

(a) Removal.

(1)(i) All topsoil shall be removed as a separate layer from the area to be disturbed, and segregated.

(ii) Where the topsoil is of insufficient quantity or of poor quality for sustaining vegetation, the materials approved by the division in accordance with Paragraph (b) of this section shall be removed as a separate layer from the area to be disturbed, and segregated.

(2) If topsoil is less than six inches thick, the permittee may remove the topsoil and the unconsolidated materials immediately below the topsoil and treat the mixture as topsoil.

(3) The division may choose not to require the removal of topsoil for minor disturbances which -

(i) Occur at the site of small structures, such as power poles, signs, or fence lines; or

(ii) Will not destroy the existing vegetation and will not cause erosion.

(4) Timing. All materials to be removed under this section shall be removed after the vegetative cover that would interfere with its salvage is cleared from the area to be disturbed, but before any drilling, blasting, mining, or other surface disturbance takes place.

(b) Substitutes and supplements.

(1) Selected overburden materials may be substituted for, or used as a supplement to, topsoil if the permittee demonstrates to the division, in accordance with 4VAC25-130-784.13 that the resulting soil medium is equal to, or more suitable for sustaining vegetation than, the existing topsoil, and the resulting soil medium is the best available in the permit area to support revegetation.

(2) Substituted or supplemental material shall be removed, segregated, and replaced in compliance with the requirements of this section for topsoil.

(3) Selected overburden materials may be substituted for or used as a supplement to topsoil, if the slope of the land containing the topsoil is greater than 60 percent (3v:5h) and the selected overburden materials satisfy the following criteria:

(i) The results of the analyses of the overburden required in 4VAC25-130-784.13 demonstrates the feasibility of using the overburden materials.

(ii) The substitute material has a pH greater than 5.0, has a net acidity of less than five tons per 1,000 tons of material or a net alkalinity, and is suitable for sustaining vegetation consistent with the standards for vegetation in 4VAC25-130-817.111 through 4VAC25-130-817.116, and the approved postmining land use.

(c) Storage.

(1) Materials removed under Paragraph (a) of this section shall be segregated and stockpiled when it is impractical to redistribute such materials promptly on regraded areas.

(2) Stockpiled materials shall-

(i) Be selectively placed on a stable site within the permit area;

(ii) Be protected from contaminants and unnecessary compaction that would interfere with revegetation;

(iii) Be protected from wind and water erosion through prompt establishment and maintenance of an effective, quick growing vegetative cover or through other measures approved by the division; and

(iv) Not be moved until required for redistribution unless approved by the division.

(3) Where long term surface disturbances will result from facilities such as support facilities and preparation plants and where stockpiling of materials removed under Paragraph (a)(1) of this section would be detrimental to the quality or quantity of those materials, the division may approve the temporary distribution of the soil materials so removed to an approved site within the permit area to enhance the current use of that site until the materials are needed for later reclamation, provided that-

(i) Such action will not permanently diminish the capability of the topsoil of the host site; and

(ii) The material will be retained in a condition more suitable for redistribution than if stockpiled.

(d) Redistribution.

(1) Topsoil materials and substitutes removed under Paragraph (a) and (b) of this section shall be redistributed in a manner that-

(i) Achieves an approximately uniform, stable thickness when consistent with the approved postmining land use, contours, and surface water drainage systems. Soil thickness may also be varied to the extent such variations help meet the specific revegetation goals identified in the permit;

(ii) Prevents excess compaction of the materials; and

(iii) Protects the materials from wind and water erosion before and after seeding and planting.

(2) Before redistribution of the material removed under Paragraph (a) of this section, the regraded land shall be treated if necessary to reduce potential slippage of the redistributed material and to promote root penetration. If no harm will be caused to the redistributed material and reestablished vegetation, such treatment may be conducted after such material is replaced.

(3) The division may choose not to require the redistribution of topsoil or topsoil substitutes on the approved postmining embankments of permanent impoundments or of roads if it determines that-

(i) Placement of topsoil or topsoil substitutes on such embankments is inconsistent with the requirement to use the best technology currently available to prevent sedimentation; and

(ii) Such embankments will be otherwise stabilized.

(4) Nutrients and soil amendments shall be applied to the initially redistributed material when necessary to establish the vegetative cover. The types and amounts of nutrients and soil amendments shall be determined by soil tests performed by a qualified laboratory using standard methods which are approved by the division. If seeding is done without a site specific soil test -

(i) Fertilization rates of 300 pounds of 16-27-14 or 500 pounds of 10-20-10 or equivalents per acre shall be used.

(ii) Liming rates shall be in accordance with the following table:

Mine Spoil pH	Tons of Lime Needed per Acre to Increase pH to:					
	5.1 - 5.5			5.6 - 6.2		
Test	Sandstone	Shale	Mixed	Sandstone	Shale	Mixed
4.0 - 4.5	2	3	2	3	5	4
4.6 - 5.0	1	3	2	2	4	3
5.1 - 5.5	0	2	1	1	3	2
5.6 - 6.0	0	1	0	0	2	1

(iii) Soil tests shall be performed promptly after topsoiling but before application of any supplementary nutrients and any additional lime and fertilizer applied as necessary.

(e) Subsoil segregation. The division may require that the B horizon, C horizon, or other underlying strata, or portions thereof, be removed and segregated, stockpiled, and redistributed as subsoil in accordance with the requirements of Paragraphs (c) and (d) of this section if it finds that such subsoil layers are necessary to comply with the revegetation requirements of 4VAC25-130-817.111, 4VAC25-130-817.113, 4VAC25-130-817.114, and 4VAC25-130-817.116.

4VAC25-130-817.43. Diversions.

(a) General requirements.

(1) With the approval of the division, any flow from mined areas abandoned before May 3, 1978, and any flow from undisturbed areas or reclaimed areas, after meeting the criteria of 4VAC25-130-817.46 for siltation structure removal, may be diverted from disturbed areas by means of temporary or permanent diversions. All diversions shall be designed to minimize adverse impacts to the hydrologic balance within the permit and adjacent areas, to prevent material damage outside the permit area and to assure the safety of the public. Diversions shall not be used to divert water into underground mines without approval of the division in accordance with 4VAC25-130-817.41(h).

(2) The diversion and its appurtenant structures shall be designed, located, constructed, and maintained to-

(i) Be stable;

(ii) Provide protection against flooding and resultant damage to life and property;

(iii) Prevent, to the extent possible using the best technology currently available, additional contributions

of suspended solids to streamflow outside the permit area; and

(iv) Comply with all applicable local, State, and Federal laws and regulations.

(3) Temporary diversions shall be removed when no longer needed to achieve the purpose for which they were authorized. The land disturbed by the removal process shall be restored in accordance with this Part. Before diversions are removed, downstream water treatment facilities previously protected by the diversion shall be modified or removed, as necessary to prevent overtopping or failure of the facilities. This requirement shall not relieve the permittee from maintaining water treatment facilities as otherwise required. A permanent diversion or a stream channel reclaimed after the removal of a temporary diversion shall be designed and constructed so as to restore or approximate the premining characteristics of the original stream channel including the natural riparian vegetation to promote the recovery and the enhancement of the aquatic habitat.

(4) Diversions which convey water continuously or frequently shall be ~~lined with rock rip rap to at least the normal flow depth, including an allowance for freeboard. Diversions constructed in competent bedrock and portions of channels above normal flow depth shall comply with the velocity limitations of Paragraph (5) below~~ designed by a qualified registered professional engineer and constructed to ensure stability and compliance with the standards of this Part and any other criteria set by the division.

~~(5) The maximum permissible velocity for the following methods of stabilization are:~~

~~Vegetated channel constructed in soil~~	~~3.5 feet per second~~
~~Vegetated channel with jute netting~~	~~5.0 feet per second~~
~~Rock rip rap lined channel~~	~~16.0 feet per second~~
~~Channel constructed in competent bedrock~~	~~No limit~~

~~(6)~~ (5) Channel side slopes shall be no steeper than 1.5h:1v in soil.

~~(7)~~ (6) Adequate freeboard shall be provided to prevent overtopping. A minimum of 0.3 feet shall be included, with additional freeboard provided at curves, transitions, and other critical sections as required.

~~(8)~~ (7) When rock rip rap lining is used, consideration shall be given to rip rap size, bedding, and filter material. Rock used for rip rap shall be non-degradable, and non-acid forming such as natural sand and gravel, sandstone or limestone. No clay, shale, or coal shall be used.

~~(9)~~ (8) Sediment and other debris shall be removed and the diversion maintained to provide the design requirements throughout its operation.

~~(10)~~ (9) The division may specify other criteria for diversions to meet the requirements of this section.

(b) Diversion of perennial and intermittent streams.

(1) Diversion of perennial and intermittent streams within the permit area may be approved by the division after making the finding relating to stream buffer zones called for in 4VAC25-130-817.57 that the diversions will not adversely affect the water quantity and quality and related environmental resources of the stream.

(2) The design capacity of channels for temporary and permanent stream channel diversions shall be at least equal to the capacity of the unmodified stream channel immediately upstream and downstream from the diversion.

(3) The requirements of Paragraph (a)(2)(ii) of this section shall be met when the temporary and permanent diversions for perennial and intermittent streams are designed so that the combination of channel, bank and flood-plain configuration is adequate to pass safely the peak runoff of a 10-year, 6-hour precipitation event for a temporary diversion and a 100-year, 6-hour precipitation event for a permanent diversion.

(4) The design and construction of all stream channel diversions of perennial and intermittent streams shall be certified by a qualified registered professional engineer as meeting the standards of this Part and any other criteria set by the division.

(5) Channels which are constructed in backfilled material shall be formed during the backfilling and grading of the area. Unless the backfill material is of sufficiently low permeability, the channel shall be lined to prevent saturation of the backfill, loss of stream flow, or degradation of groundwater quality.

(6) Rock rip rap lining shall be placed in the channels of all diversions of perennial and intermittent streams to the normal flow depth, including adequate freeboard. Channels constructed in competent bedrock need not be rip rap lined.

(c) Diversion of miscellaneous flows.

(1) Miscellaneous flows, which consist of all flows except for perennial and intermittent streams, may be diverted away from disturbed areas if required or approved by the division. Miscellaneous flows shall include ground-water discharges and ephemeral streams.

(2) The design, location, construction, maintenance, and removal of diversions of miscellaneous flows shall meet all of the performance standards set forth in Paragraph (a) of this section.

(3) The requirements of Paragraph (a)(2)(ii) of this section shall be met when the temporary and permanent diversions for miscellaneous flows are designed to pass safely the peak runoff of a 2-year, 6-hour precipitation event for a temporary diversion and a 10-year, 6-hour precipitation event for a permanent diversion.

(d) Steep slope water conveyances.

(1) A steep slope conveyance, including but not limited to a rock rip rap flume, concrete flume, or a pipe, shall be used to convey water down steep slopes to stable natural or constructed drainways. Steep slope conveyances shall be constructed at locations where concentrated flows may cause erosion.

(2) The capacity of the conveyance shall be equal to or greater than the capacity of the inlet ditch or drainage structure associated with it.

4VAC25-130-817.116. Revegetation; standards for success.

(a) Success of revegetation shall be judged on the effectiveness of the vegetation for the approved postmining land use, the extent of cover compared to the cover occurring in natural vegetation of the area, and the general requirements of 4VAC25-130-817.111.

(1) Statistically valid sampling techniques shall be used for measuring success.

(2) Ground cover, production, or stocking shall be considered equal to the approved success standard when they are not less than 90% of the success standard. The sampling techniques for measuring success shall use a 90% statistical confidence interval (i.e., a one-sided test with a 0.10 alpha error). Sampling techniques for measuring woody plant stocking, ground cover, and production shall be in accordance with techniques approved by the division.

(b) Standards for success shall be applied in accordance with the approved postmining land use and, at a minimum, the following conditions:

(1) For areas developed for use as grazing land or pasture land, the ground cover and production of living plants on the revegetated area shall be at least equal to that of a reference area or if approved by the division, a vegetative ground cover of 90% for areas planted only in herbaceous species and productivity at least equal to the productivity of the premining soils may be achieved. Premining productivity shall be based upon data of the U.S. Natural Resources Conservation Service and measured in such units as weight of material produced per acre or animal units supported.

(2) For areas developed for use as cropland, crop production on the revegetated area shall be at least equal to that of a reference area or if approved by the division, crop yields shall be at least equal to the yields for reference crops from unmined lands. Reference crop yields shall be determined from the current yield records of representative local farms in the surrounding area or from the average county yields recognized by the U.S. Department of Agriculture.

(3) For areas to be developed for fish and wildlife habitat, undeveloped land, recreation, shelter belts, or ~~forest products, success of vegetation, shall be determined on the basis of tree and shrub~~ forestry, the stocking ~~and vegetative ground cover~~ of woody plants must be at least equal to the rates specified in the approved reclamation plan. To minimize competition with woody plants, herbaceous ground cover should be limited to that necessary to control erosion and support the postmining land use. Seed mixtures and seeding rates will be specified in the approved reclamation plan. Such parameters are described as follows:

(i) Minimum stocking and planting arrangements shall be specified by the division on the basis of local and regional conditions and after consultation with and approval by the state agencies responsible for the administration of forestry and wildlife programs. Consultation and approval may occur on either a program wide or a permit specific basis.

(ii) Trees and shrubs that will be used in determining the success of stocking and the adequacy of the plant arrangement shall have utility for the approved postmining land use. Trees and shrubs counted in determining such success shall be healthy and have been in place for not less than two growing seasons. At the time of bond release, at least 80% of the trees and shrubs used to determine such success shall have been in place for at least three years. Root crown or root sprouts over one foot in height shall count as one toward meeting the stocking requirements. Where multiple stems occur, only the tallest stem will be counted.

(iii) Vegetative ground cover shall not be less than that required to control erosion and achieve the approved postmining land use.

(iv) Where commercial forest land is the approved postmining land use:

(A) The area shall have a minimum stocking of 400 trees per acre.

(B) All countable trees shall be commercial species and shall be well distributed over each acre stocked.

(C) Additionally, the area shall have an average of at least 40 wildlife food-producing shrubs per acre. The shrubs shall be suitably located for wildlife enhancement, and may be distributed or clustered.

(v) Where woody plants are used for wildlife management, recreation, shelter belts, or forest uses other than commercial forest land:

(A) The stocking of trees, shrubs, half-shrubs and the ground cover established on the revegetated area shall utilize local and regional recommendations regarding species composition, spacing and planting arrangement;

(B) Areas planted only in herbaceous species shall sustain a vegetative ground cover of 90%;

(C) Areas planted with a mixture of herbaceous and woody species shall sustain a herbaceous vegetative ground cover ~~of 90%~~ in accordance with guidance provided by the division and the approved forestry reclamation plan and establish an average of 400 woody plants per acre. At least 40 of the woody plants for each acre shall be wildlife food-producing shrubs located suitably for wildlife enhancement, which may be distributed or clustered on the area.

(4) For areas to be developed for industrial, commercial, or residential use less than two years after regrading is completed, the vegetative ground cover shall not be less than that required to control erosion.

(5) For areas previously disturbed by mining that were not reclaimed to the requirements of this subchapter and that are remined or other wise redisturbed by surface coal mining operations, as a minimum, the vegetative ground cover shall be not less than the ground cover existing before redisturbance and shall be adequate to control erosion.

(c) (1) The period of extended responsibility for successful revegetation shall begin after the last year of augmented seeding, fertilizing, irrigation, or other work, excluding husbandry practices that are approved by the division in accordance with subdivision (c)(3) of this section.

(2) The period of responsibility shall continue for a period of not less than

(i) Five full years except as provided in subdivision (c)(2)(ii) of this section. The vegetation parameters identified in subsection (b) of this section for grazing land or pastureland and cropland shall equal or exceed the approved success standard during the growing seasons of any two years of the responsibility period, except the first year. Areas approved for the other uses identified in subsection (b) of this section shall equal or exceed the applicable success standard during the growing season of the last year of the responsibility period.

(ii) Two full years for lands eligible for remining. To the extent that the success standards are established by subdivision (b)(5) of this section, the lands shall equal or exceed the standards during the growing season of the last year of the responsibility period.

(3) The division may approve selective husbandry practices, excluding augmented seeding, fertilization, or irrigation, without extending the period of responsibility for revegetation success and bond liability, if such practices can be expected to continue as part of the postmining land use or if discontinuance of the practices after the liability period expires will not reduce the probability of permanent revegetation success. Approved practices shall be normal husbandry practices within the region for unmined lands having land uses similar to the approved postmining land use of the disturbed area, including such practices as disease, pest, and vermin control; and any pruning, reseeding and/or transplanting specifically necessitated by such actions.

4VAC25-130-842.15. Review of decision not to inspect or enforce.

(a) Any person who is or may be adversely affected by a coal exploration or surface coal mining and reclamation operation may ask the division to review informally an authorized representative's decision not to inspect or take appropriate enforcement action with respect to any violation alleged by that person in a request for inspection under 4VAC25-130-842.12. The request for review shall be in writing and include a statement of how the person is or may be adversely affected and why the decision merits review.

(b) The division shall conduct the review and inform the person, in writing, of the results of the review within 30 days of receipt of the request. The person alleged to be in violation shall also be given a copy of the results of the review, except that the name of the person who is or may be adversely affected shall not be disclosed unless confidentiality has been waived or disclosure is required under the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia).

(c) Informal review under this section shall not affect any right to formal review under § 45.1-249 of the Act or to a citizen's suit under § 45.1-246.1 of the Act.

(d) Any person who requested a review of a decision not to inspect or enforce under this section and who is or may be adversely affected by any determination made under subsection (b) of this section may request review of that determination by filing within 30 days of the division's determination an application for formal review and request for hearing under the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia). All requests for hearing or appeals for review and reconsideration made under this section shall be filed with the Director, Division of Mined Land Reclamation, Department of Mines, Minerals and Energy, Post Office Drawer 900, Big Stone Gap, Virginia 24219.

VA.R. Doc. No. R07-275; Filed January 28, 2009, 10:59 a.m.

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Fast-Track Regulation

Title of Regulation: **9VAC5-10. General Definitions (amending 9VAC5-10-20).**

Statutory Authority: § 10.1-1308 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 18, 2009.

Effective Date: April 2, 2009.

Agency Contact: Karen G. Sabasteanski, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4426, FAX (804) 698-4510, or email kgsabastea@deq.virginia.gov.

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

Purpose: The purpose of the regulation is not to impose any regulatory requirements in and of itself, but to provide a basis for and support to other provisions of the Regulations for the Control and Abatement of Air Pollution, which are in place in order to protect public health and welfare. The proposed amendments are being made to ensure that the definition of volatile organic compound (VOC), which is crucial to most of the regulations, is up to date and scientifically accurate, as well as consistent with the overall EPA requirements under which the regulations operate.

Rationale for Using Fast-Track Process: The definition is being revised to add a less-reactive substance to the list of compounds not considered to be VOCs. This revision is not expected to affect a significant number of sources or have any significant impact, other than a positive one, on air quality overall. Additionally, removal of the substance at the federal level was accompanied by detailed scientific review and public comment, and no additional information on the reactivity of this substance or the appropriateness of its removal is anticipated.

Substance: The general definitions impose no regulatory requirements in and of themselves but provide support to other provisions of the Regulations for the Control and Abatement of Air Pollution (9VAC5-10 through 9VAC5-80). The list of substances not considered to be VOCs in Virginia has been revised to include (1)1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (HFE-7300).

Issues: The general public health and welfare will benefit because the revision will encourage the use of products containing the less-reactive substance in place of products containing more reactive and thereby more polluting substances, ultimately resulting in fewer emissions of VOCs and reduced production of ozone, which results from VOC emissions. Companies that use this substance in place of more reactive substances may also benefit by reducing their VOC emissions and concomitant reductions in permitting and other regulatory requirements.

The revision will allow the department to focus VOC reduction strategies on substances that are more responsible for ozone formation and greenhouse gas generation.

The Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The State Air Pollution Control Board (board) proposes to make clarifying changes to the regulation and revise the definition of volatile organic compound (VOC) to add (1)1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (HFE-7300) to the list of substances not considered to be a VOC. The proposed amendments are being made to ensure that the definition of VOC, which is crucial to board regulations, is up to date and scientifically accurate, as well as consistent with the overall EPA requirements under which the regulations operate.

Result of Analysis. The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact. According to the Department of Environmental Quality (DEQ), no sources located in Virginia currently use HFE-7300. There are sources that may some day eventually wish to use this substance; however, DEQ has not identified any specific sources that plan to do so. HFE-7300 has a variety of potential uses such as a heat transfer fluid, coating, cleaner, and lubricant. It may be used in (i) coating deposition applications, (ii) heat-transfer fluids in heat-transfer processes, (iii) cleaning organic and/or inorganic substrates, and (iv) formulating working fluids or lubricants for machinery operations and manufacturing processes.

A source that is not currently using HFE-7300 but at some point does choose to use it may do so in order to realize a cost savings. If this occurs it will likely result in the use of products containing the less-reactive substance in place of products containing more reactive and thereby more polluting substances.[1] This may ultimately result in fewer emissions of VOCs and reduced production of ozone, which results from VOC emissions. This would benefit public health and welfare, the amount of which would depend on the number of companies, if any, that anticipate a financial benefit from switching products. Since the proposed amendments will only

have impact if the use of HFE-7300 lowers costs for firms, and the use of HFE-7300 would likely result in less pollution, the proposal produces net benefits.

Businesses and Entities Affected. No sources located in Virginia currently use this substance. There are sources that may some day eventually wish to use this substance; however, DEQ has not identified any specific sources that plan to do so. Firms involved in the production or use of (i) coating deposition applications, (ii) heat-transfer fluids in heat-transfer processes, (iii) cleaning organic and/or inorganic substrates, and (iv) formulating working fluids or lubricants for machinery operations and manufacturing processes potentially could be affected.

Localities Particularly Affected. There is no locality which will bear any identified disproportionate material air quality impact due to the proposed amendment which would not be experienced by other localities.

Projected Impact on Employment. The proposed amendments will not likely significantly affect employment.

Effects on the Use and Value of Private Property. The proposed amendments will not likely significantly affect the use and value of private property.

Small Businesses: Costs and Other Effects. The proposed amendments will not affect most small businesses. Firms involved in the production or use of (i) coating deposition applications, (ii) heat-transfer fluids in heat-transfer processes, (iii) cleaning organic and/or inorganic substrates, and (iv) formulating working fluids or lubricants for machinery operations and manufacturing processes could potentially encounter cost savings.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed amendments do not adversely affect small businesses.

Real Estate Development Costs. The proposed amendments do not directly 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.

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[1] Source: DEQ

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

Summary:

The amendments revise the definition of volatile organic compound (VOC) to add a compound that has been demonstrated to be less reactive to the list of substances that are not considered to be VOCs: (1)1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (HFE-7300).

9VAC5-10-20. Terms defined.

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

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

"Affected facility" means, with reference to a stationary source, any part, equipment, facility, installation, apparatus, process or operation to which an emission standard is applicable or any other facility so designated. The term "affected facility" includes any affected source as defined in 40 CFR 63.2.

"Air pollution" means the presence in the outdoor atmosphere of one or more substances which are or may be harmful or injurious to human health, welfare or safety; to

animal or plant life; or to property; or which unreasonably interfere with the enjoyment by the people of life or property.

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

"Air quality control region" means any area designated as such in 9VAC5-20-200.

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

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

"Ambient air quality standard" means any primary or secondary standard designated as such in ~~9VAC5 Chapter 30~~ 9VAC5-30 (Ambient Air Quality Standards).

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

"Class I area" means any prevention of significant deterioration area (i) in which virtually any deterioration of existing air quality is considered significant and (ii) designated as such in 9VAC5-20-205.

"Class II area" means any prevention of significant deterioration area (i) in which any deterioration of existing air quality beyond that normally accompanying well-controlled growth is considered significant and (ii) designated as such in 9VAC5-20-205.

"Class III area" means any prevention of significant deterioration area (i) in which deterioration of existing air quality to the levels of the ambient air quality standards is permitted and (ii) designated as such in 9VAC5-20-205.

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

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

1. The date by which contracts for emission control system or process modifications are to be awarded, or the date by which orders are to be issued for the purchase of component parts to accomplish emission control or process modification.

2. The date by which the on-site construction or installation of emission control equipment or process change is to be initiated.

3. The date by which the on-site construction or installation of emission control equipment or process modification is to be completed.

4. The date by which final compliance is to be achieved.

"Criteria pollutant" means any pollutant for which an ambient air quality standard is established under ~~9VAC5 Chapter 30~~ 9VAC5-30 (Ambient Air Quality Standards).

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

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

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

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

"Dispersion technique"

1. Means any technique which attempts to affect the concentration of a pollutant in the ambient air by:

a. Using that portion of a stack which exceeds good engineering practice stack height;

b. Varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant; or

c. Increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters, or combining exhaust gases from several existing stacks into one stack; or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise.

2. The preceding sentence does not include:

a. The reheating of a gas stream, following use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream;

b. The merging of exhaust gas streams where:

(1) The owner demonstrates that the facility was originally designed and constructed with such merged gas streams;

(2) After July 8, 1985, such merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant. This exclusion from the definition of "dispersion techniques" shall apply only to the ~~emission~~ emissions limitation for the pollutant affected by such change in operation; or

(3) Before July 8, 1985, such merging was part of a change in operation at the facility that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons. Where there was an increase in the ~~emission~~ emissions limitation or, in the event that no ~~emission~~ emissions limitation was in existence prior to the merging, an increase in the quantity of pollutants actually emitted prior to the merging, the board shall presume that merging was significantly motivated by an intent to gain emissions credit for greater dispersion. Absent a demonstration by the owner that merging was not significantly motivated by such intent, the board shall deny credit for the effects of such merging in calculating the allowable emissions for the source;

c. Smoke management in agricultural or silvicultural prescribed burning programs;

d. Episodic restrictions on residential woodburning and open burning; or

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

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

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

"Emission standard" means any provision of ~~9VAC5 Chapter 40, 9VAC5 Chapter 50 or 9VAC5 Chapter 60 which~~ 9VAC5-40 (Existing Stationary Sources), 9VAC5-50 (New and Modified Stationary Sources), or 9VAC5-60 (Hazardous Air Pollutant Sources) that prescribes an ~~emission~~ emissions limitation, or other requirements that control air pollution emissions.

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

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

"EPA" means the U.S. Environmental Protection Agency or an authorized representative.

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

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

1. For sources seeking credit for stack height exceeding that established under subdivision 2 of the GEP definition, a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, and eddy effects produced by nearby structures or nearby terrain features which individually is at least 40% in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and which contributes to a total concentration due to emissions from all sources that is greater than an ambient air quality standard. For sources subject to the provisions of Article 8 ~~(9VAC5-80-1700~~ (9VAC5-80-1605 et seq.) of Part II of ~~9VAC5 Chapter 80~~ 9VAC5-80 (Permits for Stationary Sources), an excessive concentration alternatively means a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, or eddy effects produced by nearby structures or nearby terrain features which individually is at least 40% in excess of the maximum concentration experienced in the absence of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and greater than a prevention of significant deterioration increment. The allowable emission rate to be used in making demonstrations under this provision shall be prescribed by the new source performance standard that is applicable to the source category unless the owner demonstrates that this emission rate is infeasible. Where such demonstrations are approved by the board, an alternative emission rate shall be established in consultation with the owner;

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

rate) shall be used, or (ii) the actual presence of a local nuisance caused by the existing stack, as determined by the board; and

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

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

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

"Federal Clean Air Act" means ~~42 USC § 7401 et seq., 91 Stat 685~~ Chapter 85 (§ 7401 et seq.) of Title 42 of the United States Code.

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

1. Emission standards, alternative emission standards, alternative ~~emission~~ emissions limitations, and equivalent ~~emission~~ emissions limitations established pursuant to § 112 of the federal Clean Air Act as amended in 1990.

2. New source performance standards established pursuant to § 111 of the federal Clean Air Act, and emission standards established pursuant to § 112 of the federal Clean Air Act before it was amended in 1990.

3. All terms and conditions in a federal operating permit, including any provisions that limit a source's potential to emit, unless expressly designated as not federally enforceable.

4. Limitations and conditions that are part of an implementation plan.

5. Limitations and conditions that are part of a section 111(d) or section 111(d)/129 plan.

6. Limitations and conditions that are part of a federal construction permit issued under 40 CFR 52.21 or any construction permit issued under regulations approved by EPA in accordance with 40 CFR Part 51.

7. Limitations and conditions that are part of an operating permit issued pursuant to a program approved by EPA into an implementation plan as meeting EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for EPA and public comment prior to issuance of the final permit and practicable enforceability.

8. Limitations and conditions in a Virginia regulation or program that has been approved by EPA under subpart E of 40 CFR Part 63 for the purposes of implementing and enforcing § 112 of the federal Clean Air Act.

9. Individual consent agreements issued pursuant to the legal authority of EPA.

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

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

2. a. For stacks in existence on January 12, 1979, and for which the owner had obtained all applicable permits or approvals required under ~~9VAC5 Chapter 80~~ 9VAC5-80 (Permits for Stationary Sources),

Hg = 2.5H,

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

b. For all other stacks,

Hg = H + 1.5L,

where:

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

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

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

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

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

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

"Initial emission test" means the test required by any regulation, permit issued pursuant to ~~9VAC5 Chapter 80~~ 9VAC5-80 (Permits for Stationary Sources), control program, compliance schedule or other enforceable mechanism for determining compliance with new or more stringent emission standards or permit limitations or other ~~emission~~ emissions limitations requiring the installation or modification of air pollution control equipment or implementation of a control method. Initial emission tests shall be conducted in accordance with 9VAC5-40-30.

"Initial performance test" means the test required by (i) 40 CFR Part 60 for determining compliance with standards of performance, or (ii) a permit issued pursuant to ~~9VAC5 Chapter 80~~ 9VAC5-80 (Permits for Stationary Sources) for determining initial compliance with permit limitations. Initial performance tests shall be conducted in accordance with 9VAC5-50-30 and 9VAC5-60-30.

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

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

"Maintenance area" means any geographic region of the United States previously designated as a nonattainment area and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan and designated as such in 9VAC5-20-203.

"Malfunction" means any sudden failure of air pollution control equipment, of process equipment, or of a process to operate in a normal or usual manner, which failure is not due to intentional misconduct or negligent conduct on the part of the owner or other person. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.

"Metropolitan statistical area" means any area designated as such in 9VAC5-20-202.

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

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

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

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

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

"Nonattainment area" means any area which is shown by air quality monitoring data or, where such data are not available, which is calculated by air quality modeling (or other methods determined by the board to be reliable) to exceed the levels allowed by the ambient air quality standard for a given pollutant including, but not limited to, areas designated as such in 9VAC5-20-204.

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

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

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

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

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

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

"PM_{10}" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as

measured by the applicable reference method or an equivalent method.

"PM_{10} emissions" means finely divided solid or liquid material, with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the ambient air as measured by the applicable reference method, or an equivalent or alternative method.

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

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

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

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

"Prevention of significant deterioration area" means any area not designated as a nonattainment area in 9VAC5-20-204 for a particular pollutant and designated as such in 9VAC5-20-205.

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

"Public hearing" means, unless indicated otherwise, an informal proceeding, similar to that provided for in § ~~2.2-4007~~ 2.2-4007.02 of the Administrative Process Act, held to afford persons an opportunity to submit views and data relative to a matter on which a decision of the board is pending.

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

1. For ambient air quality standards in ~~9VAC5 Chapter 30~~ 9VAC5-30 (Ambient Air Quality Standards): The applicable appendix of 40 CFR Part 50 or any method that has been designated as a reference method in accordance with 40 CFR Part 53, except that it does not include a method for which a reference designation has been canceled in accordance with 40 CFR 53.11 or 40 CFR 53.16.

2. For emission standards in ~~9VAC5 Chapter 40 and 9VAC5 Chapter 50~~ 9VAC5-40 (Existing Stationary Sources) and 9VAC5-50 (New and Modified Stationary Sources): Appendix M of 40 CFR Part 51 or Appendix A of 40 CFR Part 60.

3. For emission standards in ~~9VAC5 Chapter 60~~ 9VAC5-60 (Hazardous Air Pollutant Sources): Appendix B of 40 CFR Part 61 or Appendix A of 40 CFR Part 63.

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

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

"Regulations for the Control and Abatement of Air Pollution" means ~~9VAC5 Chapters 10 through 80~~ 9VAC5-10 (General Definitions) through 9VAC5-80 (Permits for Stationary Sources).

"Reid vapor pressure" means the absolute vapor pressure of volatile crude oil and volatile nonviscous petroleum liquids except liquefied petroleum gases as determined by American Society for Testing and Materials publication, "Standard Test Method for Vapor Pressure of Petroleum Products (Reid Method)" (see 9VAC5-20-21).

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

"Section 111(d) plan" means the portion or portions of the plan, or the most recent revision thereof, which has been approved under 40 CFR 60.27(b) in accordance with § 111(d)(1) of the federal Clean Air Act, or promulgated under 40 CFR 60.27(d) in accordance with § 111 (d)(2) of the federal Clean Air Act, and which implements the relevant requirements of the federal Clean Air Act.

"Section 111(d)/129 plan" means the portion or portions of the plan, or the most recent revision thereof, which has been approved under 40 CFR 60.27(b) in accordance with §§ 111(d)(1) and 129(b)(2) of the federal Clean Air Act, or promulgated under 40 CFR 60.27(d) in accordance with §§ 111(d)(2) and 129(b)(3) of the federal Clean Air Act, and which implements the relevant requirements of the federal Clean Air Act.

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

"Source" means any one or combination of the following: buildings, structures, facilities, installations, articles, machines, equipment, landcraft, watercraft, aircraft or other contrivances which contribute, or may contribute, either directly or indirectly to air pollution. Any activity by any

person that contributes, or may contribute, either directly or indirectly to air pollution, including, but not limited to, open burning, generation of fugitive dust or emissions, and cleaning with abrasives or chemicals.

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

"Stack in existence" means that the owner had:

1. Begun, or caused to begin, a continuous program of physical on site construction of the stack; or

2. Entered into binding agreements or contractual obligations, which could not be canceled or modified without substantial loss to the owner, to undertake a program of construction of the stack to be completed in a reasonable time.

"Standard conditions" means a temperature of 20°C (68°F) and a pressure of 760 mm of Hg (29.92 inches of Hg).

"Standard of performance" means any provision of ~~9VAC5 Chapter 50~~ 9VAC5-50 (New and Modified Stationary Sources) which prescribes an ~~emission~~ emissions limitation or other requirements that control air pollution emissions.

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

"State enforceable" means all limitations and conditions which are enforceable by the board or department, including, but not limited to, those requirements developed pursuant to 9VAC5-20-110; requirements within any applicable regulation, order, consent agreement or variance; and any permit requirements established pursuant to ~~9VAC5 Chapter 80~~ 9VAC5-80 (Permits for Stationary Sources).

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

"Stationary source" means any building, structure, facility or installation which emits or may emit any air pollutant. A stationary source shall include all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual (see 9VAC5-20-21).

"These regulations" means ~~9VAC5 Chapters 10 through 80~~ 9VAC5-10 (General Definitions) through 9VAC5-80 (Permits for Stationary Sources.

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

"True vapor pressure" means the equilibrium partial pressure exerted by a petroleum liquid as determined in accordance with methods described in American Petroleum Institute (API) publication, "Evaporative Loss from External Floating-Roof Tanks" (see 9VAC5-20-21). The API procedure may not be applicable to some high viscosity or high pour crudes. Available estimates of true vapor pressure may be used in special cases such as these.

"Urban area" means any area consisting of a core city with a population of 50,000 or more plus any surrounding localities with a population density of 80 persons per square mile and designated as such in 9VAC5-20-201.

"Vapor pressure," except where specific test methods are specified, means true vapor pressure, whether measured directly, or determined from Reid vapor pressure by use of the applicable nomograph in American Petroleum Institute publication, "Evaporative Loss from ~~External~~ Floating-Roof Tanks" (see 9VAC5-20-21).

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

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

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

a. Methane;

b. Ethane;

c. Methylene chloride (dichloromethane);

d. 1,1,1-trichloroethane (methyl chloroform);

e. 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113);

f. Trichlorofluoromethane (CFC-11);

g. Dichlorodifluoromethane (CFC-12);

h. Chlorodifluoromethane (H CFC-22);

i. Trifluoromethane (H FC-23);

j. 1,2-dichloro 1,1,2,2,-tetrafluoroethane (CFC-114);

k. Chloropentafluoroethane (CFC-115);

l. 1,1,1-trifluoro 2,2-dichloroethane (HCFC-123);

m. 1,1,1,2-tetrafluoroethane (HFC-134a);

n. 1,1-dichloro 1-fluoroethane (HCFC-141b);

o. 1-chloro 1,1-difluoroethane (HCFC-142b);

p. 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124);

q. Pentafluoroethane (HFC-125);

r. 1,1,2,2-tetrafluoroethane (HFC-134);

s. 1,1,1-trifluoroethane (HFC-143a);

t. 1,1-difluoroethane (HFC-152a);

u. Parachlorobenzotrifluoride (PCBTF);

v. Cyclic, branched, or linear completely methylated siloxanes;

w. Acetone;

x. Perchloroethylene (tetrachloroethylene);

y. 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca);

z. 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb);

aa. 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee);

bb. Difluoromethane (HFC-32);

cc. Ethylfluoride (HFC-161);

dd. 1,1,1,3,3,3-hexafluoropropane (HFC-236fa);

ee. 1,1,2,2,3-pentafluoropropane (HFC-245ca);

ff. 1,1,2,3,3-pentafluoropropane (HFC-245ea);

gg. 1,1,1,2,3-pentafluoropropane (HFC-245eb);

hh. 1,1,1,3,3-pentafluoropropane (HFC-245fa);

ii. 1,1,1,2,3,3-hexafluoropropane (HFC-236ea);

jj. 1,1,1,3,3-pentafluorobutane (HFC-365mfc);

kk. Chlorofluoromethane (HCFC-31);

ll. 1 chloro-1-fluoroethane (HCFC-151a);

mm. 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a);

nn. 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane ($C_4F_9OCH_3$ or HFE-7100);

oo. 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-hepta-fluoropropane ($(CF_3)_2CFCF_2OCH_3$);

pp. 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane ($C_4F_9OC_2H_5$ or HFE-7200);

qq. 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-hepta-fluoropropane ($(CF_3)_2CFCF_2OC_2H_5$);

rr. Methyl acetate; ss. 1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane (n-$C_3F_7OCH_3$) (HFE-7000);

tt. 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane (HFE-7500);

uu. 1,1,1,2,3,3,3-heptafluoropropane (HFC 227ea);

vv. methyl formate ($HCOOCH_3$); ~~and~~

ww. (1) 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (HFE-7300); and

xx. Perfluorocarbon compounds which fall into these classes:

(1) Cyclic, branched, or linear, completely fluorinated alkanes;

(2) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(3) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

(4) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

2. For purposes of determining compliance with emissions standards, volatile organic compounds shall be measured by the appropriate reference method in accordance with the provisions of 9VAC5-40-30 or 9VAC5-50-30, as applicable. Where such a method also measures compounds with negligible photochemical reactivity, these negligibly reactive compounds may be excluded as a volatile organic compound if the amount of such compounds is accurately quantified, and such exclusion is approved by the board.

3. As a precondition to excluding these compounds as volatile organic compounds or at any time thereafter, the board may require an owner to provide monitoring or testing methods and results demonstrating, to the satisfaction of the board, the amount of negligibly reactive compounds in the emissions of the source.

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

5. The following compound is a VOC for purposes of all recordkeeping, emissions reporting, photochemical dispersion modeling and inventory requirements that apply to VOCs and shall be uniquely identified in emission reports, but is not a VOC for purposes of VOC emission

standards, VOC ~~emission~~ emissions limitations, or VOC content requirements: t-butyl acetate.

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

VA.R. Doc. No. R09-1036; Filed January 26, 2009, 12:24 p.m.

Final Regulation

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

Titles of Regulations: **9VAC5-20. General Provisions (amending 9VAC5-20-21).**

9VAC5-30. Ambient Air Quality Standards (amending 9VAC5-30-55, 9VAC5-30-65; adding 9VAC5-30-56).

Statutory Authority: §§ 10.1-1308 of the Code of Virginia; §§ 108, 109 and 302 of the Clean Air Act; 40 CFR Parts 50, 53 and 58.

Effective Date: March 18, 2009.

Agency Contact: Karen G. Sabasteanski, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4426 or email kgsabastea@deq.virginia.gov.

Summary:

9VAC5-30, Ambient Air Quality Standards, contains the national ambient air quality standards (NAAQS) for the specific criteria pollutants set out in 40 CFR Part 50. This action incorporates the NAAQS into the regulations to provide a legally enforceable means by which the state prepares attainment and maintenance plans, and determines whether a new source will affect the NAAQS. The standard for ozone is revised to add a new 8-hour standard of 0.075 ppm.

Amendments to 9VAC5-20-21 reflect the 2008 edition of the Code of Federal Regulations.

9VAC5-20-21. Documents incorporated by reference.

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

1. United States Code.

2. Code of Virginia.

3. Code of Federal Regulations.

4. Federal Register.

5. Technical and scientific reference documents.

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

B. Any reference in these regulations to any provision of the Code of Federal Regulations (CFR) shall be considered as the adoption by reference of that provision. The specific version of the provision adopted by reference shall be that contained in the CFR ~~(2007)~~ (2008) in effect July 1, ~~2007~~ 2008. In making reference to the Code of Federal Regulations, 40 CFR Part 35 means Part 35 of Title 40 of the Code of Federal Regulations; 40 CFR 35.20 means § 35.20 in Part 35 of Title 40 of the Code of Federal Regulations.

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

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

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

1. Code of Federal Regulations.

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

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

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

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

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

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

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

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

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

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

(i) Appendix I -- ~~Reserved~~ Interpretation of the 8-Hour Primary and Secondary National Ambient Air Quality Standards for Ozone.

(j) Appendix J -- Reference Method for the Determination of Particulate Matter as PM_{10} in the Atmosphere.

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

(l) Appendix L - Reference Method for the Determination of Fine Particulate Matter as $PM_{2.5}$ in the Atmosphere.

(m) Appendix M - Reserved.

(n) Appendix N - Interpretation of the National Ambient Air Quality Standards for $PM_{2.5}$.

(o) Appendix O - Reference Method for the Determination of Coarse Particulate Matter as PM in the Atmosphere.

(p) Appendix P - Interpretation of the Primary and Secondary National Ambient Air Quality Standards for Ozone.

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

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

(a) Appendix S -- Emission Offset Interpretive Ruling.

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

(c) Appendix Y - Guidelines for BART Determinations Under the Regional Haze Rule.

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

~~Appendix B -- Quality Assurance Requirements for Prevention of Significant Deterioration (PSD) Air Monitoring~~ Appendix A - Quality Assurance Requirements for SLAMS, SPMs and PSD Air Monitoring.

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

The specific provisions of 40 CFR Part 60 incorporated by reference are found in Article 5 (9VAC5-50-400 et seq.) of Part II of 9VAC5-50 (New and Modified Sources).

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

The specific provisions of 40 CFR Part 61 incorporated by reference are found in Article 1 (9VAC5-60-60 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources).

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

The specific provisions of 40 CFR Part 63 incorporated by reference are found in Article 2 (9VAC5-60-90 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources).

(7) 40 CFR Part 59, Subpart D-National Volatile Organic Compound Emission Standards for Architectural Coatings, Appendix A -- "Determination of Volatile Matter Content of Methacrylate Multicomponent Coatings Used as Traffic Marking Coatings."

(8) 40 CFR Part 64, Compliance Assurance Monitoring.

(9) 40 CFR Part 72, Permits Regulation.

(10) 40 CFR Part 73, Sulfur Dioxide Allowance System.

(11) 40 CFR Part 74, Sulfur Dioxide Opt-Ins.

(12) 40 CFR Part 75, Continuous Emission Monitoring.

(13) 40 CFR Part 76, Acid Rain Nitrogen Oxides Emission Reduction Program.

(14) 40 CFR Part 77, Excess Emissions.

(15) 40 CFR Part 78, Appeal Procedures for Acid Rain Program.

(16) 40 CFR Part 59 Subpart C, National Volatile Organic Compound Emission Standards for Consumer Products.

b. Copies may be obtained from: Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954; phone (202) 783-3238.

2. U.S. Environmental Protection Agency.

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

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

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

b. Copies of the document identified in subdivision E 2 a (1) of this subdivision, and Volume I and Supplements A through C of the document identified in subdivision E 2 a (2) of this subdivision, may be obtained from: U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161; phone 1-800-553-6847. Copies of Supplements D and E of the document identified in subdivision E 2 a (2) may be obtained online from EPA's Technology Transfer Network at http://www.epa.gov/ttn/chief/ap42/index.html.

3. U.S. government.

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

b. Copies may be obtained from: Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954; phone (202) 512-1800.

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

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

(1) D323-99a, "Standard Test Method for Vapor Pressure of Petroleum Products (Reid Method)."

(2) D97-96a, "Standard Test Method for Pour Point of Petroleum Products."

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

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

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

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

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

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

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

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

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

(12) D523-89, "Standard Test Method for Specular Gloss" (1999).

(13) D1613-02, "Standard Test Method for Acidity in Volatile Solvents and Chemical Intermediates Used in Paint, Varnish, Lacquer and Related Products" (2002).

(14) D1640-95, "Standard Test Methods for Drying, Curing, or Film Formation of Organic Coatings at Room Temperature" (1999).

(15) E119-00a, "Standard Test Methods for Fire Tests of Building Construction Materials" (2000).

(16) E84-01, "Standard Test Method for Surface Burning Characteristics of Building Construction Materials" (2001).

(17) D4214-98, "Standard Test Methods for Evaluating the Degree of Chalking of Exterior Paint Films" (1998).

(18) D86-01, "Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure" (2001).

(19) D4359-90, "Standard Test Method for Determining Whether a Material is a Liquid or a Solid" (reapproved 2000).

(20) E260-96, "Standard Practice for Packed Column Gas Chromatography" (reapproved 2001).

(21) D3912-95, "Standard Test Method for Chemical Resistance of Coatings Used in Light-Water Nuclear Power Plants" (reapproved 2001).

(22) D4082-02, "Standard Test Method for Effects of Gamma Radiation on Coatings for Use in Light-Water Nuclear Power Plants."

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

5. American Petroleum Institute (API).

a. The following document from the American Petroleum Institute is incorporated herein by reference: Evaporative Loss from Floating Roof Tanks, API MPMS Chapter 19, April 1, 1997.

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

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

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

b. Copies may be obtained from: ACGIH, 1330 Kemper Meadow Drive, Suite 600, Cincinnati, Ohio 45240; phone (513) 742-2020.

7. National Fire Prevention Association (NFPA).

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

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

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

(3) NFPA 30A, Code for Motor Fuel Dispensing Facilities and Repair Garages, 2000 Edition.

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

8. American Society of Mechanical Engineers (ASME).

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

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

(2) ASME Interim Supplement 19.5 on Instruments and Apparatus: Application, Part II of Fluid Meters, 6th edition (1971).

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

b. Copies may be obtained from the American Society of Mechanical Engineers, Three Park Avenue, New York, New York 10016; phone (800) 843-2763.

9. American Hospital Association (AHA).

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

b. Copies may be obtained from: American Hospital Association, One North Franklin, Chicago, IL 60606; phone (800) 242-2626.

10. Bay Area Air Quality Management District (BAAQMD).

a. The following documents from the Bay Area Air Quality Management District are incorporated herein by reference:

(1) Method 41, "Determination of Volatile Organic Compounds in Solvent-Based Coatings and Related Materials Containing Parachlorobenzotrifluoride" (December 20, 1995).

(2) Method 43, "Determination of Volatile Methylsiloxanes in Solvent-Based Coatings, Inks, and Related Materials" (November 6, 1996).

b. Copies may be obtained from: Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109, phone (415) 771-6000.

11. South Coast Air Quality Management District (SCAQMD).

a. The following documents from the South Coast Air Quality Management District are incorporated herein by reference:

(1) Method 303-91, "Determination of Exempt Compounds," in Manual SSMLLABM, "Laboratory Methods of Analysis for Enforcement Samples" (1996).

(2) Method 318-95, "Determination of Weight Percent Elemental Metal in Coatings by X-Ray Diffraction," in Manual SSMLLABM, "Laboratory Methods of Analysis for Enforcement Samples" (1996).

(3) Rule 1174 Ignition Method Compliance Certification Protocol (February 28, 1991).

b. Copies may be obtained from: South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765, phone (909) 396-2000.

12. California Air Resources Board (CARB).

a. The following documents from the California Air Resources Board are incorporated herein by reference:

(1) Test Method 510, "Automatic Shut-Off Test Procedure for Spill-Proof Systems and Spill-Proof Spouts" (July 6, 2000).

(2) Test Method 511, "Automatic Closure Test Procedure for Spill-Proof Systems and Spill-Proof Spouts" (July 6, 2000).

(3) Test Method 512, "Determination of Fuel Flow Rate for Spill-Proof Systems and Spill-Proof Spouts" (July 6, 2000).

(4) Test Method 513, "Determination of Permeation Rate for Spill-Proof Systems" (July 6, 2000).

(5) Test Method 310 (including Appendices A and B), "Determination of Volatile Organic Compounds (VOC) in Consumer Products and Reactive Organic Compounds in Aerosol Coating Products" (July 18, 2001).

(6) California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 8.5, Article 1, § 94503.5 (2003).

(7) California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 8.5, Article 2, §§ 94509 and 94511 (2003).

(8) California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 8.5, Article 4, §§ 94540-94555 (2003).

b. Copies may be obtained from: California Air Resources Board, P.O. Box 2815, Sacramento, CA 95812, phone (906) 322-3260 or (906) 322-2990.

13. American Architectural Manufacturers Association.

a. The following documents from the American Architectural Manufacturers Association are incorporated herein by reference:

(1) Voluntary Specification 2604-02, "Performance Requirements and Test Procedures for High Performance Organic Coatings on Aluminum Extrusions and Panels" (2002).

(2) Voluntary Specification 2605-02, "Performance Requirements and Test Procedures for Superior Performing Organic Coatings on Aluminum Extrusions and Panels" (2002).

b. Copies may be obtained from: American Architectural Manufacturers Association, 1827 Walden Office Square, Suite 550, Schaumburg, IL 60173, phone (847) 303-5664.

14. American Furniture Manufacturers Association.

a. The following document from the American Furniture Manufacturers Association is incorporated herein by reference: Joint Industry Fabrics Standards Committee, Woven and Knit Residential Upholstery Fabric Standards and Guidelines (January 2001).

b. Copies may be obtained from: American Furniture Manufacturers Association, P.O. Box HP-7, High Point, NC 27261; phone (336) 884-5000.

9VAC5-30-55. Ozone ~~(8-hour)~~ (8-hour, 0.08 ppm).

A. The primary and secondary ambient air quality standard is 0.08 parts per million, daily maximum 8-hour average.

B. Ozone shall be measured by the reference method described in Appendix D of 40 CFR Part 50, or other method designated as such, or by an equivalent method.

C. The 8-hour primary and secondary ozone ambient air quality standards are met at an ambient air quality monitoring site when the average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm, as determined in accordance with Appendix I of 40 CFR Part 50.

9VAC5-30-56. Ozone (8-hour, 0.075 ppm).

A. The primary and secondary ambient air quality standard is 0.075 parts per million, daily maximum 8-hour average.

B. Ozone shall be measured by the reference method described in Appendix D of 40 CFR Part 50, other method designated as such, or by an equivalent method.

C. The 8-hour primary and secondary ozone ambient air quality standards are met at an ambient air quality monitoring site when the three-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.075 ppm, as determined in accordance with Appendix P to 40 CFR Part 50.

9VAC5-30-65. Particulate matter ($PM_{2.5}$).

A. The primary and secondary ambient air quality standards for particulate matter are:

1. 15.0 micrograms per cubic meter -- annual arithmetic mean concentration.

2. 65 micrograms per cubic meter -- 24-hour average concentration.

B. Particulate matter shall be measured in the ambient air as $PM_{2.5}$ (particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers) by a reference method based on Appendix L of 40 CFR Part 50, or other method designated as such, or by an equivalent method.

C. The annual primary and secondary $PM_{2.5}$ standards are met when the annual arithmetic mean concentration, as determined in accordance with Appendix N of 40 CFR Part 50, is less than or equal to 15.0 micrograms per cubic meter.

D. The 24-hour primary and secondary $PM_{2.5}$ standards are met when the 98th percentile 24-hour concentration, as determined in accordance with Appendix N of 40 CFR Part 50, is less than or equal to 65 micrograms per cubic meter.

E. The $PM_{2.5}$ standards set forth in this section were established by EPA on July 18, 1997 ~~(62 FR 38856)~~ (62 FR 38652) and became effective on September 8, 2004, by adoption by the board. The $PM_{2.5}$ standards set forth in this

section shall continue to apply only for purposes of the following:

1. Control strategy implementation plan revisions, maintenance plans, and associated emissions budgets relative to the $PM_{2.5}$ standards in this section.

2. Designation of nonattainment areas and maintenance areas relative to the $PM_{2.5}$ standards in this section.

Nothing in this section shall prevent the redesignation of any nonattainment area to attainment at any time.

VA.R. Doc. No. R09-1323; Filed January 21, 2009, 3:35 p.m.

Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from Article 2 of 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 State Air Pollution Control Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Titles of Regulations: **9VAC5-50. New and Modified Stationary Sources (amending 9VAC5-50-400, 9VAC5-50-410).**

9VAC5-60. Hazardous Air Pollutant Sources (amending 9VAC5-60-60, 9VAC5-60-90, 9VAC5-60-100).

Statutory Authority: § 10.1-1308 of the Code of Virginia; § 112 of the Clean Air Act; 40 CFR Parts 61 and 63.

Effective Date: March 18, 2009.

Agency Contact: Karen G. Sabasteanski, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4426, FAX (804) 698-4510, TTY (804) 698-4021, or email kgsabastea@deq.virginia.gov.

Summary:

The amendments update state regulations that incorporate by reference certain federal regulations to reflect the Code of Federal Regulations as published on July 1, 2008. A list of the changes to the standards incorporated by reference follows:

1. No new NSPSs are being incorporated. Standards that are not being incorporated are listed with a note that enforcement of the standard rests with EPA. This is done for consistency with Article 1 of 9VAC5-60 (NESHAPs) and in order to make the rules more user friendly. The date of the Code of Federal Regulations volume being incorporated by reference is also being updated to the latest version.

2. No new NESHAPs are being incorporated. The date of the Code of Federal Regulations volume being incorporated by reference is being updated to the latest version.

3. 13 new MACTs are being incorporated: Clay Ceramics Manufacturing Area Sources (Subpart RRRRRR, 40 CFR 63.11435 thru 40 CFR 63.11447); Glass Manufacturing Area Sources (Subpart SSSSSS, 40 CFR 63.11448 thru 40 CFR 63.11461); Secondary Nonferrous Metals Processing Area Sources (Subpart TTTTTT, 40 CFR 63.11462 thru 40 CFR 63.11474); Hospital Ethylene Oxide Sterilizer Area Sources (Subpart WWWWW, 40 CFR 63.10382 thru 40 CFR 63.10448); Electric Arc Furnace Steelmaking Facility Area Sources (Subpart YYYYY, 40 CFR 63.1068 thru 40 CFR 63.10692); Iron and Steel Foundries Area Sources (Subpart ZZZZZ, 40 CFR 63.10880 thru 40 CFR 63.10906); Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities, Area Sources (Subpart BBBBBB ,40 CFR 63.11080 thru 40 CFR 63.11100); Acrylic and Modacrylic Fibers Production Area Sources (Subpart LLLLLL, 40 CFR 63.11393 thru 40 CFR 63.11399); Carbon Black Production Area Sources (Subpart MMMMMM, 40 CFR 63.11400 thru 40 CFR 63.11406); Chemical Manufacturing Area Sources: Chromium Compounds (Subpart NNNNNN, 40 CFR 63.11407 thru 40 CFR 63.63.11413); Flexible Polyurethane Foam Production and Fabrication Area Sources (Subpart OOOOOO, 40 CFR 63.11414 thru 40 CFR 63.11420); Lead Acid Battery Manufacturing Area Sources (Subpart PPPPPP, 40 CFR 63.11421 thru 40 CFR 63.11427); and Wood Preserving Area Sources (Subpart QQQQQQ, 40 CFR 63.11428 thru 40 CFR 63.11434). Standards that are not being incorporated are listed with a note that enforcement of the standard rests with EPA. This is done for consistency with Article 1 of 9VAC5-60 (NESHAPs) and in order to make the rules more user friendly.

9VAC5-50-400. General.

The U.S. Environmental Protection Agency Regulations on Standards of Performance for New Stationary Sources (NSPSs), as promulgated in 40 CFR Part 60 and designated in 9VAC5-50-410 are, unless indicated otherwise, incorporated by reference into the regulations of the board as amended by the word or phrase substitutions given in 9VAC5-50-420. The complete text of the subparts in 9VAC5-50-410 incorporated herein by reference is contained in 40 CFR Part 60. The 40 CFR section numbers appearing under each subpart in 9VAC5-50-410 identify the specific provisions of the subpart incorporated by reference. The specific version of the provision adopted by reference shall be that contained in the CFR ~~(2007)~~ (2008) in effect July 1, ~~2007~~ 2008. In making reference to the Code of Federal Regulations, 40 CFR Part 60 means Part 60 of Title 40 of the Code of Federal Regulations;

40 CFR 60.1 means 60.1 in Part 60 of Title 40 of the Code of Federal Regulations.

9VAC5-50-410. Designated standards of performance.

Subpart A - General Provisions.

40 CFR 60.1 through 40 CFR 60.3, 40 CFR 60.7, 40 CFR 60.8, 40 CFR 60.11 through 40 CFR 60.15, 40 CFR 60.18 through 40 CFR 60.19

(applicability, definitions, units and abbreviations, notification and recordkeeping, performance tests, compliance, circumvention, monitoring requirements, modification, reconstruction, general control device requirements, and general notification and reporting requirements)

Subpart B - Not applicable.

Subpart C - Not applicable.

Subpart Ca - Reserved.

Subpart Cb - Not applicable.

Subpart Cc - Not applicable.

Subpart Cd - Not applicable.

Subpart Ce - Not applicable.

Subpart D - Fossil-Fuel Fired Steam Generators for which Construction is Commenced after August 17, 1971.

40 CFR 60.40 through 40 CFR 60.46

(fossil-fuel fired steam generating units of more than 250 million Btu per hour heat input rate, and fossil-fuel fired and wood-residue fired steam generating units capable of firing fossil fuel at a heat input rate of more than 250 million Btu per hour)

Subpart Da - Electric Utility Steam Generating Units for which Construction is Commenced after September 18, 1978.

40 CFR 60.40a through 40 CFR 60.49a

(electric utility steam generating units capable of combusting more than 250 million Btu per hour heat input of fossil fuel (either alone or in combination with any other fuel); electric utility combined cycle gas turbines capable of combusting more than 250 million Btu per hour heat input in the steam generator)

Subpart Db - Industrial-Commercial-Institutional Steam Generating Units.

40 CFR 60.40b through 40 CFR 60.49b

(industrial-commercial-institutional steam generating units which have a heat input capacity from combusted fuels of more than 100 million Btu per hour)

Subpart Dc - Small Industrial-Commercial-Institutional Steam Generating Units.

40 CFR 60.40c through 40 CFR 60.48c

(industrial-commercial-institutional steam generating units which have a heat input capacity of 100 million Btu per hour or less, but greater than or equal to 10 million Btu per hour)

Subpart E - Incinerators.

40 CFR 60.50 through 40 CFR 60.54

(incinerator units of more than 50 tons per day charging rate)

Subpart Ea - Municipal Waste Combustors for which Construction is Commenced after December 20, 1989, and on or before September 20, 1994

40 CFR 60.50a through 40 CFR 60.59a

(municipal waste combustor units with a capacity greater than 250 tons per day of municipal-type solid waste or refuse-derived fuel)

Subpart Eb - Large Municipal Combustors for which Construction is Commenced after September 20, 1994, or for which Modification or Reconstruction is Commenced after June 19, 1996

40 CFR 60.50b through 40 CFR 60.59b

(municipal waste combustor units with a capacity greater than 250 tons per day of municipal-type solid waste or refuse-derived fuel)

Subpart Ec - Hospital/Medical/Infectious Waste Incinerators for which Construction is Commenced after June 20, 1996

40 CFR 60.50c through 40 CFR 60.58c

(hospital/medical/infectious waste incinerators that combust any amount of hospital waste and medical/infectious waste or both)

Subpart F - Portland Cement Plants.

40 CFR 60.60 through 40 CFR 60.64

(kilns, clinker coolers, raw mill systems, finish mill systems, raw mill dryers, raw material storage, clinker storage, finished product storage, conveyor transfer points, bagging and bulk loading and unloading systems)

Subpart G - Nitric Acid Plants.

40 CFR 60.70 through 40 CFR 60.74

(nitric acid production units)

Subpart H - Sulfuric Acid Plants.

40 CFR 60.80 through 40 CFR 60.85

(sulfuric acid production units)

Subpart I - Hot Mix Asphalt Facilities.

40 CFR 60.90 through 40 CFR 60.93

(dryers; systems for screening, handling, storing and weighing hot aggregate; systems for loading, transferring and storing mineral filler; systems for mixing asphalt; and the loading, transfer and storage systems associated with emission control systems)

Subpart J - Petroleum Refineries.

40 CFR 60.100 through 40 CFR 60.106

(fluid catalytic cracking unit catalyst regenerators, fluid catalytic cracking unit incinerator-waste heat boilers and fuel gas combustion devices)

Subpart K - Storage Vessels for Petroleum Liquids for which Construction, Reconstruction, or Modification Commenced after June 11, 1973, and prior to May 19, 1978.

40 CFR 60.110 through 40 CFR 60.113

(storage vessels with a capacity greater than 40,000 gallons)

Subpart Ka - Storage Vessels for Petroleum Liquids for which Construction, Reconstruction, or Modification Commenced after May 18, 1978, and prior to July 23, 1984.

40 CFR 60.110a through 40 CFR 60.115a

(storage vessels with a capacity greater than 40,000 gallons)

Subpart Kb - Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for which Construction, Reconstruction, or Modification Commenced after July 23, 1984.

40 CFR 60.110b through 40 CFR 60.117b

(storage vessels with capacity greater than or equal to 10,566 gallons)

Subpart L - Secondary Lead Smelters.

40 CFR 60.120 through 40 CFR 60.123

(pot furnaces of more than 550 pound charging capacity, blast (cupola) furnaces and reverberatory furnaces)

Subpart M - Secondary Brass and Bronze Production Plants.

40 CFR 60.130 through 40 CFR 60.133

(reverberatory and electric furnaces of 2205 pound or greater production capacity and blast (cupola) furnaces of 550 pounds per hour or greater production capacity)

Subpart N - Primary Emissions from Basic Oxygen Process Furnaces for which Construction is Commenced after June 11, 1973.

40 CFR 60.140 through 40 CFR 60.144

(basic oxygen process furnaces)

Subpart Na - Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for which Construction is Commenced after January 20, 1983.

40 CFR 60.140a through 40 CFR 60.145a

(facilities in an iron and steel plant: top-blown BOPFs and hot metal transfer stations and skimming stations used with bottom-blown or top-blown BOPFs)

Subpart O - Sewage Treatment Plants.

40 CFR 60.150 through 40 CFR 60.154

(incinerators that combust wastes containing more than 10% sewage sludge (dry basis) produced by municipal sewage treatment plants or incinerators that charge more than 2205 pounds per day municipal sewage sludge (dry basis))

Subpart P - Primary Copper Smelters.

40 CFR 60.160 through 40 CFR 60.166

(dryers, roasters, smelting furnaces, and copper converters)

Subpart Q - Primary Zinc Smelters.

40 CFR 60.170 through 40 CFR 60.176

(roasters and sintering machines)

Subpart R - Primary Lead Smelters

40 CFR 60.180 through 40 CFR 60.186

(sintering machines, sintering machine discharge ends, blast furnaces, dross reverberatory furnaces, electric smelting furnaces and converters)

Subpart S - Primary Aluminum Reduction Plants.

40 CFR 60.190 through 40 CFR 60.195

(potroom groups and anode bake plants)

Subpart T - Phosphate Fertilizer Industry: Wet-Process Phosphoric Acid Plants.

40 CFR 60.200 through 40 CFR 60.204

(reactors, filters, evaporators, and hot wells)

Subpart U - Phosphate Fertilizer Industry: Superphosphoric Acid Plants.

40 CFR 60.210 through 40 CFR 60.214

(evaporators, hot wells, acid sumps, and cooling tanks)

Subpart V - Phosphate Fertilizer Industry: Diammonium Phosphate Plants.

40 CFR 60.220 through 40 CFR 60.224

(reactors, granulators, dryers, coolers, screens, and mills)

Subpart W - Phosphate Fertilizer Industry: Triple Superphosphate Plants.

40 CFR 60.230 through 40 CFR 60.234

(mixers, curing belts (dens), reactors, granulators, dryers, cookers, screens, mills, and facilities which store run-of-pile triple superphosphate)

Subpart X - Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities.

40 CFR 60.240 through 40 CFR 60.244

(storage or curing piles, conveyors, elevators, screens and mills)

Subpart Y - Coal Preparation Plants.

40 CFR 60.250 through 40 CFR 60.254

(plants which process more than 200 tons per day: thermal dryers, pneumatic coal-cleaning equipment (air tables), coal processing and conveying equipment (including breakers and crushers), coal storage systems, and coal transfer and loading systems)

Subpart Z - Ferroalloy Production Facilities.

40 CFR 60.260 through 40 CFR 60.266

(electric submerged arc furnaces which produce silicon metal, ferrosilicon, calcium silicon, silicomanganese zirconium, ferrochrome silicon, silvery iron, high-carbon ferrochrome, charge chrome, standard ferromanganese, silicomanganese, ferromanganese silicon or calcium carbide; and dust-handling equipment)

Subpart AA - Steel Plants: Electric Arc Furnaces Constructed after October 21, 1974, and on or before August 17, 1983.

40 CFR 60.270 through 40 CFR 60.276

(electric arc furnaces and dust-handling systems that produce carbon, alloy or specialty steels)

Subpart AAa - Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed after August 17, 1983.

40 CFR 60.270a through 40 CFR 60.276a

(electric arc furnaces, argon-oxygen decarburization vessels, and dust-handling systems that produce carbon, alloy, or specialty steels)

Subpart BB - Kraft Pulp Mills.

40 CFR 60.280 through 40 CFR 60.285

(digester systems, brown stock washer systems, multiple effect evaporator systems, black liquor oxidation systems, recovery furnaces, smelt dissolving tanks, lime kilns, condensate strippers and kraft pulping operations)

Subpart CC - Glass Manufacturing Plants.

40 CFR 60.290 through 40 CFR 60.296

(glass melting furnaces)

Subpart DD - Grain Elevators.

40 CFR 60.300 through 40 CFR 60.304

(grain terminal elevators/grain storage elevators: truck unloading stations, truck loading stations, barge and ship unloading stations, barge and ship loading stations, railcar unloading stations, railcar loading stations, grain dryers, and all grain handling operations)

Subpart EE - Surface Coating of Metal Furniture.

40 CFR 60.310 through 40 CFR 60.316

(metal furniture surface coating operations in which organic coatings are applied)

Subpart FF - (Reserved)

Subpart GG - Stationary Gas Turbines.

40 CFR 60.330 through 40 CFR 60.335

(stationary gas turbines with a heat input at peak load equal to or greater than 10 million Btu per hour, based on the lower heating value of the fuel fired)

Subpart HH - Lime Manufacturing Plants.

40 CFR 60.340 through 40 CFR 60.344

(each rotary lime kiln)

Subparts II through JJ - (Reserved)

Subpart KK - Lead-Acid Battery Manufacturing Plants.

40 CFR 60.370 through 40 CFR 60.374

(lead-acid battery manufacturing plants that produce or have the design capacity to produce in one day (24 hours) batteries containing an amount of lead equal to or greater than 6.5 tons: grid casting facilities, paste mixing facilities, three-process operation facilities, lead oxide manufacturing facilities, lead reclamation facilities, and other lead-emitting operations)

Subpart LL - Metallic Mineral Processing Plants.

40 CFR 60.380 through 40 CFR 60.386

(each crusher and screen in open-pit mines; each crusher, screen, bucket elevator, conveyor belt transfer point, thermal dryer, product packaging station, storage bin, enclosed storage area, truck loading station, truck unloading station, railcar loading station, and railcar unloading station at the mill or concentrator with the following exceptions. All facilities located in underground mines are exempted from the provisions of this subpart. At uranium ore processing plants, all facilities subsequent to and including the benefication of uranium ore are exempted from the provisions of this subpart)

Subpart MM - Automobile and Light Duty Truck Surface Coating Operations.

40 CFR 60.390 through 40 CFR 60.397

(prime coat operations, guide coat operations, and top-coat operations)

Subpart NN - Phosphate Rock Plants.

40 CFR 60.400 through 40 CFR 60.404

(phosphate rock plants which have a maximum plant production capacity greater than 4 tons per hour: dryers, calciners, grinders, and ground rock handling and storage facilities, except those facilities producing or preparing phosphate rock solely for consumption in elemental phosphorous production)

Subpart OO - (Reserved)

Subpart PP - Ammonium Sulfate Manufacture.

40 CFR 60.420 through 40 CFR 60.424

(ammonium sulfate dryer within an ammonium sulfate manufacturing plant in the caprolactum by-product, synthetic, and coke oven by-product sectors of the ammonium sulfate industry)

Subpart QQ - Graphic Arts Industry: Publication Rotogravure Printing.

40 CFR 60.430 through 40 CFR 60.435

(publication rotogravure printing presses, except proof presses)

Subpart RR - Pressure Sensitive Tape and Label Surface Coating Operations.

40 CFR 60.440 through 40 CFR 60.447

(pressure sensitive tape and label material coating lines)

Subpart SS - Industrial Surface Coating: Large Appliances.

40 CFR 60.450 through 40 CFR 60.456

(surface coating operations in large appliance coating lines)

Subpart TT - Metal Coil Surface Coating.

40 CFR 60.460 through 40 CFR 60.466

(metal coil surface coating operations: each prime coat operation, each finish coat operation, and each prime and finish coat operation combined when the finish coat is applied wet on wet over the prime coat and both coatings are cured simultaneously)

Subpart UU - Asphalt Processing and Asphalt Roofing Manufacture.

40 CFR 60.470 through 40 CFR 60.474

(each saturator and each mineral handling and storage facility at asphalt roofing plants; and each asphalt storage tank and each blowing still at asphalt processing plants, petroleum refineries, and asphalt roofing plants)

Subpart VV - Equipment Leaks of Volatile Organic Compounds in the Synthetic Organic Chemicals Manufacturing Industry.

40 CFR 60.480 through 40 CFR 60.489

(all equipment within a process unit in a synthetic organic chemicals manufacturing plant)

Subpart WW - Beverage Can Surface Coating Industry.

40 CFR 60.490 through 40 CFR 60.496

(beverage can surface coating lines: each exterior base coat operation, each overvarnish coating operation, and each inside spray coating operation)

Subpart XX - Bulk Gasoline Terminals.

40 CFR 60.500 through 40 CFR 60.506

(total of all loading racks at a bulk gasoline terminal which deliver liquid product into gasoline tank trucks)

Subparts YY through ZZ - (Reserved)

Subpart AAA - New Residential Wood Heaters.

40 CFR 60.530 through 40 CFR 60.539b

(wood heaters)

Subpart BBB - Rubber Tire Manufacturing Industry.

40 CFR 60.540 through 40 CFR 60.548

(each undertread cementing operation, each sidewall cementing operation, each tread end cementing operation, each bead cementing operation, each green tire spraying operation, each Michelin-A operation, each Michelin-B operation, and each Michelin-C automatic operation)

Subpart CCC - (Reserved)

Subpart DDD - Volatile Organic Compound (VOC) Emissions from the Polymer Manufacturing Industry.

40 CFR 60.560 through 40 CFR 60.566

(for polypropylene and polyethylene manufacturing using a continuous process that emits continuously or intermittently: all equipment used in the manufacture of these polymers. For polystyrene manufacturing using a continuous process that emits continuously: each material recovery section. For poly(ethylene terephthalate) manufacturing using a continuous process that emits continuously: each polymerization reaction section; if dimethyl terephthalate is used in the process, each material recovery section is also an affected facility; if terephthalic acid is used in the process, each raw materials preparation section is also an affected facility. For VOC emissions from equipment leaks: each group of fugitive emissions equipment within any process unit, excluding poly(ethylene terephthalate) manufacture.)

Subpart EEE - (Reserved)

Subpart FFF - Flexible Vinyl and Urethane Coating and Printing.

40 CFR 60.580 through 40 CFR 60.585

(each rotogravure printing line used to print or coat flexible vinyl or urethane products)

Subpart GGG - Equipment Leaks of VOC in Petroleum Refineries.

40 CFR 60.590 through 40 CFR 60.593

(each compressor, valve, pump pressure relief device, sampling connection system, open-ended valve or line, and flange or other connector in VOC service)

Subpart HHH - Synthetic Fiber Production Facilities.

40 CFR 60.600 through 40 CFR 60.604

(each solvent-spun synthetic fiber process that produces more than 500 megagrams of fiber per year)

Subpart III - Volatile Organic Compound (VOC) Emissions from the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes.

40 CFR 60.610 through 40 CFR 60.618

(each air oxidation reactor not discharging its vent stream into a recovery system and each combination of an air oxidation reactor or two or more air oxidation reactors and the recovery system into which the vent streams are discharged)

Subpart JJJ - Petroleum Dry Cleaners.

40 CFR 60.620 through 40 CFR 60.625

(facilities located at a petroleum dry cleaning plant with a total manufacturers' rated dryer capacity equal to or greater than 84 pounds: petroleum solvent dry cleaning dryers, washers, filters, stills, and settling tanks)

Subpart KKK - Equipment Leaks of VOC from Onshore Natural Gas Processing Plants.

40 CFR 60.630 through 40 CFR 60.636

(each compressor in VOC service or in wet gas service; each pump, pressure relief device, open-ended valve or line, valve, and flange or other connector that is in VOC service or in wet gas service, and any device or system required by this subpart)

Subpart LLL - Onshore Natural Gas Processing: Sulfur Dioxide Emissions.

40 CFR 60.640 through 40 CFR 60.648

(facilities that process natural gas: each sweetening unit, and each sweetening unit followed by a sulfur recovery unit)

Subpart MMM - (Reserved)

Subpart NNN - Volatile Organic Compound (VOC) Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations.

40 CFR 60.660 through 40 CFR 60.668

(each distillation unit not discharging its vent stream into a recovery system, each combination of a distillation unit or of two or more units and the recovery system into which their vent streams are discharged)

Subpart OOO - Nonmetallic Mineral Processing Plants.

40 CFR 60.670 through 40 CFR 60.676

(facilities in fixed or portable nonmetallic mineral processing plants: each crusher, grinding mill, screening operation, bucket elevator, belt conveyor, bagging operation, storage bin, enclosed truck or railcar loading station)

Subpart PPP - Wool Fiberglass Insulation Manufacturing Plants.

40 CFR 60.680 through 40 CFR 60.685

(each rotary spin wool fiberglass insulation manufacturing line)

Subpart QQQ - VOC Emissions from Petroleum Refinery Wastewater Systems.

40 CFR 60.690 through 40 CFR 60.699

(individual drain systems, oil-water separators, and aggregate facilities in petroleum refineries)

Subpart RRR - Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes.

40 CFR 60.700 through 40 CFR 60.708

(each reactor process not discharging its vent stream into a recovery system, each combination of a reactor process and the recovery system into which its vent stream is discharged, and each combination of two or more reactor processes and the common recovery system into which their vent streams are discharged)

Subpart SSS - Magnetic Tape Coating Facilities.

40 CFR 60.710 through 40 CFR 60.718

(each coating operation and each piece of coating mix preparation equipment)

Subpart TTT - Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines.

40 CFR 60.720 through 40 CFR 60.726

(each spray booth in which plastic parts for use in the manufacture of business machines receive prime coats, color coats, texture coats, or touch-up coats)

Subpart UUU - Calciners and Dryers in Mineral Industries.

40 CFR 60.730 through 40 CFR 60.737

(each calciner and dryer at a mineral processing plant)

Subpart VVV - Polymeric Coating of Supporting Substrates Facilities.

40 CFR 60.740 through 40 CFR 60.748

(each coating operation and any onsite coating mix preparation equipment used to prepare coatings for the polymeric coating of supporting substrates)

Subpart WWW - Municipal Solid Waste Landfills.

40 CFR 60.750 through 40 CFR 60.759

(municipal solid waste landfills for the containment of household and RCRA Subtitle D wastes)

Subpart AAAA - Small Municipal Waste Combustors for which Construction is Commenced after August 30, 1999, or for which Modification or Reconstruction is Commenced after June 6, 2001

40 CFR 60.1000 through 40 CFR 60.1465

(municipal waste combustor units with a capacity less than 250 tons per day and greater than 35 tons per day of municipal solid waste or refuse-derived fuel)

Subpart BBBB - Not applicable.

Subpart CCCC - Commercial/Industrial Solid Waste Incinerators for which Construction is Commenced after November 30, 1999, or for which Modification or Construction is Commenced on or after June 1, 2001

40 CFR 60.2000 through 40 CFR 60.2265

(an enclosed device using controlled flame combustion without energy recovery that is a distinct operating unit of any commercial or industrial facility, or an air curtain incinerator without energy recovery that is a distinct operating unit of any commercial or industrial facility)

Subpart DDDD - Not applicable.

Subpart EEEE - Other Solid Waste Incineration Units for Which Construction is Commenced After December 9, 2004, or for Which Modification or Reconstruction Is Commenced on or After June 16, 2006.

40 CFR 60.2880 through 40 CFR 60.2977

(very small municipal waste combustion units with the capacity to combust less than 35 tons per day of municipal solid waste or refuse-derived fuel, and institutional waste incineration units owned or operated by an organization having a governmental, educational, civic, or religious purpose)

Subpart FFFF - Reserved.

Subpart GGGG - Reserved.

Subpart HHHH - Reserved.

Subpart IIII - ~~Reserved~~ Stationary Compression Ignition Internal Combustion Engines.

40 CFR 60.4200 through 40 CFR 60.4219

(NOTE: Authority to enforce the above standard is being retained by EPA and it is not incorporated by reference into these regulations.)

Subpart JJJJ - ~~Reserved~~ Stationary Spark Ignition Internal Combustion Engines.

40 CFR 60.4230 through 40 CFR 60.4248

(NOTE: Authority to enforce the above standard is being retained by EPA and it is not incorporated by reference into these regulations.)

Subpart KKKK - Stationary Combustion Turbines.

40 CFR 60.4300 through 40 CFR 60.4420

(stationary combustion turbine with a heat input at peak load equal to or greater than 10.7 gigajoules (10 MMBtu) per hour)

Appendix A - Test methods.

Appendix B - Performance specifications.

Appendix C - Determination of Emission Rate Change.

Appendix D - Required Emission Inventory Information.

Appendix E - (Reserved)

Appendix F - Quality Assurance Procedures.

Appendix G - (Not applicable)

Appendix H - (Reserved)

Appendix I - Removable label and owner's manual.

9VAC5-60-60. General.

The Environmental Protection Agency (EPA) Regulations on National Emission Standards for Hazardous Air Pollutants (NESHAP), as promulgated in 40 CFR Part 61 and designated in 9VAC5-60-70 are, unless indicated otherwise, incorporated by reference into the regulations of the board as amended by the word or phrase substitutions given in 9VAC5-60-80. The complete text of the subparts in 9VAC5-60-70 incorporated herein by reference is contained in 40 CFR Part 61. The 40 CFR section numbers appearing under each subpart in 9VAC5-60-70 identify the specific provisions of the subpart incorporated by reference. The specific version of the provision adopted by reference shall be that contained in the CFR ~~(2007)~~ (2008) in effect July 1, ~~2007~~ 2008. In making reference to the Code of Federal Regulations, 40 CFR Part 61 means Part 61 of Title 40 of the Code of Federal Regulations; 40 CFR 61.01 means 61.01 in Part 61 of Title 40 of the Code of Federal Regulations.

9VAC5-60-90. General.

The Environmental Protection Agency (EPA) National Emission Standards for Hazardous Air Pollutants for Source Categories (Maximum Achievable Control Technologies, or MACTs) as promulgated in 40 CFR Part 63 and designated in 9VAC5-60-100 are, unless indicated otherwise, incorporated by reference into the regulations of the board as amended by the word or phrase substitutions given in 9VAC5-60-110. The complete text of the subparts in 9VAC5-60-100 incorporated herein by reference is contained in 40 CFR Part 63. The 40 CFR section numbers appearing under each subpart in 9VAC5-60-100 identify the specific provisions of the subpart incorporated by reference. The specific version of the provision adopted by reference shall be that contained in the CFR ~~(2007)~~ (2008) in effect July 1, ~~2007~~ 2008. In making reference to the Code of Federal Regulations, 40 CFR Part 63 means Part 63 of Title 40 of the Code of Federal Regulations; 40 CFR 63.1 means 63.1 in Part 63 of Title 40 of the Code of Federal Regulations.

9VAC5-60-100. Designated emission standards.

Subpart A - General Provisions.

40 CFR 63.1 through 40 CFR 63.11; 40 CFR 63.16

(applicability, definitions, units and abbreviations, prohibited activities and circumvention, construction and reconstruction, compliance with standards and maintenance requirements, performance testing requirements, monitoring requirements, notification requirements, recordkeeping and reporting requirements, control device requirements, performance track provisions)

Subpart B - Not applicable.

Subpart C - List of Hazardous Air Pollutants, Petitions Process, Lesser Quantity Designations, Source Category List.

40 CFR 63.60, 40 CFR 63.61, 40 CFR 63.62 and 40 CFR 63.63

(deletion of caprolactam from the list of hazardous air pollutants, deletion of methyl ethyl ketone from the list of hazardous air pollutants, redefinition of glycol ethers listed as hazardous air pollutants, deletion of ethylene glycol monobutyl ether)

Subpart D - Not applicable.

Subpart E - Not applicable.

Subpart F - Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry.

40 CFR 63.100 through 40 CFR 63.106

(chemical manufacturing process units that manufacture as a primary product one or more of a listed chemical; use as a reactant or manufacture as a product, by-product, or co-product, one or more of a listed organic hazardous air pollutant; and are located at a plant site that is a major source as defined in § 112 of the federal Clean Air Act)

Subpart G - Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater.

40 CFR 63.110 through 40 CFR 63.152

(all process vents, storage vessels, transfer operations, and wastewater streams within a source subject to Subpart F, 40 CFR 63.100 through 40 CFR 63.106)

Subpart H - Organic Hazardous Air Pollutants for Equipment Leaks.

40 CFR 63.160 through 40 CFR 63.182

(pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, surge control vessels, bottoms receivers, instrumentation systems, and control devices or systems that are intended to operate in organic hazardous air pollutant service 300 hours or more during the calendar year within a source subject to the provisions of a specific subpart in 40 CFR Part 63)

Subpart I - Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.

40 CFR 63.190 through 40 CFR 63.192

(emissions of designated organic hazardous air pollutants from processes specified in this subpart that are located at a plant site that is a major source as defined in § 112 of the federal Clean Air Act)

Subpart J - ~~Reserved~~ Polyvinyl Chloride and Copolymers Production.

40 CFR 63.210 through 40 CFR 63.217

(NOTE: Authority to enforce the above standard is being retained by EPA and it is not incorporated by reference into these regulations.)

Subpart K - Reserved.

Subpart L - Coke Oven Batteries.

40 CFR 63.300 through 40 CFR 63.313

(existing by-product coke oven batteries at a coke plant, and existing nonrecovery coke oven batteries located at a coke plant)

Subpart M - Perchlorethylene Dry Cleaning Facilities.

40 CFR 63.320 through 40 CFR 63.325

(each dry cleaning facility that uses perchlorethylene)

Subpart N - Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks.

40 CFR 63.340 through 40 CFR 63.347

(each chromium electroplating or chromium anodizing tank at facilities performing hard chromium electroplating, decorative chromium electroplating, or chromium anodizing)

Subpart O - Ethylene Oxide Commercial Sterilization and Fumigation Operations.

40 CFR 63.360 through 40 CFR 63.367

(sterilization sources using ethylene oxide in sterilization or fumigation operations)

Subpart P - Reserved.

Subpart Q - Industrial Process Cooling Towers.

40 CFR 63.400 through 40 CFR 63.406

(industrial process cooling towers that are operated with chromium-based water treatment chemicals)

Subpart R - Gasoline Distribution Facilities.

40 CFR 63.420 through 40 CFR 63.429

(bulk gasoline terminals and pipeline breakout stations)

Subpart S - Pulp and Paper Industry.

40 CFR 63.440 through 40 CFR 63.458

(processes that produce pulp, paper, or paperboard, and use the following processes and materials: kraft, soda, sulfite, or semi-chemical pulping processes using wood; or mechanical pulping processes using wood; or any process using secondary or nonwood fibers)

Subpart T - Halogenated Solvent Cleaning.

40 CFR 63.460 through 40 CFR 63.469

(each individual batch vapor, in-line vapor, in-line cold, and batch cold solvent cleaning machine that uses any solvent containing methylene chloride, perchlorethylene, trichloroethylene, 1,1,1-trichloroethane, carbon tetrachloride, or chloroform)

Subpart U - Group I Polymers and Resins.

40 CFR 63.480 through 40 CFR 63.506

(elastomer product process units that produce butyl rubber, halobutyl rubber, epichlorohydrin elastomers, ethylene propylene rubber, Hypalon™, neoprene, nitrile butadiene rubber, nitrile butadiene latex, polysulfide rubber, polybutadiene rubber/styrene butadiene rubber by solution, styrene butadiene latex, and styrene butadiene rubber by emulsion)

Subpart V - Reserved.

Subpart W - Epoxy Resins Production and Non-Nylon Polyamides Production.

40 CFR 63.520 through 40 CFR 63.527

(manufacturers of basic liquid epoxy resins and wet strength resins)

Subpart X - Secondary Lead Smeltering.

40 CFR 63.541 through 40 CFR 63.550

(at all secondary lead smelters: blast, reverbatory, rotary, and electric smelting furnaces; refining kettles; agglomerating furnaces; dryers; process fugitive sources; and fugitive dust sources)

Subpart Y - Marine Tank Vessel Tank Loading Operations.

40 CFR 63.560 through 40 CFR 63.567

(marine tank vessel unloading operations at petroleum refineries)

Subpart Z - Reserved.

Subpart AA - Phosphoric Acid Manufacturing Plants.

40 CFR 63.600 through 40 CFR 63.610

(wet-process phosphoric acid process lines, evaporative cooling towers, rock dryers, rock calciners, superphosphoric acid process lines, purified acid process lines)

Subpart BB - Phosphate Fertilizers Production Plants.

40 CFR 63.620 through 40 CFR 63.631

(diammonium and monoammonium phosphate process lines, granular triple superphosphate process lines, and granular triple superphosphate storage buildings)

Subpart CC - Petroleum Refineries.

40 CFR 63.640 through 40 CFR 63.654

(storage tanks, equipment leaks, process vents, and wastewater collection and treatment systems at petroleum refineries)

Subpart DD - Off-Site Waste and Recovery Operations.

40 CFR 63.680 through 40 CFR 63.697

(operations that treat, store, recycle, and dispose of waste received from other operations that produce waste or recoverable materials as part of their manufacturing processes)

Subpart EE - Magnetic Tape Manufacturing Operations.

40 CFR 63.701 through 40 CFR 63.708

(manufacturers of magnetic tape)

Subpart FF - Reserved.

Subpart GG - Aerospace Manufacturing and Rework Facilities.

40 CFR 63.741 through 40 CFR 63.752

(facilities engaged in the manufacture or rework of commercial, civil, or military aerospace vehicles or components)

Subpart HH - Oil and Natural Gas Production Facilities.

40 CFR 63.760 through 40 CFR 63.779

(facilities that process, upgrade, or store hydrocarbon liquids or natural gas; ancillary equipment and compressors intended to operate in volatile hazardous air pollutant service)

Subpart II - Shipbuilding and Ship Repair (Surface Coating).

40 CFR 63.780 through 40 CFR 63.788

(shipbuilding and ship repair operations)

Subpart JJ - Wood Furniture Manufacturing Operations.

40 CFR 63.800 through 40 CFR 63.819

(finishing materials, adhesives, and strippable spray booth coatings; storage, transfer, and application of coatings and solvents)

Subpart KK - Printing and Publishing Industry.

40 CFR 63.820 through 40 CFR 63.831

(publication rotogravure, product and packaging rotogravure, and wide-web printing processes)

Subpart LL - Primary Aluminum Reduction Plants.

40 CFR 63.840 through 40 CFR 63.859

(each pitch storage tank, potline, paste production plant, or anode bulk furnace associated with primary aluminum production)

Subpart MM - Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite and Stand-Alone Semichemical Pulp Mills.

40 CFR 63.860 through 40 CFR 63.868

(chemical recovery systems, direct and nondirect contact evaporator recovery furnace systems, lime kilns, sulfite combustion units, semichemical combustion units)

Subpart NN - Reserved.

Subpart OO - Tanks--Level 1.

40 CFR 63.900 through 40 CFR 63.907

(for off-site waste and recovery operations, fixed-roof tanks)

Subpart PP - Containers.

40 CFR 63.920 through 40 CFR 63.928

(for off-site waste and recovery operations, containers)

Subpart QQ - Surface Impoundments.

40 CFR 63.940 through 40 CFR 63.948

(for off-site waste and recovery operations, surface impoundment covers and vents)

Subpart RR - Individual Drain Systems.

40 CFR 63.960 through 40 CFR 63.966

(for off-site waste and recovery operations, inspection and maintenance of individual drain systems)

Subpart SS - Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process.

40 CFR 63.980 through 40 CFR 63.999

(closed vent systems, control devices, recovery devices, and routing to a fuel gas system or a process, when associated with facilities subject to a referencing subpart)

Subpart TT - Equipment Leaks - Control Level 1.

40 CFR 63.1000 through 40 CFR 63.1018

(control of air emissions from equipment leaks when associated with facilities subject to a referencing subpart)

Subpart UU - Equipment Leaks - Control Level 2.

40 CFR 63.1019 through 40 CFR 63.1039

(control of air emissions from equipment leaks when associated with facilities subject to a referencing subpart: pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, instrumentation systems, closed vent systems and control devices)

Subpart VV - Oil-Water Separators and Organic-Water Separators.

40 CFR 63.1040 through 40 CFR 63.1049

(for off-site waste and recovery operations, oil-water separators and organic-water separator roofs and vents)

Subpart WW - Storage Vessels (Tanks) - Control Level 2.

40 CFR 63.1060 through 40 CFR 63.1066

(storage vessels associated with facilities subject to a referencing subpart)

Subpart XX - Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste.

40 CFR 63.1080 through 40 CFR 63.1098

(any cooling tower system or once-through cooling water system)

Subpart YY - Generic Maximum Achievable Control Technology Standards.

40 CFR 63.1100 through 40 CFR 63.1113

(acetal resins production, acrylic and modacrylic fibers production, hydrogen fluoride production, polycarbonate production)

Subpart ZZ - Reserved.

Subpart AAA - Reserved.

Subpart BBB - Reserved.

Subpart CCC - Steel Pickling - Hydrogen Chloride Process Facilities and Hydrochloric Acid Regeneration Plants.

40 CFR 63.1155 through 40 CFR 63.1174

(steel pickling facilities that pickle carbon steel using hydrochloric acid solution, hydrochloric acid regeneration plants)

Subpart DDD - Mineral Wool Production.

40 CFR 63.1175 through 40 CFR 63.1199

(cupolas and curing ovens at mineral wool manufacturing facilities)

Subpart EEE - Hazardous Waste Combustors.

40 CFR 63.1200 through 40 CFR 63.1221

(hazardous waste combustors)

Subpart FFF - Reserved.

Subpart GGG - Pharmaceutical Production.

40 CFR 63.1250 through 40 CFR 63.1261

(pharmaceutical manufacturing operations)

Subpart HHH - Natural Gas Transmission and Storage Facilities.

40 CFR 63.1270 through 40 CFR 63.1289

(natural gas transmission and storage facilities that transport or store natural gas prior to entering the pipeline to a local distribution company or to a final end user)

Subpart III - Flexible Polyurethane Foam Production.

40 CFR 63.1290 through 40 CFR 63.1309

(flexible polyurethane foam or rebond processes)

Subpart JJJ - Group IV Polymers and Resins.

40 CFR 63.1310 through 40 CFR 63.1335

(facilities which manufacture acrylonitrile butadiene styrene resin, styrene acrylonitrile resin, methyl methacrylate butadiene styrene resin, polystyrene resin, poly(ethylene terephthalate) resin, or nitrile resin)

Subpart KKK - Reserved.

Subpart LLL - Portland Cement Manufacturing.

40 CFR 63.1340 through 40 CFR 63.1359

(kilns; in-line kilns/raw mills; clinker coolers; raw mills; finish mills; raw material dryers; raw material, clinker, or finished product storage bins; conveying system transfer points; bagging systems; bulk loading or unloading systems)

Subpart MMM - Pesticide Active Ingredient Production.

40 CFR 63.1360 through 40 CFR 63.1369

(pesticide active ingredient manufacturing process units, waste management units, heat exchange systems, and cooling towers)

Subpart NNN - Wool Fiberglass Manufacturing.

40 CFR 63.1380 through 40 CFR 63.1399

(glass melting furnaces, rotary spin wool fiberglass manufacturing lines producing bonded wool fiberglass building insulation or bonded heavy-density product)

Subpart OOO - Amino/Phenolic Resins Production.

40 CFR 63.1400 through 40 CFR 63.1419

(unit operations, process vents, storage vessels, equipment subject to leak provisions)

Subpart PPP - Polyether Polyols Production.

40 CFR 63.1420 through 40 CFR 63.1439

(polyether polyol manufacturing process units)

Subpart QQQ - Primary Copper Smelting.

40 CFR 63.1440 through 40 CFR 63.1-1459

(batch copper converters, including copper concentrate dryers, smelting furnaces, slag cleaning vessels, copper converter departments, and the entire group of fugitive emission sources)

Subpart RRR - Secondary Aluminum Production.

40 CFR 63.1500 through 40 CFR 63.1520

(scrap shredders; thermal chip dryers; scrap dryers/delacquering kilns/decoating kilns; group 2, sweat, dross-only furnaces; rotary dross coolers; processing units)

Subpart SSS - Reserved.

Subpart TTT - Primary Lead Smelting.

40 CFR 63.1541 through 40 CFR 63.1550

(sinter machines, blast furnaces, dross furnaces, process fugitive sources, fugitive dust sources)

Subpart UUU - Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units.

40 CFR 63.1560 through 40 CFR 63.1579

(petroleum refineries that produce transportation and heating fuels or lubricants, separate petroleum, or separate, crack, react, or reform an intermediate petroleum stream, or recover byproducts from an intermediate petroleum stream)

Subpart VVV - Publicly Owned Treatment Works.

40 CFR 63.1580 through 40 CFR 63.1595

(intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment)

Subpart WWW - Reserved.

Subpart XXX - Ferroalloys Production: Ferromanganese and Silicomanganese.

40 CFR 63.1620 through 40 CFR 63.1679

(submerged arc furnaces, metal oxygen refining processes, crushing and screening operations, fugitive dust sources)

Subpart YYY - Reserved.

Subpart ZZZ - Reserved.

Subpart AAAA - Municipal Solid Waste Landfills.

40 CFR 63.1930 through 40 CFR 63.1990

(municipal solid waste landfills that have accepted waste since November 8, 1987, or have additional capacity for waste deposition)

Subpart BBBB - Reserved.

Subpart CCCC - Manufacturing of Nutritional Yeast.

40 CFR 63.2130 through 40 CFR 63.2192

(fermentation vessels)

Subpart DDDD - Plywood and Composite Wood Products.

40 CFR 63.2230 through 40 CFR 63.2292

(manufacture of plywood and composite wood products by bonding wood material or agricultural fiber with resin under heat and pressure to form a structural panel or engineered wood product)

Subpart EEEE - Organic Liquids Distribution (Nongasoline).

40 CFR 63.2330 through 40 CFR 63.2406

(transfer of noncrude oil liquids or liquid mixtures that contain organic hazardous air pollutants, or crude oils downstream of the first point of custody, via storage tanks, transfer racks, equipment leak components associated with pipelines, and transport vehicles

Subpart FFFF - Miscellaneous Organic Chemical Manufacturing.

40 CFR 63.2430 through 40 CFR 63.2550

(reaction, recovery, separation, purification, or other activity, operation, manufacture, or treatment that are used to produce a product or isolated intermediate)

Subpart GGGG - Solvent Extraction for Vegetable Oil Production.

40 CFR 63.2830 through 40 CFR 63.2872

(vegetable oil production processes)

Subpart HHHH--Wet-formed Fiberglass Mat Production.

40 CFR 63.2980 through 63.3079

(wet-formed fiberglass mat drying and curing ovens)

Subpart IIII - Surface Coating of Automobiles and Light-Duty Trucks.

40 CFR 63.3080 through 40 CFR 63.3176.

(application of topcoat to new automobile or new light-duty truck bodies or body parts)

Subpart JJJJ - Paper and Other Web Coating.

40 CFR 63.3280 through 40 CFR 63.3420

(web coating lines engaged in the coating of metal webs used in flexible packaging and in the coating of fabric substrates for use in pressure-sensitive tape and abrasive materials)

Subpart KKKK - Surface Coating of Metal Cans.

40 CFR 63.3480 through 40 CFR 63.3561

(application of coatings to a substrate using spray guns or dip tanks, including one- and two-piece draw and iron can body coating; sheetcoating; three-piece can body assembly coating; and end coating)

Subpart LLLL - Reserved.

Subpart MMMM - Surface Coating of Miscellaneous Metal Parts and Products.

40 CFR 63.3880 through 40 CFR 63.3981

(application of coatings to industrial, household, and consumer products)

Subpart NNNN - Surface Coating of Large Appliances.

40 CFR 63.4080 through 40 CFR 63.4181

(surface coating of a large appliance part or product, including cooking equipment; refrigerators, freezers, and refrigerated cabinets and cases; laundry equipment; dishwashers, trash compactors, and water heaters; and HVAC units, air-conditioning, air-conditioning and heating combination units, comfort furnaces, and electric heat pumps)

Subpart OOOO - Printing, Coating, and Dyeing of Fabrics and Other Textiles.

40 CFR 63.4280 through 40 CFR 63.4371

(printing, coating, slashing, dyeing, or finishing of fabric and other textiles)

Subpart PPPP - Surface Coating of Plastic Parts and Products.

40 CFR 63.4480 through 40 CFR 63.4581

(application of coating to a substrate using spray guns or dip tanks, including motor vehicle parts and accessories for automobiles, trucks, recreational vehicles; sporting and recreational goods; toys; business machines; laboratory and medical equipment; and household and other consumer products)

Subpart QQQQ - Surface Coating of Wood Building Products.

40 CFR 63.4680 through 40 CFR 63.4781

(finishing or laminating of wood building products used in the construction of a residential, commercial, or institutional building)

Subpart RRRR - Surface Coating of Metal Furniture.

40 CFR 63.4880 through 40 CFR 63.4981

(application of coatings to substrate using spray guns and dip tanks)

Subpart SSSS - Surface Coating of Metal Coil.

40 CFR 63.5080 through 40 CFR 63.5209

(organic coating to surface of metal coil, including web unwind or feed sections, work stations, curing ovens, wet sections, and quench stations)

Subpart TTTT - Leather Finishing Operations.

40 CFR 63.5280 through 40 CFR 63.5460

(multistage application of finishing materials to adjust and improve the physical and aesthetic characteristics of leather surfaces)

Subpart UUUU - Cellulose Products Manufacturing.

40 CFR 63.5480 through 40 CFR 63.5610

(cellulose food casing, rayon, cellulosic sponge, cellophane manufacturing, methyl cellulose, hydroxypropyl methyl cellulose, hydroxypropyl cellulose, hydroxyethyl cellulose, and carboxymethyl cellulose manufacturing industries)

Subpart VVVV - Boat Manufacturing.

40 CFR 63.5680 through 40 CFR 63.5779

(resin and gel coat operations, carpet and fabric adhesive operations, aluminum recreational boat surface coating operations)

Subpart WWWW - Reinforced Plastic Composites Production.

40 CFR 63.5780 through 40 CFR 63.5935

(reinforced or nonreinforced plastic composites or plastic molding compounds using thermostat resins and gel coats that contain styrene)

Subpart XXXX - Rubber Tire Manufacturing.

40 CFR 63.5980 through 40 CFR 63.6015

(production of rubber tires and components including rubber compounds, sidewalls, tread, tire beads, tire cord and liners)

Subpart YYYY - Stationary Combustion Turbines.

40 CFR 63.6080 through 40 CFR 63.6175

(simple cycle, regenerative/recuperative cycle, cogeneration cycle, and combined cycle stationary combustion turbines)

Subpart ZZZZ - Stationary Reciprocating Internal Combustion Engines.

40 CFR 63.6580 through 40 CFR 63.6675.

(any stationary internal combustion engine that uses reciprocating motion to convert heat energy into mechanical work)

(NOTE: Authority to enforce provisions related to affected facilities located at a major source as defined in 40 CFR 63.6675 is being retained by the Commonwealth. Authority to enforce the area source provisions of the above standard is being retained by EPA. The provisions of this subpart as they apply to area sources are not incorporated by reference into these regulations)

Subpart AAAAA - Lime Manufacturing Plants.

40 CFR 63.7080 through 40 CFR 63.7143.

(manufacture of lime product, including calcium oxide, calcium oxide with magnesium oxide, or dead burned dolomite, by calcination of limestone, dolomite, shells or other calcareous substances)

Subpart BBBBB - Semiconductor Manufacturing.

40 CFR 63.7180 through 40 CFR 63.7195

(semiconductor manufacturing process units used to manufacture p-type and n-type semiconductors and active solid-state devices from a wafer substrate)

Subpart CCCCC - Coke Ovens: Pushing, Quenching, and Battery Stacks.

40 CFR 63.7280 through 40 CFR 63.7352

(pushing, soaking, quenching, and battery stacks at coke oven batteries)

Subpart DDDDD - ~~Reserved~~ Industrial, Commercial, and Institutional Boilers and Process Heaters.

40 CFR 63.7480 through 40 CFR 63.7575

(NOTE: Authority to enforce the above standard is being retained by EPA and it is not incorporated by reference into these regulations.)

Subpart EEEEE - Iron and Steel Foundries.

40 CFR 63.7680 through 40 CFR 63.7765

(metal melting furnaces, scrap preheaters, pouring areas, pouring stations, automated conveyor and pallet cooling lines, automated shakeout lines, and mold and core making lines)

Subpart FFFFF - Integrated Iron and Steel Manufacturing.

40 CFR 63.7780 through 40 CFR 63.7852

(each sinter plant, blast furnace, and basic oxygen process furnace at an integrated iron and steel manufacturing facility)

Subpart GGGGG - Site Remediation.

40 CFR 63.7880 through 40 CFR 63.7957

(activities or processes used to remove, destroy, degrade, transform, immobilize, or otherwise manage remediation material)

Subpart HHHHH - Miscellaneous Coating Manufacturing.

40 CFR 63.7980 through 40 CFR 63.8105

(process vessels; storage tanks for feedstocks and products; pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, and instrumentation systems; wastewater tanks and transfer racks)

Subpart IIIII - Mercury Cell Chlor-Alkali Plants.

40 CFR 63.8180 through 40 CFR 63.8266

(byproduct hydrogen streams, end box ventilation system vents, and fugitive emission sources associated with cell rooms, hydrogen systems, caustic systems, and storage areas for mercury-containing wastes)

Subpart JJJJJ - ~~Reserved~~ Brick and Structural Clay Products Manufacturing.

40 CFR 63.8380 through 40 CFR 63.8515

(NOTE: Authority to enforce the above standard is being retained by EPA and it is not incorporated by reference into these regulations.)

Subpart KKKKK - ~~Reserved~~ Ceramics Manufacturing.

40 CFR 63.8530 through 40 CFR 63.8665

(NOTE: Authority to enforce the above standard is being retained by EPA and it is not incorporated by reference into these regulations.)

Subpart LLLLL - Asphalt Processing and Asphalt Roof Manufacturing.

40 CFR 63.8680 through 40 CFR 63.8698

(preparation of asphalt flux at stand-alone asphalt processing facilities, petroleum refineries, and asphalt roofing facilities)

Subpart MMMMM - Flexible Polyurethane Foam Fabrication Operations.

40 CFR 63.8780 through 40 CFR 63.8830

(flexible polyurethane foam fabrication plants using flame lamination or loop slitter adhesives)

Subpart NNNNN - Hydrochloric Acid Production.

40 CFR 63.8980 through 40 CFR 63.9075

(HCl production facilities that produce a liquid HCl product)

Subpart OOOOO - Reserved.

Subpart PPPPP - Engine Test Cells and Stands.

40 CFR Subpart 63.9280 through 40 CFR 63.9375

(any apparatus used for testing uninstalled stationary or uninstalled mobile (motive) engines)

Subpart QQQQQ - Friction Materials Manufacturing Facilities.

40 CFR 63.9480 through 40 CFR 63.9579

(friction materials manufacturing facilities that use a solvent-based process)

Subpart RRRRR - Taconite Iron Ore Processing.

40 CFR 63.9580 through 40 CFR 63.9652

(ore crushing and handling, ore dryer stacks, indurating furnace stacks, finished pellet handling, and fugitive dust)

Subpart SSSSS - Refractory Products Manufacturing.

40 CFR 63.9780 through 40 CFR 63.9824

(manufacture of refractory products, including refractory bricks and shapes, monolithics, kiln furniture, crucibles, and other materials for liming furnaces and other high temperature process units)

Subpart TTTTT - Primary Magnesium Refining.

40 CFR 63.9880 through 40 CFR 63.9942

(spray dryer, magnesium chloride storage bin scrubber, melt/reactor system, and launder off-gas system stacks)

Subpart UUUUU - Reserved.

Subpart VVVVV - Reserved.

Subpart WWWWW - ~~Reserved~~ Hospital Ethylene Oxide Sterilizer Area Sources.

40 CFR 63.10382 through 40 CFR 63.10448

(any enclosed vessel that is filled with ethylene oxide gas or an ethylene oxide/inert gas mixture for the purpose of sterilization)

Subpart XXXXX - Reserved.

Subpart YYYYY - ~~Reserved~~ Electric Arc Furnace Steelmaking Facility Area Sources.

40 CFR 63.10680 through 40 CFR 63.10692

(a steel plant that produces carbon, alloy, or specialty steels using an electric arc furnace)

Subpart ZZZZZ - ~~Reserved~~ Iron and Steel Foundries Area Sources.

40 CFR 63.10880 through 40 CFR 63.10906

(a facility that melts scrap, ingot, and/or other forms of iron and/or steel and pours the resulting molten metal into molds to produce final or near final shape products for introduction into commerce)

Subpart AAAAAA - Reserved.

Subpart BBBBBB - ~~Reserved~~ Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities, Area Sources.

40 CFR 63.11080 through 40 CFR 63.11100

(gasoline storage tanks, gasoline loading racks, vapor collection-equipped gasoline cargo tanks, and equipment components in vapor or liquid gasoline service)

Subpart CCCCCC - ~~Reserved~~ Gasoline Dispensing Facilities, Area Sources.

40 CFR 63.11110 through 40 CFR 63.11132

(NOTE: Authority to enforce the above standard is being retained by EPA and it is not incorporated by reference into these regulations.)

Subpart DDDDDD - Polyvinyl Chloride and Copolymers Production Area Sources.

40 CFR 63.11140 through 40 CFR 63.11145

(plants that produce polyvinyl chloride or copolymers)

Subpart EEEEEE - Primary Copper Smelting Area Sources.

40 CFR 63.11146 through 40 CFR 63.11152

(any installation or any intermediate process engaged in the production of copper from copper sulfide ore concentrates through the use of pyrometallurgical techniques)

Subpart FFFFFF - Secondary Copper Smelting Area Sources.

40 CFR 63.11153 through 40 CFR 63.11159

(a facility that processes copper scrap in a blast furnace and converter or that uses another pyrometallurgical purification process to produce anode copper from copper scrap, including low-grade copper scrap)

Subpart GGGGGG - Primary Nonferrous Metals Area Sources--Zinc, Cadmium, and Beryllium.

40 CFR 63.11160 through 40 CFR 63.11168

(cadmium melting furnaces used to melt cadmium or produce cadmium oxide from the cadmium recovered in the zinc production; primary beryllium production facilities engaged in the chemical processing of beryllium ore to produce beryllium metal, alloy, or oxide, or performing any of the intermediate steps in these processes; and primary zinc production facilities engaged in the production, or any intermediate process in the production, of zinc or zinc oxide from zinc sulfide ore concentrates through the use of pyrometallurgical techniques)

Subpart HHHHHH - Paint Stripping and Miscellaneous Surface Coating Operations Area Sources.

40 CFR 63.11169 through 40 CFR 63.11180

(NOTE: Authority to enforce the above standard is being retained by EPA and it is not incorporated by reference into these regulations.)

Subpart IIIIII - Reserved.

Subpart JJJJJJ - Reserved.

Subpart KKKKKK - Reserved.

Subpart LLLLLL - Acrylic and Modacrylic Fibers Production Area Sources.

40 CFR 63.11393 through 40 CFR 63.11399

(production of either of the following synthetic fibers composed of acrylonitrile units: acrylic fiber or modacrylic fiber)

Subpart MMMMMM - Carbon Black Production Area Sources.

40 CFR 63.11400 through 40 CFR 63.11406

(carbon black production process units including all waste management units, maintenance wastewater, and equipment components that contain or contact HAP that are associated with the carbon black production process unit)

Subpart NNNNNN - Chemical Manufacturing Area Sources: Chromium Compounds.

40 CFR 63.11407 through 40 CFR 63.11413

(any process that uses chromite ore as the basic feedstock to manufacture chromium compounds, primarily sodium dichromate, chromic acid, and chromic oxide)

Subpart OOOOOO - Flexible Polyurethane Foam Production and Fabrication Area Sources.

40 CFR 63.11414 through 40 CFR 63.11420

(a facility where pieces of flexible polyurethane foam are cut, bonded, and/or laminated together or to other substrates)

Subpart PPPPPP - Lead Acid Battery Manufacturing Area Sources.

40 CFR 63.11421 through 40 CFR 63.11427

(grid casting facilities, paste mixing facilities, three-process operation facilities, lead oxide manufacturing facilities, lead reclamation facilities, and any other lead-emitting operation that is associated with the lead acid battery manufacturing plant)

Subpart QQQQQQ - Wood Preserving Area Sources.

40 CFR 63.11428 through 40 CFR 63.11434

(pressure or thermal impregnation of chemicals into wood to provide effective long-term resistance to attack by fungi, bacteria, insects, and marine borers)

Subpart RRRRRR - Clay Ceramics Manufacturing Area Sources.

40 CFR 63.11435 through 40 CFR 63.11447

(manufacture of pressed tile, sanitaryware, dinnerware, or pottery with an atomized glaze spray booth or kiln that fires glazed ceramic ware)

Subpart SSSSSS - Glass Manufacturing Area Sources.

40 CFR 63.11448 through 40 CFR 63.11461

(manufacture of flat glass, glass containers, or pressed and blown glass by melting a mixture of raw materials to produce molten glass and form the molten glass into sheets, containers, or other shapes)

Subpart TTTTTT - Secondary Nonferrous Metals Processing Area Sources.

40 CFR 63.11462 through 40 CFR 63.11474

(all crushing and screening operations at a secondary zinc processing facility and all furnace melting operations located at any secondary nonferrous metals processing facility)

Subpart UUUUUU - Reserved.

Subpart VVVVVV - Reserved.

Subpart WWWWWW - Reserved.

Subpart XXXXXX - Reserved.

Subpart YYYYYY - Reserved.

Subpart ZZZZZZ - Reserved.

Appendix A - Test Methods.

Appendix B - Sources Defined for Early Reduction Provisions.

Appendix C - Determination of the Fraction Biodegraded (F_{bio}) in a Biological Treatment Unit.

Appendix D - Alternative Validation Procedure for EPA Waste and Wastewater Methods.

VA.R. Doc. No. R09-1616; Filed January 21, 2009, 3:35 p.m.

Final Regulation

REGISTRAR'S NOTICE: The State Air Pollution Control Board is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 3, which excludes regulations that consist only of changes in style or form or corrections of technical errors. The State Air Pollution Control Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Titles of Regulations: **9VAC5-40. Existing Stationary Sources (repealing 9VAC5-40-5600 through 9VAC5-40-5645).**

9VAC5-130. Regulation for Open Burning (adding 9VAC5-130-10 through 9VAC5-130-100).

Statutory Authority: § 10.1-1308 of the Code of Virginia; §§ 110, 111, 123, 129, 171, 172 and 182 of the Clean Air Act; 40 CFR Parts 51 and 60.

Effective Date: March 18, 2009.

Agency Contact: Mary E. Major, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423 or email memajor@deq.virginia.gov.

Summary:

This regulatory action (i) recodifies the Emission Standards for Open Burning as the Regulation for Open Burning in 9VAC5-130; and (ii) deletes the existing Open Burning Rule (Rule 4-40) located in Article 40 of 9VAC5-40.

Article 40
Emission Standards for Open Burning (Rule 4-40)
(Repealed.)

9VAC5-40-5600. ~~Applicability.~~ (Repealed.)

~~A. Except as provided in subsections C and D of this section, the provisions of this article apply to any person who permits or engages in open burning or who permits or engages in burning using special incineration devices.~~

~~B. The provisions of this article apply throughout the Commonwealth of Virginia.~~

~~C. The provisions of this article do not apply to such an extent as to prohibit the burning of leaves by persons on property where they reside if the local governing body of the county, city or town in which such persons reside has enacted~~

an otherwise valid ordinance (under the provisions of § 10.1-1308 of the Virginia Air Pollution Control Law) regulating such burning in all or any part of the locality.

D. The provisions of this article do not apply to air curtain incinerators subject to the provisions of (i) Article 45 (9VAC5-40-6250 et seq.), 46 (9VAC5-40-6550 et seq.), or 54 (9VAC5-40-7950 et seq.) of 9VAC5 Chapter 40 or (ii) Subparts Eb, AAAA or CCCC of 40 CFR Part 60.

9VAC5-40-5610. ~~Definitions.~~ (Repealed.)

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

B. As used in this article, all terms not defined here shall have the meanings given them in 9VAC5 Chapter 10 (9VAC5-10), unless otherwise required by context.

C. Terms defined:

"Air curtain incinerator" means an incinerator that operates by forcefully projecting a curtain of air across an open chamber or pit in which combustion occurs. Incinerators of this type can be constructed above or below ground and with or without refractory walls and floor. Air curtain incinerators are not to be confused with conventional combustion devices with enclosed fireboxes and controlled air technology such as mass burn, modular, and fluidized bed combustors.

"Automobile graveyard" means any lot or place that is exposed to the weather and upon which more than five motor vehicles of any kind, incapable of being operated, and that it would not be economically practical to make operative, are placed, located or found.

"Built-up area" means any area with a substantial portion covered by industrial, commercial or residential buildings.

"Clean burning waste" means waste that is not prohibited to be burned under this article and that consists only of (i) 100% wood waste, (ii) 100% clean lumber or clean wood, (iii) 100% yard waste, or (iv) 100% mixture of only any combination of wood waste, clean lumber, clean wood or yard waste.

"Clean lumber" means wood or wood products that have been cut or shaped and include wet, air-dried, and kiln-dried wood products. Clean lumber does not include wood products that have been painted, pigment stained, or pressure treated by compounds such as chromate copper arsenate, pentachlorophenol, and creosote.

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

"Commercial waste" means all solid waste generated by establishments engaged in business operations other than manufacturing or construction. This category includes, but is not limited to, waste resulting from the operation of stores, markets, office buildings, restaurants and shopping centers.

"Construction waste" means solid waste that is produced or generated during construction, remodeling, or repair of pavements, houses, commercial buildings and other structures. Construction waste consists of lumber, wire, sheetrock, broken brick, shingles, glass, pipes, concrete, and metal and plastics if the metal or plastics are a part of the materials of construction or empty containers for such materials. Paints, coatings, solvents, asbestos, any liquid, compressed gases or semi-liquids, and garbage are not construction wastes and the disposal of such materials shall be in accordance with the regulations of the Virginia Waste Management Board.

"Debris waste" means wastes resulting from land clearing operations. Debris wastes include but are not limited to stumps, wood, brush, leaves, soil and road spoils.

"Demolition waste" means that solid waste that is produced by the destruction of structures or their foundations, or both, and includes the same materials as construction waste.

"Garbage" means readily putrescible discarded materials composed of animal, vegetable or other organic matter.

"Hazardous waste" means a "hazardous waste" as described in 9VAC20-60, Hazardous Waste Management Regulations.

"Household waste" means any waste material, including garbage, trash and refuse derived from households. For purposes of this regulation, households include single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day-use recreation areas. Household wastes do not include sanitary waste in septic tanks (septage) that is regulated by other state agencies.

"Industrial waste" means any solid waste generated by manufacturing or industrial process that is not a regulated hazardous waste. Such waste may include but is not limited to waste resulting from the following manufacturing processes: electric power generation; fertilizer/agricultural chemicals; food and related products/by-products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.

~~"Junk" means old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber, debris, waste, or junked, dismantled, or wrecked automobiles, or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material.~~

~~"Junkyard" means an establishment or place of business that is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard, and the term shall include garbage dumps and sanitary landfills.~~

~~"Landfill" means a sanitary landfill, an industrial waste landfill, or a construction/demolition/debris landfill. See Part I (9VAC20-80-10 et seq.) of 9VAC20 Chapter 80 (Solid Waste Management Regulations) for further definitions of these terms.~~

~~"Local landfill" means any landfill located within the jurisdiction of a local government.~~

~~"Opening burning" means the combustion of solid waste without:~~

~~1. Control of combustion air to maintain adequate temperature for efficient combustion;~~

~~2. Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and~~

~~3. Control of the combustion products' emission.~~

~~"Open pit incinerator" means a device used to burn waste for the primary purpose of reducing the volume by removing combustible matter. Such devices function by directing a curtain of air at an angle across the top of a trench or similarly enclosed space, thus reducing the amount of combustion byproducts emitted into the atmosphere. The term also includes trench burners, air curtain incinerators and over draft incinerators.~~

~~"Refuse" means all solid waste products having the characteristics of solids rather than liquids and that are composed wholly or partially of materials such as garbage, trash, rubbish, litter, residues from clean up of spills or contamination or other discarded materials.~~

~~"Salvage operation" means any operation consisting of a business, trade or industry participating in salvaging or reclaiming any product or material, such as, but not limited to, reprocessing of used motor oils, metals, chemicals, shipping containers or drums, and specifically including automobile graveyards and junkyards.~~

~~"Sanitary landfill" means an engineered land burial facility for the disposal of household waste that is so located, designed, constructed, and operated to contain and isolate the waste so that it does not pose a substantial or potential hazard to human health or the environment. A sanitary landfill also may receive other types of solid wastes, such as commercial solid waste, nonhazardous sludge, hazardous waste from conditionally exempt small quantity generators, construction, demolition, or debris waste and nonhazardous industrial solid waste. See Part I (9VAC20-80-10 et seq.) of 9VAC20 Chapter 80 (Solid Waste Management Regulations) for further definitions of these terms.~~

~~"Smoke" means small gas-borne particulate matter consisting mostly, but not exclusively, of carbon, ash and other material in concentrations sufficient to form a visible plume.~~

~~"Special incineration device" means an open pit incinerator, conical or teepee burner, or any other device specifically designed to provide good combustion performance.~~

~~"Wood waste" means untreated wood and untreated wood products, including tree stumps (whole or chipped), trees, tree limbs (whole or chipped), bark, sawdust, chips, scraps, slabs, millings, and shavings. Wood waste does not include:~~

~~1. Grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands.~~

~~2. Construction, renovation, or demolition wastes.~~

~~3. Clean lumber.~~

~~"Yard waste" means grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs that come from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands. Yard waste does not include (i) construction, renovation, and demolition wastes or (ii) clean wood.~~

9VAC5-40-5620. ~~Open burning prohibitions.~~ (Repealed.)

~~A. No owner or other person shall cause or permit open burning of refuse or use of special incineration devices except as provided in 9VAC5-40-5630.~~

~~B. No owner or other person shall cause or permit open burning or the use of a special incineration device for the destruction of rubber tires, asphaltic materials, crankcase oil, impregnated wood or other rubber or petroleum based materials except when conducting bona fide fire fighting instruction at fire fighting training schools having permanent facilities.~~

~~C. No owner or other person shall cause or permit open burning or the use of a special incineration device for the destruction of hazardous waste or containers for such materials.~~

~~D. No owner or other person shall cause or permit open burning or the use of a special incineration device for the purpose of a salvage operation or for the destruction of commercial/industrial waste.~~

~~E. Upon declaration of an alert, warning or emergency stage of an air pollution episode as described in 9VAC5 Chapter 70~~

~~(9VAC5-70) or when deemed advisable by the board to prevent a hazard to, or an unreasonable burden upon, public health or welfare, no owner or other person shall cause or permit open burning or use of a special incineration device; and any in-process burning or use of special incineration devices shall be immediately terminated in the designated air quality control region.~~

9VAC5-40-5630. ~~Permissible open burning.~~ (Repealed.)

~~A. Open burning or the use of special incineration devices is permitted in the following instances provided the provisions of subsections B through E of 9VAC5-40-5620 are met:~~

~~1. Upon the request of an owner or a responsible civil or military public official, the board may approve open burning or the use of special incineration devices under controlled conditions for the elimination of a hazard that constitutes a threat to the public health, safety or welfare and that cannot be remedied by other means consonant with the circumstances presented by the hazard. Such uses of open burning or the use of special incineration devices may include, but are not limited to, the following:~~

~~a. Destruction of deteriorated or unused explosives and munitions on government or private property when other means of disposal are not available. Hazardous waste permits may be required under the provisions of 9VAC20-60.~~

~~b. Destruction of debris caused by floods, tornadoes, hurricanes or other natural disasters where alternate means of disposal are not economical or practical and when it is in the best interest of the citizens of the Commonwealth. Solid waste management permits may be required under the provisions of 9VAC20-80.~~

~~c. On-site destruction of animal or plant life that is infested, or reasonably believed to be infested, by a pest or disease in order (i) to suppress, control, or eradicate an infestation or pest; (ii) to prevent or retard the spread of an infestation or pest; or (iii) to prevent further disease transmission or progression.~~

~~2. Open burning is permitted for training and instruction of government and public fire fighters under the supervision of the designated official and industrial in-house fire fighting personnel with clearance from the local fire fighting authority. The designated official in charge of the training shall notify and obtain the approval of the regional director prior to conducting the training exercise. Training schools where permanent facilities are installed for fire fighting instruction are exempt from this notification requirement. Buildings that have not been demolished may be burned under the provisions of this subdivision only.~~

~~3. Open burning or the use of special incineration devices is permitted for the destruction of classified military documents under the supervision of the designated official.~~

~~4. Open burning is permitted for camp fires or other fires that are used solely for recreational purposes, for ceremonial occasions, for outdoor noncommercial preparation of food, and for warming of outdoor workers provided the materials specified in subsections B and C of 9VAC5-40-5620 are not burned.~~

~~5. In urban areas, open burning is permitted for the on-site destruction of leaves and tree, yard and garden trimmings located on the premises of private property, provided that no regularly scheduled public or private collection service for such trimmings is available at the adjacent street or public road. In nonurban areas, open burning is permitted for the on-site destruction of leaves and tree, yard and garden trimmings located on the premises of private property regardless of the availability of collection service for such trimmings.~~

~~6. Open burning is permitted for the on-site destruction of household waste by homeowners or tenants, provided that no regularly scheduled public or private collection service for such refuse is available at the adjacent street or public road.~~

~~7. Open burning is permitted for the destruction of any combustible liquid or gaseous material by burning in a flare or flare stack. Use of a flare or flare stack for the destruction of hazardous waste or commercial/industrial waste is allowed provided written approval is obtained from the board and the facility is in compliance with Article 3 (9VAC5-40-160 et seq.) of this chapter and Article 3 (9VAC5-50-160 et seq.) of 9VAC5 Chapter 50. Permits issued under 9VAC5 Chapter 80 (9VAC5-80) may be used to satisfy the requirement for written approval. This activity must be consistent with the provisions of 9VAC20-60.~~

~~8. Open burning or the use of special incineration devices is permitted on site for the destruction of clean burning waste and debris waste resulting from property maintenance, from the development or modification of roads and highways, parking areas, railroad tracks, pipelines, power and communication lines, buildings or building areas, sanitary landfills, or from any other clearing operations.~~

~~Open burning or the use of special incineration devices for the purpose of such destruction is prohibited in volatile organic compounds emissions control areas (see 9VAC5-20-206) during May, June, July, August, and September.~~

~~9. Open burning is permitted for forest management and agriculture practices approved by the board (see 9VAC5-40-5631), provided the following conditions are met:~~

~~a. The burning shall be at least 1000 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted.~~

~~b. The burning shall be attended at all times.~~

~~10. Open burning or the use of special incineration devices is permitted for the destruction of clean burning waste and~~

~~debris waste on the site of local landfills provided that the burning does not take place on land that has been filled and covered so as to present an underground fire hazard due to the presence of methane gas. Open burning or the use of special incineration devices for the purpose of such destruction is prohibited in volatile organic compounds emissions control areas (see 9VAC5-20-206) during May, June, July, August, and September.~~

~~B. Open burning or the use of special incineration devices permitted under the provisions of this article does not exempt or excuse any owner or other person from the consequences, liability, damages or injuries that may result from such conduct; nor does it excuse or exempt any owner or other person from complying with other applicable laws, ordinances, regulations and orders of the governmental entities having jurisdiction, even though the open burning is conducted in compliance with this article. In this regard, special attention should be directed to § 10.1-1142 of the Code of Virginia, which is enforced by the Department of Forestry.~~

~~C. With regard to the provisions of subsection B of this section, special attention should also be directed to the regulations of the Virginia Waste Management Board. No destruction of waste by open burning or transportation of waste to be destroyed by open burning shall take place in violation of the regulations of the Virginia Waste Management Board.~~

9VAC5-40-5631. ~~Forest management and agricultural practices.~~ (Repealed.)

~~A. Open burning is permitted in accordance with subsections B and C of this section provided the provisions of subsections B through E of 9VAC5-40-5620 are met.~~

~~B. Open burning may be used for the following forest management practices provided the burning is conducted in accordance with the Department of Forestry's smoke management plan:~~

~~1. To reduce forest fuels and minimize the effect of wild fires.~~

~~2. To control undesirable growth of hardwoods.~~

~~3. To control disease in pine seedlings.~~

~~4. To prepare forest land for planting or seeding.~~

~~5. To create a favorable habitat for certain species.~~

~~6. To remove dead vegetation for the maintenance of railroad, highway and public utility right-of-way.~~

~~C. In the absence of other means of disposal, open burning may be used for the following agricultural practices:~~

~~1. To destroy undesirable or diseased vegetation.~~

~~2. To clear orchards and orchard prunings.~~

~~3. To destroy empty fertilizer and chemical containers.~~

~~4. To denature seed and grain that may no longer be suitable for agricultural purposes.~~

~~5. To prevent loss from frost or freeze damage.~~

~~6. To create a favorable habitat for certain species.~~

~~7. To destroy strings and plastic ground cover remaining in the field after being used in growing staked tomatoes.~~

9VAC5-40-5641. ~~Local ordinances on open burning.~~ (Repealed.)

~~A. General.~~

~~1. If the governing body of any locality wishes to adopt an ordinance relating to air pollution and governing open burning within its jurisdiction, the ordinance must first be approved by the board (see § 10.1-1321 B of the Code of Virginia).~~

~~2. In order to assist local governments in the development of ordinances acceptable to the board, the ordinance in subsection C of this section is offered as a model.~~

~~3. If a local government wishes to adopt the language of the model ordinance without changing any wording except that enclosed by parentheses, that government's ordinance shall be deemed to be approved by the board on the date of local adoption provided that a copy of the ordinance is filed with the department upon its adoption by the local government.~~

~~4. If a local government wishes to change any wording of the model ordinance aside from that enclosed by parentheses in order to construct a local ordinance, that government shall request the approval of the board prior to adoption of the ordinance by the local jurisdiction. A copy of the ordinance shall be filed with the department upon its adoption by the local government.~~

~~5. Local ordinances that have been approved by the board prior to April 1, 1996, remain in full force and effect as specified by their promulgating authorities.~~

~~B. Establishment and approval of local ordinances varying from the model.~~

~~1. Any local governing body proposing to adopt or amend an ordinance relating to open burning that differs from the model local ordinance in subsection C of this section shall first obtain the approval of the board for the ordinance or amendment as specified in subdivision A 4 of this section. The board in approving local ordinances will consider, but will not be limited to, the following criteria:~~

~~a. The local ordinance shall provide for intergovernmental cooperation and exchange of information.~~

~~b. Adequate local resources will be committed to enforcing the proposed local ordinance.~~

c. The provisions of the local ordinance shall be as strict as state regulations, except as provided for leaf burning in § 10.1-1308 of the Virginia Air Pollution Control Law.

d. If a waiver from any provision of Article 40 (9VAC5-40-5600 et seq.) of 9VAC5 Chapter 40 has been requested under 9VAC5-40-5645, the language of the ordinance shall achieve the objective of the provision from which the waiver is requested.

2. Approval of any local ordinance may be withdrawn if the board determines that the local ordinance is less strict than state regulations or if the locality fails to enforce the ordinance.

3. If a local ordinance must be amended to conform to an amendment to state regulations, such local amendment will be made within six months of the effective date of the amended state regulations.

4. Local ordinances are a supplement to state regulations. Any provisions of local ordinances that have been approved by the board and are more strict than state regulations shall take precedence over state regulations within the respective locality. If a locality fails to enforce its own ordinance, the board reserves the right to enforce state regulations.

5. A local governing body may grant a variance to any provision of its air pollution control ordinance(s) provided that:

a. A public hearing is held prior to granting the variance;

b. The public is notified of the application for a variance by notice in at least one major newspaper of general circulation in the affected locality at least 30 days prior to the date of the hearing; and

c. The variance does not permit any owner or other person to take action that would result in a violation of any provision of state regulations unless a variance is granted by the board. The public hearings required for the variances to the local ordinance and state regulations may be conducted jointly as one proceeding.

6. 0 9VAC5-170-150 shall not apply to local ordinances concerned solely with open burning.

C. Model Ordinance.

ORDINANCE NO. (000)

Section (000-1). Title. This article shall be known as the (local jurisdiction) Ordinance for the Regulation of Open Burning.

Section (000-2). Purpose. The purpose of this article is to protect public health, safety, and welfare by regulating open burning within (local jurisdiction) to achieve and maintain, to the greatest extent practicable, a level of air quality that will provide comfort and convenience while promoting economic and social development. This article is intended to supplement the applicable regulations promulgated by the State Air Pollution Control Board and other applicable regulations and laws.

Section (000-3). Definitions. For the purpose of this article and subsequent amendments or any orders issued by (local jurisdiction), the words or phrases shall have the meaning given them in this section.

A. "Automobile graveyard" means any lot or place that is exposed to the weather and upon which more than five motor vehicles of any kind, incapable of being operated, and that it would not be economically practical to make operative, are placed, located or found.

B. "Built-up area" means any area with a substantial portion covered by industrial, commercial or residential buildings.

C. "Clean burning waste" means waste that is not prohibited to be burned under this ordinance and that consists only of (i) 100% wood waste, (ii) 100% clean lumber or clean wood, (iii) 100% yard waste, or (iv) 100% mixture of only any combination of wood waste, clean lumber, clean wood or yard waste.

D. "Clean lumber" means wood or wood products that have been cut or shaped and include wet, air dried, and kiln dried wood products. Clean lumber does not include wood products that have been painted, pigment stained, or pressure treated by compounds such as chromate copper arsenate, pentachlorophenol, and creosote.

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

F. "Construction waste" means solid waste that is produced or generated during construction, remodeling, or repair of pavements, houses, commercial buildings and other structures. Construction waste consists of lumber, wire, sheetrock, broken brick, shingles, glass, pipes, concrete, and metal and plastics if the metal or plastics are a part of the materials of construction or empty containers for such materials. Paints, coatings, solvents, asbestos, any liquid, compressed gases or semi-liquids, and garbage are not construction wastes and the disposal of such materials must be in accordance with the regulations of the Virginia Waste Management Board.

G. "Debris waste" means wastes resulting from land clearing operations. Debris wastes include but are not limited to stumps, wood, brush, leaves, soil and road spoils.

H. "Demolition waste" means that solid waste that is produced by the destruction of structures or their foundations,

~~or both, and includes the same materials as construction waste.~~

~~I. "Garbage" means readily putrescible discarded materials composed of animal, vegetable or other organic matter.~~

~~J. "Hazardous waste" means a "hazardous waste" as described in 9VAC20-60, Hazardous Waste Management Regulations.~~

~~K. "Household waste" means any waste material, including garbage, trash and refuse derived from households. For purposes of this regulation, households include single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day use recreation areas. Household wastes do not include sanitary waste in septic tanks (septage) that is regulated by state agencies.~~

~~L. "Industrial waste" means any solid waste generated by manufacturing or industrial process that is not a regulated hazardous waste. Such waste may include but is not limited to waste resulting from the following manufacturing processes: electric power generation; fertilizer/agricultural chemicals; food and related products/by products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.~~

~~M. "Junkyard" means an establishment or place of business that is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard, and the term shall include garbage dumps and sanitary landfills.~~

~~N. "Landfill" means a sanitary landfill, an industrial waste landfill, or a construction/demolition/debris landfill. See Solid Waste Management Regulations (9VAC20-80) for further definitions of these terms.~~

~~O. "Local landfill" means any landfill located within the jurisdiction of a local government.~~

~~P. "Open burning" means the combustion of solid waste without:~~

~~1. Control of combustion air to maintain adequate temperature for efficient combustion;~~

~~2. Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and~~

~~3. Control of the combustion products' emission.~~

~~Q. "Open pit incinerator" means a device used to burn waste for the primary purpose of reducing the volume by removing combustible matter. Such devices function by directing a curtain of air at an angle across the top of a trench or similarly enclosed space, thus reducing the amount of combustion byproducts emitted into the atmosphere. The term also includes trench burners, air curtain incinerators and over draft incinerators.~~

~~R. "Refuse" means all solid waste products having the characteristics of solids rather than liquids and that are composed wholly or partially of materials such as garbage, trash, rubbish, litter, residues from clean up of spills or contamination or other discarded materials.~~

~~S. "Salvage operation" means any operation consisting of a business, trade or industry participating in salvaging or reclaiming any product or material, such as, but not limited to, reprocessing of used motor oils, metals, chemicals, shipping containers or drums, and specifically including automobile graveyards and junkyards.~~

~~T. "Sanitary landfill" means an engineered land burial facility for the disposal of household waste that is so located, designed, constructed, and operated to contain and isolate the waste so that it does not pose a substantial present or potential hazard to human health or the environment. A sanitary landfill also may receive other types of solid wastes, such as commercial solid waste, nonhazardous sludge, hazardous waste from conditionally exempt small quantity generators, construction, demolition, or debris waste and nonhazardous industrial solid waste. See Solid Waste Management Regulations (9VAC20-80) for further definitions of these terms.~~

~~U. "Smoke" means small gas-borne particulate matter consisting mostly, but not exclusively, of carbon, ash and other material in concentrations sufficient to form a visible plume.~~

~~V. "Special incineration device" means an open pit incinerator, conical or teepee burner, or any other device specifically designed to provide good combustion performance.~~

~~W. "Wood waste" means untreated wood and untreated wood products, including tree stumps (whole or chipped), trees, tree limbs (whole or chipped), bark, sawdust, chips, scraps, slabs, millings, and shavings. Wood waste does not include:~~

~~1. Grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands.~~

~~2. Construction, renovation, or demolition wastes.~~

~~3. Clean lumber.~~

~~X. "Yard waste" means grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs that come from~~

residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands. Yard waste does not include (i) construction, renovation, and demolition wastes or (ii) clean wood.

Section (000-4). Prohibitions on open burning.

A. No owner or other person shall cause or permit open burning or the use of a special incineration device for the destruction of refuse except as provided in this ordinance.

B. No owner or other person shall cause or permit open burning or the use of a special incineration device for the destruction of rubber tires, asphaltic materials, crankcase oil, impregnated wood or other rubber or petroleum based materials except when conducting bona fide fire fighting instruction at fire fighting training schools having permanent facilities.

C. No owner or other person shall cause or permit open burning or the use of a special incineration device for the destruction of hazardous waste or containers for such materials.

D. No owner or other person shall cause or permit open burning or the use of a special incineration device for the purpose of a salvage operation or for the destruction of commercial/industrial waste.

E. Open burning or the use of special incineration devices permitted under the provisions of this ordinance does not exempt or excuse any owner or other person from the consequences, liability, damages or injuries that may result from such conduct; nor does it excuse or exempt any owner or other person from complying with other applicable laws, ordinances, regulations and orders of the governmental entities having jurisdiction, even though the open burning is conducted in compliance with this ordinance. In this regard special attention should be directed to § 10.1-1142 of the Code of Virginia, the regulations of the Virginia Waste Management Board, and the State Air Pollution Control Board's Regulations for the Control and Abatement of Air Pollution.

F. Upon declaration of an alert, warning or emergency stage of an air pollution episode as described in 9VAC5 Chapter 70 (9VAC5-70) or when deemed advisable by the State Air Pollution Control Board to prevent a hazard to, or an unreasonable burden upon, public health or welfare, no owner or other person shall cause or permit open burning or use of a special incineration device; and any in process burning or use of special incineration devices shall be immediately terminated in the designated air quality control region.

Section (000-5). Exemptions. The following activities are exempted to the extent covered by the State Air Pollution Control Board's Regulations for the Control and Abatement of Air Pollution:

A. Open burning for training and instruction of government and public fire fighters under the supervision of the designated official and industrial in-house fire fighting personnel;

B. Open burning for camp fires or other fires that are used solely for recreational purposes, for ceremonial occasions, for outdoor noncommercial preparation of food, and for warming of outdoor workers;

C. Open burning for the destruction of any combustible liquid or gaseous material by burning in a flare or flare stack;

D. Open burning for forest management and agriculture practices approved by the State Air Pollution Control Board; and

E. Open burning for the destruction of classified military documents.

Section (000-6). Permissible open burning.

A. Open burning is permitted on site for the destruction of leaves and tree, yard and garden trimmings located on the premises of private property, provided that the conditions are met:

1. The burning takes place on the premises of the private property; (and)

2. The location of the burning is not less than 300 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted; (and

3. No regularly scheduled public or private collection service for such trimmings is available at the adjacent street or public road[1].

B. Open burning is permitted on site for the destruction of household waste by homeowners or tenants, provided that the following conditions are met:

1. The burning takes place on the premises of the dwelling;

2. Animal carcasses or animal wastes are not burned;

3. Garbage is not burned; (and)

4. The location of the burning is not less than 300 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted; (and

5. No regularly scheduled public or private collection service for such refuse is available at the adjacent street or public road[2].

C. Open burning is permitted on-site for destruction of debris waste resulting from property maintenance, from the development or modification of roads and highways, parking areas, railroad tracks, pipelines, power and communication lines, buildings or building areas, sanitary landfills, or from

any other clearing operations that may be approved by (designated local official), provided the following conditions are met:

1. All reasonable effort shall be made to minimize the amount of material burned, with the number and size of the debris piles approved by (designated local official);

2. The material to be burned shall consist of brush, stumps and similar debris waste and shall not include demolition material;

3. The burning shall be at least 500 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted;

4. The burning shall be conducted at the greatest distance practicable from highways and air fields;

5. The burning shall be attended at all times and conducted to ensure the best possible combustion with a minimum of smoke being produced;

6. The burning shall not be allowed to smolder beyond the minimum period of time necessary for the destruction of the materials; and

7. The burning shall be conducted only when the prevailing winds are away from any city, town or built up area.

D. Open burning is permitted for destruction of debris on the site of local landfills provided that the burning does not take place on land that has been filled and covered so as to present an underground fire hazard due to the presence of methane gas provided that the following conditions are met:

1. The burning shall take place on the premises of a local sanitary landfill that meets the provisions of the regulations of the Virginia Waste Management Board;

2. The burning shall be attended at all times;

3. The material to be burned shall consist only of brush, tree trimmings, yard and garden trimmings, clean burning waste, clean burning debris waste, or clean burning demolition waste;

4. All reasonable effort shall be made to minimize the amount of material that is burned;

5. No materials may be burned in violation of the regulations of the Virginia Waste Management Board or the State Air Pollution Control Board. The exact site of the burning on a local landfill shall be established in coordination with the regional director and (designated local official); no other site shall be used without the approval of these officials. (Designated local official) shall be notified of the days during which the burning will occur.

(E. Sections 000-6-A through D notwithstanding, no owner or other person shall cause or permit open burning or the use of a special incineration device during May, June, July, August, or September.[3])

Section (000-7). Permits.

A. When open burning of debris waste (Section 000-6-C) or open burning of debris on the site of a local landfill (Section 000-6-D) is to occur within (local jurisdiction), the person responsible for the burning shall obtain a permit from (designated local official) prior to the burning. Such a permit may be granted only after confirmation by (designated local official) that the burning can and will comply with the provisions of this ordinance and any other conditions that are deemed necessary to ensure that the burning will not endanger the public health and welfare or to ensure compliance with any applicable provisions of the State Air Pollution Control Board's Regulations for the Control and Abatement of Air Pollution. The permit may be issued for each occasion of burning or for a specific period of time deemed appropriate by (designated local official).

B. Prior to the initial installation (or reinstallation, in cases of relocation) and operation of special incineration devices, the person responsible for the burning shall obtain a permit from (designated local official), such permits to be granted only after confirmation by (designated local official) that the burning can and will comply with the applicable provisions in Regulations for the Control and Abatement of Air Pollution and that any conditions are met that are deemed necessary by (designated local official) to ensure that the operation of the devices will not endanger the public health and welfare. Permits granted for the use of special incineration devices shall at a minimum contain the following conditions:

1. All reasonable effort shall be made to minimize the amount of material that is burned. Such efforts shall include, but are not limited to, the removal of pulpwood, sawlogs and firewood.

2. The material to be burned shall consist of brush, stumps and similar debris waste and shall not include demolition material.

3. The burning shall be at least 300 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted; burning shall be conducted at the greatest distance practicable from highways and air fields. If (designated local official) determines that it is necessary to protect public health and welfare, he may direct that any of the above cited distances be increased.

4. The burning shall be attended at all times and conducted to ensure the best possible combustion with a minimum of smoke being produced. Under no circumstances should the burning be allowed to smolder beyond the minimum period of time necessary for the destruction of the materials.

~~5. The burning shall be conducted only when the prevailing winds are away from any city, town or built-up area.~~

~~6. The use of special incineration devices shall be allowed only for the destruction of debris waste, clean burning construction waste, and clean burning demolition waste.~~

~~(C. An application for a permit under Section 000-7-A or 000-7-B shall be accompanied by a processing fee of $ ____.[4])~~

~~Section (000-8). Penalties for violation.~~

~~A. Any violation of this ordinance is punishable as a Class 1 misdemeanor. (See § 15.2-1429 of the Code of Virginia.)~~

~~B. Each separate incident may be considered a new violation.~~

~~[1]This provision shall be included in ordinances for urban areas. It may be included in ordinances for non-urban areas.~~

~~[2]This provision shall be included in ordinances for urban areas. It may be included in ordinances for non-urban areas.~~

~~[3]This provision shall be included in ordinances for jurisdictions within volatile organic compound emissions control areas. It may be included in ordinances for jurisdictions outside these areas.~~

~~[4]The fee stipulation in this section is optional at the discretion of the jurisdiction.~~

9VAC5-40-5645. ~~Waivers.~~ (Repealed.)

~~A. A waiver from any provision of this article may be granted by the board for any person or geographic area provided that satisfactory demonstration is made that another state or local government entity has in effect statutory provisions or other enforceable mechanisms that will achieve the objective of the provision from which the waiver is granted.~~

~~B. Demonstrations made pursuant to subsection A of this section should, at a minimum, meet the following criteria:~~

~~1. The demonstration should show that the statutory provisions or other enforceable mechanisms essentially provide the same effect as the provision from which the waiver is granted.~~

~~2. That the governmental entity has the legal authority to enforce the statutory provisions or enforceable mechanisms.~~

~~C. Waivers under subsection A of this section shall be executed through a memorandum of understanding between the board and affected governmental entity and may include such terms and conditions as may be necessary to ensure that the objectives of this article are met by the waiver.~~

~~D. A waiver from any applicable provision of this article may be granted by the board for any locality which has lawfully adopted an ordinance in accordance with 9VAC5-40-5641.~~

CHAPTER 130
~~[Reserved]~~ REGULATION FOR OPEN BURNING

Part I
General Provisions

9VAC5-130-10. Applicability.

A. Except as provided in subsections C and D of this section, the provisions of this chapter apply to any person who permits or engages in open burning or who permits or engages in burning using special incineration devices.

B. The provisions of this chapter apply throughout the Commonwealth of Virginia.

C. The provisions of this chapter do not apply to such an extent as to prohibit the burning of leaves by persons on property where they reside if the local governing body of the county, city or town in which such persons reside has enacted an otherwise valid ordinance (under the provisions of § 10.1-1308 of the Virginia Air Pollution Control Law) regulating such burning in all or any part of the locality.

D. The provisions of this chapter do not apply to air curtain incinerators subject to the provisions of (i) Article 45 (9VAC5-40-6250 et seq.), Article 46 (9VAC5-40-6550 et seq.), or Article 54 (9VAC5-40-7950 et seq.) of 9VAC5-40 (Existing Stationary Sources) or (ii) Subparts Eb, AAAA or CCCC of 40 CFR Part 60.

9VAC5-130-20. Definitions.

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

B. As used in this chapter, all terms not defined here shall have the meaning given them in 9VAC5-10 (General Definitions), unless otherwise required by context.

C. Terms defined:

"Air curtain incinerator" means an incinerator that operates by forcefully projecting a curtain of air across an open chamber or pit in which combustion occurs. Incinerators of this type can be constructed above or below ground and with or without refractory walls and floor. Air curtain incinerators are not to be confused with conventional combustion devices with enclosed fireboxes and controlled air technology such as mass burn, modular, and fluidized bed combustors.

"Automobile graveyard" means any lot or place that is exposed to the weather and upon which more than five motor vehicles of any kind, incapable of being operated, and that it would not be economically practical to make operative, are placed, located or found.

"Built-up area" means any area with a substantial portion covered by industrial, commercial or residential buildings.

"Clean burning waste" means waste that is not prohibited to be burned under this chapter and that consists only of (i) 100% wood waste, (ii) 100% clean lumber or clean wood, (iii) 100% yard waste, or (iv) 100% mixture of only any combination of wood waste, clean lumber, clean wood or yard waste.

"Clean lumber" means wood or wood products that have been cut or shaped and include wet, air-dried, and kiln-dried wood products. Clean lumber does not include wood products that have been painted, pigment-stained, or pressure-treated by compounds such as chromate copper arsenate, pentachlorophenol, and creosote.

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

"Commercial waste" means all solid waste generated by establishments engaged in business operations other than manufacturing or construction. This category includes, but is not limited to, waste resulting from the operation of stores, markets, office buildings, restaurants and shopping centers.

"Construction waste" means solid waste that is produced or generated during construction, remodeling, or repair of pavements, houses, commercial buildings and other structures. Construction waste consists of lumber, wire, sheetrock, broken brick, shingles, glass, pipes, concrete, and metal and plastics if the metal or plastics are a part of the materials of construction or empty containers for such materials. Paints, coatings, solvents, asbestos, any liquid, compressed gases or semi-liquids, and garbage are not construction wastes and the disposal of such materials shall be in accordance with the regulations of the Virginia Waste Management Board.

"Debris waste" means wastes resulting from land clearing operations. Debris wastes include but are not limited to stumps, wood, brush, leaves, soil and road spoils.

"Demolition waste" means that solid waste that is produced by the destruction of structures, or their foundations, or both, and includes the same materials as construction waste.

"Garbage" means readily putrescible discarded materials composed of animal, vegetable or other organic matter.

"Hazardous waste" means a “hazardous waste” as described in 9VAC20-60 (Hazardous Waste Management Regulations).

"Household waste" means any waste material, including garbage, trash and refuse derived from households. For purposes of this regulation, households include single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day-use recreation areas. Household wastes do not include sanitary waste in septic tanks (septage) that is regulated by other state agencies.

"Industrial waste" means any solid waste generated by manufacturing or industrial process that is not a regulated hazardous waste. Such waste may include but is not limited to waste resulting from the following manufacturing processes: electric power generation; fertilizer/agricultural chemicals; food and related products/byproducts; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.

"Junk" means old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber, debris, waste, or junked, dismantled, or wrecked automobiles, or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material.

"Junkyard" means an establishment or place of business that is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard, and the term shall include garbage dumps and sanitary landfills.

"Landfill" means a sanitary landfill, an industrial waste landfill, or a construction/demolition/debris landfill. See Part I (9VAC20-80-10 et seq.) of 9VAC20-80 (Solid Waste Management Regulations) for further definitions of these terms.

"Local landfill" means any landfill located within the jurisdiction of a local government.

"Open burning" means the combustion of solid waste without:

1. Control of combustion air to maintain adequate temperature for efficient combustion;

2. Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

3. Control of the combustion products' emission.

"Open pit incinerator" means a device used to burn waste for the primary purpose of reducing the volume by removing combustible matter. Such devices function by directing a curtain of air at an angle across the top of a trench or similarly enclosed space, thus reducing the amount of combustion byproducts emitted into the atmosphere. The term also includes trench burners, air curtain incinerators and over draft incinerators.

"Refuse" means all solid waste products having the characteristics of solids rather than liquids and that are composed wholly or partially of materials such as garbage, trash, rubbish, litter, residues from clean up of spills or contamination or other discarded materials.

"Salvage operation" means any operation consisting of a business, trade or industry participating in salvaging or reclaiming any product or material, such as, but not limited to, reprocessing of used motor oils, metals, chemicals, shipping containers or drums, and specifically including automobile graveyards and junkyards.

"Sanitary landfill" means an engineered land burial facility for the disposal of household waste that is so located, designed, constructed, and operated to contain and isolate the waste so that it does not pose a substantial present or potential hazard to human health or the environment. A sanitary landfill also may receive other types of solid wastes, such as commercial solid waste, nonhazardous sludge, hazardous waste from conditionally exempt small quantity generators, construction, demolition, or debris waste and nonhazardous industrial solid waste. See Part I (9VAC20-80-10 et seq.) of 9VAC20-80 (Solid Waste Management Regulations) for further definitions of these terms.

"Smoke" means small gas-borne particulate matter consisting mostly, but not exclusively, of carbon, ash and other material in concentrations sufficient to form a visible plume.

"Special incineration device" means an open pit incinerator, conical or teepee burner, or any other device specifically designed to provide good combustion performance.

"Wood waste" means untreated wood and untreated wood products, including tree stumps (whole or chipped), trees, tree limbs (whole or chipped), bark, sawdust, chips, scraps, slabs, millings, and shavings. Wood waste does not include:

1. Grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands.

2. Construction, renovation, or demolition wastes.

3. Clean lumber.

"Yard waste" means grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs that come from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands. Yard waste does not include (i) construction, renovation, and demolition wastes or (ii) clean wood.

9VAC5-130-30. Open burning prohibitions.

A. No owner or other person shall cause or permit open burning of refuse or use of special incineration devices except as provided in 9VAC5-130-40.

B. No owner or other person shall cause or permit open burning or the use of a special incineration device for the destruction of rubber tires, asphaltic materials, crankcase oil, impregnated wood or other rubber or petroleum based materials except when conducting bona fide fire fighting instruction at fire fighting training schools having permanent facilities.

C. No owner or other person shall cause or permit open burning or the use of a special incineration device for the destruction of hazardous waste or containers for such materials.

D. No owner or other person shall cause or permit open burning or the use of a special incineration device for the purpose of a salvage operation or for the destruction of commercial/industrial waste.

E. Upon declaration of an alert, warning or emergency stage of an air pollution episode as described in 9VAC5-70 (Air Pollution Episode Prevention) or when deemed advisable by the board to prevent a hazard to, or an unreasonable burden upon, public health or welfare, no owner or other person shall cause or permit open burning or use of a special incineration device; and any in-process burning or use of special incineration devices shall be immediately terminated in the designated air quality control region.

9VAC5-130-40. Permissible open burning.

A. Open burning or the use of special incineration devices is permitted in the following instances provided the provisions of subsections B through E of 9VAC5-130-30 are met:

1. Upon the request of an owner or a responsible civil or military public official, the board may approve open burning or the use of special incineration devices under controlled conditions for the elimination of a hazard that constitutes a threat to the public health, safety or welfare and that cannot be remedied by other means consonant with the circumstances presented by the hazard. Such uses of open burning or the use of special incineration devices may include, but are not limited to, the following:

a. Destruction of deteriorated or unused explosives and munitions on government or private property when other means of disposal are not available. Hazardous waste permits may be required under the provisions of 9VAC20-60 (Hazardous Waste Management Regulations).

b. Destruction of debris caused by floods, tornadoes, hurricanes or other natural disasters where alternate means of disposal are not economical or practical and when it is in the best interest of the citizens of the Commonwealth. Solid waste management permits may be required under the provisions of 9VAC20-80 (Solid Waste Management Regulations).

c. On-site destruction of animal or plant life that is infested, or reasonably believed to be infested, by a pest or disease in order to (i) suppress, control, or eradicate an infestation or pest; (ii) prevent or retard the spread of an infestation or pest; or (iii) prevent further disease transmission or progression.

2. Open burning is permitted for training and instruction of government and public firefighters under the supervision of the designated official and industrial in-house firefighting personnel with clearance from the local firefighting authority. The designated official in charge of the training shall notify and obtain the approval of the regional director prior to conducting the training exercise. Training schools where permanent facilities are installed for firefighting instruction are exempt from this notification requirement. Buildings that have not been demolished may be burned under the provisions of this subdivision only.

3. Open burning or the use of special incineration devices is permitted for the destruction of classified military documents under the supervision of the designated official.

4. Open burning is permitted for camp fires or other fires that are used solely for recreational purposes, for ceremonial occasions, for outdoor noncommercial preparation of food, and for warming of outdoor workers provided the materials specified in subsections B and C of 9VAC5-130-30 are not burned.

5. In urban areas, open burning is permitted for the on-site destruction of leaves and tree, yard and garden trimmings located on the premises of private property, provided that no regularly scheduled public or private collection service for such trimmings is available at the adjacent street or public road. In nonurban areas, open burning is permitted for the on-site destruction of leaves and tree, yard and garden trimmings located on the premises of private property regardless of the availability of collection service for such trimmings.

6. Open burning is permitted for the on-site destruction of household waste by homeowners or tenants, provided that no regularly scheduled public or private collection service for such refuse is available at the adjacent street or public road.

7. Open burning is permitted for the destruction of any combustible liquid or gaseous material by burning in a flare or flare stack. Use of a flare or flare stack for the destruction of hazardous waste or commercial/industrial waste is allowed provided written approval is obtained from the board and the facility is in compliance with Article 3 (9VAC5-40-160 et seq.) of 9VAC5-40 (Existing Stationary Sources) and Article 3 (9VAC5-50-160 et seq.) of 9VAC5-50 (New and Modified Stationary Sources). Permits issued under 9VAC5-80 (Permits for Stationary Sources) may be used to satisfy the requirement for written approval. This activity must be consistent with the provisions of 9VAC20-60 (Virginia Hazardous Waste Regulations).

8. Open burning or the use of special incineration devices is permitted on site for the destruction of clean burning waste and debris waste resulting from property maintenance, from the development or modification of roads and highways, parking areas, railroad tracks, pipelines, power and communication lines, buildings or building areas, sanitary landfills, or from any other clearing operations. Open burning or the use of special incineration devices for the purpose of such destruction is prohibited in volatile organic compounds emissions control areas (see 9VAC5-20-206) during May, June, July, August, and September.

9. Open burning is permitted for forest management and agriculture practices approved by the board (see 9VAC5-130-50), provided the following conditions are met:

a. The burning shall be at least 1,000 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted; and

b. The burning shall be attended at all times.

10. Open burning or the use of special incineration devices is permitted for the destruction of clean burning waste and debris waste on the site of local landfills provided that the burning does not take place on land that has been filled and covered so as to present an underground fire hazard due to the presence of methane gas. Open burning or the use of special incineration devices for the purpose of such destruction is prohibited in volatile organic compounds emissions control areas (see 9VAC5-20-206) during May, June, July, August, and September.

B. Open burning or the use of special incineration devices permitted under the provisions of this chapter does not exempt or excuse any owner or other person from the consequences, liability, damages or injuries that may result from such conduct; nor does it excuse or exempt any owner or other person from complying with other applicable laws, ordinances, regulations and orders of the governmental entities having jurisdiction, even though the open burning is conducted in compliance with this chapter. In this regard special attention should be directed to § 10.1-1142 of the Code of Virginia, which is enforced by the Department of Forestry.

C. With regard to the provisions of subsection B of this section, special attention should also be directed to the regulations of the Virginia Waste Management Board. No destruction of waste by open burning or transportation of waste to be destroyed by open burning shall take place in

violation of the regulations of the Virginia Waste Management Board.

9VAC5-130-50. Forest management and agricultural practices.

A. Open burning is permitted in accordance with subsections B and C of this section provided the provisions of subsections B through E of 9VAC5-130-30 are met.

B. Open burning may be used for the following forest management practices provided the burning is conducted in accordance with the Department of Forestry's smoke management plan to:

1. Reduce forest fuels and minimize the effect of wild fires.

2. Control undesirable growth of hardwoods.

3. Control disease in pine seedlings.

4. Prepare forest land for planting or seeding.

5. Create a favorable habitat for certain species.

6. Remove dead vegetation for the maintenance of railroad, highway and public utility right-of-way.

C. In the absence of other means of disposal, open burning may be used for the following agricultural practices to:

1. Destroy undesirable or diseased vegetation.

2. Clear orchards and orchard prunings.

3. Destroy empty fertilizer and chemical containers.

4. Denature seed and grain that may no longer be suitable for agricultural purposes.

5. Prevent loss from frost or freeze damage.

6. Create a favorable habitat for certain species.

7. Destroy strings and plastic ground cover remaining in the field after being used in growing staked tomatoes.

9VAC5-130-60. Waivers.

A. A waiver from any provision of this chapter may be granted by the board for any person or geographic area provided that satisfactory demonstration is made that another state or local government entity has in effect statutory provisions or other enforceable mechanisms that will achieve the objective of the provision from which the waiver is granted.

B. Demonstrations made pursuant to subsection A of this section should, at a minimum, meet the following criteria:

1. Show that the statutory provisions or other enforceable mechanisms essentially provide the same effect as the provision from which the waiver is granted.

2. Show that the governmental entity has the legal authority to enforce the statutory provisions or enforceable mechanisms.

C. Waivers under subsection A of this section shall be executed through a memorandum of understanding between the board and affected governmental entity and may include such terms and conditions as may be necessary to ensure that the objectives of this chapter are met by the waiver.

D. A waiver from any applicable provision of this chapter may be granted by the board for any locality that has lawfully adopted an ordinance in accordance with 9VAC5-130-100.

9VAC5-130-70. (Reserved.)

9VAC5-130-80. (Reserved.)

9VAC5-130-90. (Reserved.)

Part I
Local Ordinances

9VAC5-130-100. Local ordinances on open burning.

A. General.

1. If the governing body of any locality wishes to adopt an ordinance relating to air pollution and governing open burning within its jurisdiction, the ordinance must first be approved by the board (see § 10.1-1321 B of the Code of Virginia).

2. In order to assist local governments in the development of ordinances acceptable to the board, the ordinance in subsection C of this section is offered as a model.

3. If a local government wishes to adopt the language of the model ordinance without changing any wording except that enclosed by parentheses, that government's ordinance shall be deemed to be approved by the board on the date of local adoption provided that a copy of the ordinance is filed with the department upon its adoption by the local government.

4. If a local government wishes to change any wording of the model ordinance aside from that enclosed by parentheses in order to construct a local ordinance, that government shall request the approval of the board prior to adoption of the ordinance by the local jurisdiction. A copy of the ordinance shall be filed with the department upon its adoption by the local government.

5. Local ordinances that have been approved by the board prior to April 1, 1996, remain in full force and effect as specified by their promulgating authorities.

B. Establishment and approval of local ordinances varying from the model.

1. Any local governing body proposing to adopt or amend an ordinance relating to open burning that differs from the model local ordinance in subsection C of this section shall

first obtain the approval of the board for the ordinance or amendment as specified in subdivision A 4 of this section. The board in approving local ordinances will consider, but will not be limited to, the following criteria:

a. The local ordinance shall provide for intergovernmental cooperation and exchange of information.

b. Adequate local resources will be committed to enforcing the proposed local ordinance.

c. The provisions of the local ordinance shall be as strict as state regulations, except as provided for leaf burning in § 10.1-1308 of the Virginia Air Pollution Control Law.

d. If a waiver from any provision of this chapter has been requested under 9VAC5-130-60, the language of the ordinance shall achieve the objective of the provision from which the waiver is requested.

2. Approval of any local ordinance may be withdrawn if the board determines that the local ordinance is less strict than state regulations or if the locality fails to enforce the ordinance.

3. If a local ordinance must be amended to conform to an amendment to state regulations, such local amendment will be made within six months of the effective date of the amended state regulations.

4. Local ordinances are a supplement to state regulations. Any provisions of local ordinances that have been approved by the board and are more strict than state regulations shall take precedence over state regulations within the respective locality. If a locality fails to enforce its own ordinance, the board reserves the right to enforce state regulations.

5. A local governing body may grant a variance to any provision of its air pollution control ordinance(s) provided that:

a. A public hearing is held prior to granting the variance;

b. The public is notified of the application for a variance by notice in at least one major newspaper of general circulation in the affected locality at least 30 days prior to the date of the hearing; and

c. The variance does not permit any owner or other person to take action that would result in a violation of any provision of state regulations unless a variance is granted by the board. The public hearings required for the variances to the local ordinance and state regulations may be conducted jointly as one proceeding.

6. 9VAC5-170-150 shall not apply to local ordinances concerned solely with open burning.

C. Model ordinance.

ORDINANCE NO. (000)

Section (000-1). Title.

This chapter shall be known as the (local jurisdiction) Ordinance for the Regulation of Open Burning.

Section (000-2). Purpose.

The purpose of this chapter is to protect public health, safety, and welfare by regulating open burning within (local jurisdiction) to achieve and maintain, to the greatest extent practicable, a level of air quality that will provide comfort and convenience while promoting economic and social development. This chapter is intended to supplement the applicable regulations promulgated by the State Air Pollution Control Board and other applicable regulations and laws.

Section (000-3). Definitions.

For the purpose of this chapter and subsequent amendments or any orders issued by (local jurisdiction), the words or phrases shall have the meaning given them in this section.

"Automobile graveyard" means any lot or place that is exposed to the weather and upon which more than five motor vehicles of any kind, incapable of being operated, and that it would not be economically practical to make operative, are placed, located or found.

"Built-up area" means any area with a substantial portion covered by industrial, commercial or residential buildings.

"Clean burning waste" means waste that is not prohibited to be burned under this ordinance and that consists only of (i) 100% wood waste, (ii) 100% clean lumber or clean wood, (iii) 100% yard waste, or (iv) 100% mixture of only any combination of wood waste, clean lumber, clean wood or yard waste.

"Clean lumber" means wood or wood products that have been cut or shaped and include wet, air-dried, and kiln-dried wood products. Clean lumber does not include wood products that have been painted, pigment-stained, or pressure-treated by compounds such as chromate copper arsenate, pentachlorophenol, and creosote.

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

"Construction waste" means solid waste that is produced or generated during construction remodeling, or repair of pavements, houses, commercial buildings and other structures. Construction waste consists of lumber, wire, sheetrock, broken brick, shingles, glass, pipes, concrete, and

metal and plastics if the metal or plastics are a part of the materials of construction or empty containers for such materials. Paints, coatings, solvents, asbestos, any liquid, compressed gases or semi-liquids, and garbage are not construction wastes and the disposal of such materials must be in accordance with the regulations of the Virginia Waste Management Board.

"Debris waste" means wastes resulting from land clearing operations. Debris wastes include but are not limited to stumps, wood, brush, leaves, soil and road spoils.

"Demolition waste" means that solid waste that is produced by the destruction of structures, or their foundations, or both, and includes the same materials as construction waste.

"Garbage" means readily putrescible discarded materials composed of animal, vegetable or other organic matter.

"Hazardous waste" means a "hazardous waste" as described in 9VAC20-60 (Hazardous Waste Management Regulations).

"Household waste" means any waste material, including garbage, trash and refuse derived from households. For purposes of this regulation, households include single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day-use recreation areas. Household wastes do not include sanitary waste in septic tanks (septage) that is regulated by state agencies.

"Industrial waste" means any solid waste generated by manufacturing or industrial process that is not a regulated hazardous waste. Such waste may include but is not limited to waste resulting from the following manufacturing processes: electric power generation; fertilizer/agricultural chemicals; food and related products/byproducts; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.

"Junkyard" means an establishment or place of business that is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard, and the term shall include garbage dumps and sanitary landfills.

"Landfill" means a sanitary landfill, an industrial waste landfill, or a construction/demolition/debris landfill. See 9VAC20-80 (Solid Waste Management Regulations) for further definitions of these terms.

"Local landfill" means any landfill located within the jurisdiction of a local government.

"Open burning" means the combustion of solid waste without:

1. Control of combustion air to maintain adequate temperature for efficient combustion;

2. Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

3. Control of the combustion products' emission.

"Open pit incinerator" means a device used to burn waste for the primary purpose of reducing the volume by removing combustible matter. Such devices function by directing a curtain of air at an angle across the top of a trench or similarly enclosed space, thus reducing the amount of combustion byproducts emitted into the atmosphere. The term also includes trench burners, air curtain incinerators and over draft incinerators.

"Refuse" means all solid waste products having the characteristics of solids rather than liquids and that are composed wholly or partially of materials such as garbage, trash, rubbish, litter, residues from clean up of spills or contamination or other discarded materials.

"Salvage operation" means any operation consisting of a business, trade or industry participating in salvaging or reclaiming any product or material, such as, but not limited to, reprocessing of used motor oils, metals, chemicals, shipping containers or drums, and specifically including automobile graveyards and junkyards.

"Sanitary landfill" means an engineered land burial facility for the disposal of household waste that is so located, designed, constructed, and operated to contain and isolate the waste so that it does not pose a substantial present or potential hazard to human health or the environment. A sanitary landfill also may receive other types of solid wastes, such as commercial solid waste, nonhazardous sludge, hazardous waste from conditionally exempt small quantity generators, construction, demolition, or debris waste and nonhazardous industrial solid waste. See 9VAC20-80 (Solid Waste Management Regulations) for further definitions of these terms.

"Smoke" means small gas-borne particulate matter consisting mostly, but not exclusively, of carbon, ash and other material in concentrations sufficient to form a visible plume.

"Special incineration device" means an open pit incinerator, conical or teepee burner, or any other device specifically designed to provide good combustion performance.

"Wood waste" means untreated wood and untreated wood products, including tree stumps (whole or chipped), trees, tree limbs (whole or chipped), bark, sawdust, chips, scraps, slabs, millings, and shavings. Wood waste does not include:

1. Grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands.

2. Construction, renovation, or demolition wastes.

3. Clean lumber.

"Yard waste" means grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs that come from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands. Yard waste does not include (i) construction, renovation, and demolition wastes or (ii) clean wood.

Section (000-4). Prohibitions on open burning.

A. No owner or other person shall cause or permit open burning or the use of a special incineration device for the destruction of refuse except as provided in this ordinance.

B. No owner or other person shall cause or permit open burning or the use of a special incineration device for the destruction of rubber tires, asphaltic materials, crankcase oil, impregnated wood or other rubber or petroleum based materials except when conducting bona fide firefighting instruction at firefighting training schools having permanent facilities.

C. No owner or other person shall cause or permit open burning or the use of a special incineration device for the destruction of hazardous waste or containers for such materials.

D. No owner or other person shall cause or permit open burning or the use of a special incineration device for the purpose of a salvage operation or for the destruction of commercial/industrial waste.

E. Open burning or the use of special incineration devices permitted under the provisions of this ordinance does not exempt or excuse any owner or other person from the consequences, liability, damages or injuries that may result from such conduct; nor does it excuse or exempt any owner or other person from complying with other applicable laws, ordinances, regulations and orders of the governmental entities having jurisdiction, even though the open burning is conducted in compliance with this ordinance. In this regard special attention should be directed to § 10.1-1142 of the Forest Fire Law of Virginia, the regulations of the Virginia Waste Management Board, and the State Air Pollution Control Board's Regulations for the Control and Abatement of Air Pollution.

F. Upon declaration of an alert, warning or emergency stage of an air pollution episode as described in 9VAC5-70 (Air Pollution Episode Prevention) or when deemed advisable by the State Air Pollution Control Board to prevent a hazard to, or an unreasonable burden upon, public health or welfare, no owner or other person shall cause or permit open burning or use of a special incineration device; and any in process burning or use of special incineration devices shall be immediately terminated in the designated air quality control region.

Section (000-5). Exemptions.

The following activities are exempted to the extent covered by the State Air Pollution Control Board's Regulations for the Control and Abatement of Air Pollution:

A. Open burning for training and instruction of government and public firefighters under the supervision of the designated official and industrial in-house firefighting personnel;

B. Open burning for camp fires or other fires that are used solely for recreational purposes, for ceremonial occasions, for outdoor noncommercial preparation of food, and for warming of outdoor workers;

C. Open burning for the destruction of any combustible liquid or gaseous material by burning in a flare or flare stack;

D. Open burning for forest management and agriculture practices approved by the State Air Pollution Control Board; and

E. Open burning for the destruction of classified military documents.

Section (000-6). Permissible open burning.

A. Open burning is permitted on site for the destruction of leaves and tree, yard and garden trimmings located on the premises of private property, provided that the following conditions are met:

1. The burning takes place on the premises of the private property; (and)

2. The location of the burning is not less than 300 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted(; and

3. No regularly scheduled public or private collection service for such trimmings is available at the adjacent street or public road[1]).

B. Open burning is permitted on-site for the destruction of household waste by homeowners or tenants, provided that the following conditions are met:

1. The burning takes place on the premises of the dwelling;

2. Animal carcasses or animal wastes are not burned;

3. Garbage is not burned; and

4. The location of the burning is not less than 300 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted (; and

5. No regularly scheduled public or private collection service for such refuse is available at the adjacent street or public road[2]).

C. Open burning is permitted on site for destruction of debris waste resulting from property maintenance, from the development or modification of roads and highways, parking areas, railroad tracks, pipelines, power and communication lines, buildings or building areas, sanitary landfills, or from any other clearing operations that may be approved by (designated local official), provided the following conditions are met:

1. All reasonable effort shall be made to minimize the amount of material burned, with the number and size of the debris piles approved by (designated local official);

2. The material to be burned shall consist of brush, stumps and similar debris waste and shall not include demolition material;

3. The burning shall be at least 500 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted;

4. The burning shall be conducted at the greatest distance practicable from highways and air fields,

5. The burning shall be attended at all times and conducted to ensure the best possible combustion with a minimum of smoke being produced;

6. The burning shall not be allowed to smolder beyond the minimum period of time necessary for the destruction of the materials; and

7. The burning shall be conducted only when the prevailing winds are away from any city, town or built-up area.

D. Open burning is permitted for destruction of debris on the site of local landfills provided that the burning does not take place on land that has been filled and covered so as to present an underground fire hazard due to the presence of methane gas, provided that the following conditions are met:

1. The burning shall take place on the premises of a local sanitary landfill that meets the provisions of the regulations of the Virginia Waste Management Board;

2. The burning shall be attended at all times;

3. The material to be burned shall consist only of brush, tree trimmings, yard and garden trimmings, clean burning waste, clean burning debris waste, or clean burning demolition waste;

4. All reasonable effort shall be made to minimize the amount of material that is burned;

5. No materials may be burned in violation of the regulations of the Virginia Waste Management Board or the State Air Pollution Control Board. The exact site of the burning on a local landfill shall be established in coordination with the regional director and (designated local official); no other site shall be used without the approval of these officials. (Designated local official) shall be notified of the days during which the burning will occur.

(E. Sections 000-6 A through D notwithstanding, no owner or other person shall cause or permit open burning or the use of a special incineration device during May, June, July, August, or September.[3])

Section (000-7). Permits.

A. When open burning of debris waste (Section 000-6 C) or open burning of debris on the site of a local landfill (Section 000-6 D) is to occur within (local jurisdiction), the person responsible for the burning shall obtain a permit from (designated local official) prior to the burning. Such a permit may be granted only after confirmation by (designated local official) that the burning can and will comply with the provisions of this ordinance and any other conditions that are deemed necessary to ensure that the burning will not endanger the public health and welfare or to ensure compliance with any applicable provisions of the State Air Pollution Control Board's Regulations for the Control and Abatement of Air Pollution. The permit may be issued for each occasion of burning or for a specific period of time deemed appropriate by (designated local official).

B. Prior to the initial installation (or reinstallation, in cases of relocation) and operation of special incineration devices, the person responsible for the burning shall obtain a permit from (designated local official), such permits to be granted only after confirmation by (designated local official) that the burning can and will comply with the applicable provisions in Regulations for the Control and Abatement of Air Pollution and that any conditions are met that are deemed necessary by (designated local official) to ensure that the operation of the devices will not endanger the public health and welfare. Permits granted for the use of special incineration devices shall at a minimum contain the following conditions:

1. All reasonable effort shall be made to minimize the amount of material that is burned. Such efforts shall include, but are not limited to, the removal of pulpwood, sawlogs and firewood.

2. The material to be burned shall consist of brush, stumps and similar debris waste and shall not include demolition material.

3. The burning shall be at least 300 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted; burning shall be conducted at the greatest distance practicable from highways and air fields. If (designated local official) determines that it is necessary

to protect public health and welfare, he may direct that any of the above cited distances be increased.

4. The burning shall be attended at all times and conducted to ensure the best possible combustion with a minimum of smoke being produced. Under no circumstances should the burning be allowed to smolder beyond the minimum period of time necessary for the destruction of the materials.

5. The burning shall be conducted only when the prevailing winds are away from any city, town or built-up area.

6. The use of special incineration devices shall be allowed only for the destruction of debris waste, clean burning construction waste, and clean burning demolition waste.

7. Permits issued under this subsection shall be limited to a specific period of time deemed appropriate by (designated local official).

(C. An application for a permit under Section 000-7 A or 000-7 B shall be accompanied by a processing fee of $----.[4])

Section (000-8). Penalties for violation.

A. Any violation of this ordinance is punishable as a Class 1 misdemeanor. (See § 15.2-1429 of the Code of Virginia.)

B. Each separate incident may be considered a new violation.

[1]This provision shall be included in ordinances for urban areas. It may be included in ordinances for nonurban areas.

[2]This provision shall be included in ordinances for urban areas. It may be included in ordinances for nonurban areas.

[3]This provision shall be included in ordinances for jurisdictions within volatile organic compound emissions control areas. It may be included in ordinances for jurisdictions outside these areas.

[4]The fee stipulation in this section is optional at the discretion of the jurisdiction.

VA.R. Doc. No. R09-1680; Filed January 21, 2009, 3:34 p.m.

Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The State Air Pollution 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: **9VAC5-140. Regulation for Emissions Trading Programs (amending 9VAC5-140-1010, 9VAC5-140-1020, 9VAC5-140-1060, 9VAC5-140-2010, 9VAC5-140-2020, 9VAC5-140-3010, 9VAC5-140-3020).**

Statutory Authority: §§ 10.1-1308 and 10.1-1322.3 of the Code of Virginia; §§ 108, 109, 110 and 302 of the Clean Air Act; 40 CFR Part 51.

Effective Date: March 18, 2009.

Agency Contact: Mary E. Major, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423 or email memajor@deq.virginia.gov.

Summary:

Substantive amendments to the regulation include:

1. The definitions of "CAIR NOx Annual Trading Program," "CAIR NOx Ozone Season Trading Program," "CAIR SO_2 Trading Program," and "permitting authority" in 9VAC5-140-1020, 9VAC5-140-2020, and 9VAC5-140-3020 are amended to clarify that they are not intended to create trading programs only for sources geographically located within the borders of the Commonwealth of Virginia. Therefore, qualifying sources within the Commonwealth are to become full participants in the EPA-administered regional CAIR trading programs for annual NOx, ozone season NOx, and annual SO_2, along with sources permitted by authorities in all other states that are participating in the regional CAIR trading programs. The new language clarifies that the regulations should not be interpreted to limit the trading program to Virginia sources, which would be contrary to the intention that sources covered by other states' approved CAIR rules or by the CAIR FIP may trade allowances with sources in the Commonwealth. In addition, the provisions of 9VAC5-140-1010, 9VAC5-140-2010, and 9VAC5-140-3010 are amended to reflect this clarification.

2. The definition of "most stringent state or federal NOx emissions limitation" in 9VAC5-140-1020, 9VAC5-140-2020, and 9VAC5-140-3020 is amended to clarify that the primary fuel, where it is not designated in the permit, is the fuel that would result in the lowest emission rate.

3. The definition of "cogeneration unit" in 9VAC5-140-1020, 9VAC5-140-2020, and 9VAC5-140-3020 is amended so that most units co-firing biomass will be exempt from CAIR. Specifically, the calculation methodology is removed for the efficiency standard in the cogeneration unit definition to exclude energy input from biomass making it more likely that units co-firing biomass are able to meet the efficiency standard and qualify for exemption from the rule. In these same sections, technical amendments were made to add a new definition of "biomass" and revise the definition of "total energy input."

Part II
No_x Annual Trading Program

Article 1
CAIR NO_x Annual Trading Program General Provisions

9VAC5-140-1010. Purpose and authority.

A. This part establishes general provisions and the designated representative, permitting, allowance, monitoring, and opt-in provisions for the State Clean Air Interstate Rule (CAIR) NO_X Annual Trading Program, under § 110 of the Clean Air Act (42 USC § 7410) and 40 CFR 51.123, as a means of mitigating interstate transport of fine particulates and nitrogen oxides.

B. The purpose of this part is not to create the CAIR NO_X Annual Trading Program only for CAIR NO_X units and CAIR NO_X sources geographically located within the borders of the Commonwealth of Virginia. Upon approval by EPA in accordance with 40 CFR 51.123 (o)(1) or (2), qualifying CAIR NO_X units and CAIR NO_X sources within the Commonwealth will become full participants in the EPA-administered regional CAIR NO_X Annual Trading Program, which will include CAIR NO_X units and CAIR NO_X sources permitted by authorities in all other states that are participating in the regional CAIR NO_X Annual Trading Program.

C. This part should not be interpreted to limit the CAIR NO_X Annual Trading Program to Virginia CAIR NO_X units and CAIR NO_X sources, which would be contrary to the intention that CAIR NO_X units and CAIR NO_X sources covered by CAIR programs of other states approved in accordance with 40 CFR 51.123 (o)(1) or (2) or by the CAIR Federal Implementation Plan (subparts AA through II of 40 CFR Part 97) may trade allowances with CAIR NO_X units and CAIR NO_X sources in the Commonwealth. While the CAIR NO_X Annual Trading Program must include CAIR NO_X units and CAIR NO_X sources and permitting authorities beyond the borders of the Commonwealth, the permitting authority for Virginia (the State Air Pollution Control Board) has no authority to ensure compliance with this part by any permitting authority, person or entity outside the Commonwealth.

D. The board has the authority under the Code of Virginia to regulate the allocations of allowances, issuance of the budget permits, the administration of the opt-in provisions and other duties assigned to the permitting authority only for CAIR NO_X units and CAIR NO_X sources in Virginia. The board authorizes the administrator to assist the board in implementing the CAIR NO_X Annual Trading Program by carrying out the functions set forth for the administrator in this part.

9VAC5-140-1020. Definitions.

A. As used in this part, all words or terms not defined here shall have the meaning given them in ~~9VAC5 Chapter 10 (9VAC5-10),~~ 9VAC5-10 (General Definitions) unless otherwise required by context.

B. For the purpose of this part and any related use, the words or terms shall have the meaning given them in this ~~paragraph~~ subsection.

"Account number" means the identification number given by the administrator to each CAIR NO_X Allowance Tracking System account.

"Acid rain emissions limitation" means a limitation on emissions of sulfur dioxide or nitrogen oxides under the Acid Rain Program.

"Acid Rain Program" means a multistate sulfur dioxide and nitrogen oxides air pollution control and emission reduction program established by the administrator under Title IV of the CAA and 40 CFR Parts 72 through 78.

"Administrator" means the administrator of the United States Environmental Protection Agency or the administrator's duly authorized representative.

"Allocate" or "allocation" means, with regard to CAIR NO_X allowances, the determination by a permitting authority or the administrator of the amount of such CAIR NO_X allowances to be initially credited to a CAIR NO_X unit, a new unit set-aside, a new energy efficiency/renewable energy unit set-aside, or other entity.

"Allocation year" means the year in which allowance allocations are calculated for a future year.

"Allowance transfer deadline" means, for a control period, midnight of March 1 (if it is a business day), or midnight of the first business day thereafter (if March 1 is not a business day), immediately following the control period and is the deadline by which a CAIR NO_X allowance transfer must be submitted for recordation in a CAIR NO_X source's compliance account in order to be used to meet the source's CAIR NO_X emissions limitation for such control period in accordance with 9VAC5-140-1540.

"Alternate CAIR-designated representative" means, for a CAIR NO_X source and each CAIR NO_X unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source, in accordance with Article 2 (9VAC5-140-1100 et seq.) and Article 9 (9VAC5-140-1800 et seq.) of this part, to act on behalf of the CAIR-designated representative in matters pertaining to the CAIR NO_X Annual Trading Program. If the CAIR NO_X source is also a CAIR SO_2 source, then this natural person shall be the same person as the alternate CAIR-designated representative under the CAIR SO_2 Trading Program. If the CAIR NO_X source is also a CAIR NO_X Ozone Season source,

then this natural person shall be the same person as the alternate CAIR-designated representative under the CAIR NO_X Ozone Season Trading Program. If the CAIR NO_X source is also subject to the Acid Rain Program, then this natural person shall be the same person as the alternate designated representative under the Acid Rain Program. If the CAIR NO_X source is also subject to the Hg Budget Trading Program, then this natural person shall be the same person as the alternate Hg designated representative under the Hg Budget Trading Program.

"Automated data acquisition and handling system" or "DAHS" means that component of the continuous emission monitoring system, or other emissions monitoring system approved for use under Article 8 (9VAC5-140-1700 et seq.) of this part, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required by Article 8 (9VAC5-140-1700 et seq.) of this part.

"Biomass" means:

1. Any organic material grown for the purpose of being converted to energy;

2. Any organic byproduct of agriculture that can be converted into energy; or

3. Any material that can be converted into energy and is nonmerchantable for other purposes, that is segregated from other nonmerchantable material, and that is:

a. A forest-related organic resource, including mill residues, precommercial thinnings, slash, brush, or byproduct from conversion of trees to merchantable material; or

b. A wood material, including pallets, crates, dunnage, manufacturing and construction materials (other than pressure-treated, chemically-treated, or painted wood products), and landscape or right-of-way tree trimmings.

"Biomass energy" means energy derived from the combustion or electro-chemical reaction (as with a fuel cell) of hydrocarbon materials of a biogenic origin using a solid, liquid or gaseous fuel. Biomass fuel materials include, but are not limited to, animal wastes (e.g., manure) and clean plant materials (e.g., wood chips, waste paper and crop wastes). Biomass fuels exclude products that have emissions that include heavy metals and other neurotoxins (e.g., municipal solid wastes). Biomass fuel materials may be converted to a gaseous fuel, such as landfills (i.e., landfill gas) or waste treatment facilities (i.e., digester gas), or to liquid fuels (e.g., biodiesel). To be considered a biomass facility, the facility must (i) employ maximum achievable control technology and continuous emission stack monitors for all chemical emissions of concern to human health and (ii) be listed in one of the following categories: anaerobic digestion systems operating on animal or plant wastes, methane gas, combustion of clean wood, bark or other plant material; or on combustion of fuels derived entirely from processing of clean wood, bark, or other plant or animal material, including processing by gasification, pyrolysis, fermentation, distillation, or densification.

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

"Bottoming-cycle cogeneration unit" means a cogeneration unit in which the energy input to the unit is first used to produce useful thermal energy and at least some of the reject heat from the useful thermal energy application or process is then used for electricity production.

"CAIR-authorized account representative" means, with regard to a general account, a responsible natural person who is authorized, in accordance with Article 2 (9VAC5-140-1100 et seq.), Article 6 (9VAC5-140-1500 et seq.), and Article 9 (9VAC5-140-1800 et seq.) of this part, to transfer and otherwise dispose of CAIR NO_X allowances held in the general account and, with regard to a compliance account, the CAIR-designated representative of the source.

"CAIR-designated representative" means, for a CAIR NO_X source and each CAIR NO_X unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source, in accordance with Article 2 (9VAC5-140-1100 et seq.) and Article 9 (9VAC5-140-1800 et seq.) of this part, to represent and legally bind each owner and operator in matters pertaining to the CAIR NO_X Annual Trading Program. If the CAIR NO_X source is also a CAIR SO_2 source, then this natural person shall be the same person as the CAIR-designated representative under the CAIR SO_2 Trading Program. If the CAIR NO_X source is also a CAIR NO_X Ozone Season source, then this natural person shall be the same person as the CAIR-designated representative under the CAIR NO_X Ozone Season Trading Program. If the CAIR NO_X source is also subject to the Acid Rain Program, then this natural person shall be the same person as the designated representative under the Acid Rain Program. If the CAIR NO_X source is also subject to the Hg Budget Trading Program, then this natural person shall be the same person as the Hg designated representative under the Hg Budget Trading Program.

"CAIR NO_X allowance" means a limited authorization issued by a permitting authority or the administrator under Article 5 (9VAC5-140-1400 et seq.) of this part or 9VAC5-140-1880, provisions of an implementation plan that are approved under 40 CFR 51.123(o)(1) or (2) or (p), or under subpart EE of 40 CFR Part 97 or 40 CFR 97.188, to emit one ton of nitrogen oxides during a control period of the specified calendar year for which the authorization is allocated or of any calendar year thereafter under the CAIR NO_X Program.

An authorization to emit nitrogen oxides that is not issued under Article 5 (9VAC5-140-1400 et seq.) of this part or 9VAC5-140-1880, provisions of an implementation plan that are approved under 40 CFR 51.123(o)(1) or (2) or (p), or under subpart EE of 40 CFR Part 97 or 40 CFR 97.188 shall not be a CAIR NO_X allowance. No provision of the CAIR NO_X Annual Trading Program, the CAIR permit application, the CAIR permit, or an exemption under 9VAC5-140-1040 B or 9VAC5-140-1050 and no provision of law shall be construed to limit the authority of the United States or board to terminate or limit such authorization, which does not constitute a property right.

"CAIR NO_X allowance deduction" or "deduct CAIR NO_X allowances" means the permanent withdrawal of CAIR NO_X allowances by the administrator from a compliance account, e.g., in order to account for a specified number of tons of total nitrogen oxides emissions from all CAIR NO_X units at a CAIR NO_X source for a control period, determined in accordance with Article 8 (9VAC5-140-1700 et seq.) of this part, or to account for excess emissions.

"CAIR NO_X Allowance Tracking System" means the system by which the administrator records allocations, deductions, and transfers of CAIR NO_X allowances under the CAIR NO_X Annual Trading Program. Such allowances will be allocated, held, deducted, or transferred only as whole allowances.

"CAIR NO_X Allowance Tracking System account" means an account in the CAIR NO_X Allowance Tracking System established by the administrator for purposes of recording the allocation, holding, transferring, or deducting of CAIR NO_X allowances.

"CAIR NO_X allowances held" or "hold CAIR NO_X allowances" means the CAIR NO_X allowances recorded by the administrator, or submitted to the administrator for recordation, in accordance with Article 6 (9VAC5-140-1500 et seq.), Article 7 (9VAC5-140-1600 et seq.), and Article 9 (9VAC5-140-1800 et seq.) of this part, in a CAIR NO_X Allowance Tracking System account.

"CAIR NO_X Annual core trading budget" means the amount of tons of NO_X emissions in the CAIR NO_X Annual trading budget for the control period minus the new unit set-aside budget and the new energy efficiency/renewable energy unit set-aside budget.

"CAIR NO_X Annual trading budget" means the total number of NO_X tons set forth in 9VAC5-140-1400 and apportioned to all CAIR NO_X units and energy efficiency/renewable energy units in accordance with the CAIR NO_X Annual Trading Program, for use in a given control period.

"CAIR NO_X Annual Trading Program" means a multistate nitrogen oxides air pollution control and emission reduction program approved and administered by the administrator in accordance with this part, subparts AA through II of 40 CFR Part 96, and 40 CFR 51.123 (o)(1) or (2) or established by the administrator in accordance with subparts AA through II of 40 CFR Part 97 and 40 CFR 51.123(p) and 52.35, as a means of mitigating interstate transport of fine particulates and nitrogen oxides.

"CAIR NO_X emissions limitation" means, for a CAIR NO_X source, the tonnage equivalent, in NO_X emissions in a control period, of the CAIR NO_X allowances available for deduction for the source under 9VAC5-140-1540 A and B for the control period.

"CAIR NO_X Ozone Season source" means a source that is subject to the CAIR NO_X Ozone Season Trading Program.

"CAIR NO_X Ozone Season Trading Program" means a multistate nitrogen oxides air pollution control and emission reduction program approved and administered by the administrator in accordance with Part III (9VAC5-140-2010 et seq.) of this chapter, subparts AAAA through IIII of 40 CFR Part 96, and 40 CFR 51.123 (aa)(1) or (2) and (bb)(1), (bb)(2), or (dd) or established by the administrator in accordance with subparts AAAA through IIII of 40 CFR Part 97 and 40 CFR 51.123(ee) and 52.35, as a means of mitigating interstate transport of ozone and nitrogen oxides.

"CAIR NO_X source" means a source that includes one or more CAIR NO_X units.

"CAIR NO_X unit" means a unit that is subject to the CAIR NO_X Annual Trading Program under 9VAC5-140-1040 and, except for purposes of 9VAC5-140-1050 and Article 5 (9VAC5-140-1400 et seq.) of this part, a CAIR NO_X opt-in unit under Article 9 (9VAC5-140-1800 et seq.) of this part.

"CAIR permit" means the terms and conditions in a Title V operating permit or state operating permit, issued by the permitting authority under Article 3 (9VAC5-140-1200 et seq.) of this part, including any permit revisions, specifying the CAIR NO_X Annual Trading Program requirements applicable to a CAIR NO_X source, to each CAIR NO_X unit at the source, and to the owners and operators and the CAIR-designated representative of the source and each such unit.

"CAIR SO_2 source" means a source that is subject to the CAIR SO_2 Trading Program.

"CAIR SO_2 Trading Program" means a multistate sulfur dioxide air pollution control and emission reduction program approved and administered by the administrator in accordance with Part IV (9VAC5-140-3010 et seq.) of this chapter, subparts AAA through III of 40 CFR Part 96, and 40 CFR 51.124 (o)(1) or (2) or established by the administrator in accordance with subparts AAA through III of 40 CFR Part 97 and 40 CFR 51.124(r) and 52.36, as a means of mitigating interstate transport of fine particulates and sulfur dioxide.

"Clean Air Act" or "CAA" means the Clean Air Act, 42 USC § 7401 et seq.

"Coal" means any solid fuel classified as anthracite, bituminous, subbituminous, or lignite.

"Coal-derived fuel" means any fuel (whether in a solid, liquid, or gaseous state) produced by the mechanical, thermal, or chemical processing of coal.

"Coal-fired" means:

1. Except for purposes of Article 5 (9VAC5-140-1400 et seq.) of this part, combusting any amount of coal or coal-derived fuel, alone or in combination with any amount of any other fuel, during any year; or

2. For purposes of Article 5 (9VAC5-140-1400 et seq.) of this part, combusting any amount of coal or coal-derived fuel, alone or in combination with any amount of any other fuel, during a specified year.

"Cogeneration unit" means a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine:

1. Having equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy; ~~and~~

2. Producing during the 12-month period starting on the date the unit first produces electricity and during any calendar year after the calendar year in which the unit first produces electricity:

a. For a topping-cycle cogeneration unit~~.~~ ;

(1) Useful thermal energy not less than 5.0% of total energy output; and

(2) Useful power that, when added to one-half of useful thermal energy produced, is not less then 42.5% of total energy input, if useful thermal energy produced is 15% or more of total energy output, or not less than 45% of total energy input, if useful thermal energy produced is less than 15% of total energy output.

b. For a bottoming-cycle cogeneration unit, useful power not less than 45% of total energy input~~.~~; and

3. Provided that the total energy input under subdivisions 2 a (2) and 2 b of this definition shall equal the unit's total energy input from all fuel except biomass if the unit is a boiler.

"Combustion turbine" means:

1. An enclosed device comprising a compressor, a combustor, and a turbine and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine; and

2. If the enclosed device under subdivision 1 of this definition is combined cycle, any associated duct burner, heat recovery steam generator, and steam turbine.

"Commence commercial operation" means, with regard to a unit:

1. To have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation, except as provided in 9VAC5-140-1050 and subdivision 8 of 9VAC5-140-1840.

a. For a unit that is a CAIR NO_X unit under 9VAC5-140-1040 on the later of November 15, 1990, or the date the unit commences commercial operation as defined in subdivision 1 of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the date of commencement of commercial operation of the unit, which shall continue to be treated as the same unit.

b. For a unit that is a CAIR NO_X unit under 9VAC5-140-1040 on the later of November 15, 1990, or the date the unit commences commercial operation as defined in subdivision 1 of this definition and that is subsequently replaced by a unit at the same source (e.g., repowered), such date shall remain the replaced unit's date of commencement of commercial operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in subdivision 1 or 2 of this definition as appropriate.

2. Notwithstanding subdivision 1 of this definition and except as provided in 9VAC5-140-1050, for a unit that is not a CAIR NO_X unit under 9VAC5-140-1040 on the later of November 15, 1990, or the date the unit commences commercial operation as defined in subdivision 1 of this definition, the unit's date for commencement of commercial operation shall be the date on which the unit becomes a CAIR NO_X unit under 9VAC5-140-1040.

a. For a unit with a date for commencement of commercial operation as defined in subdivision 2 of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the date of commencement of commercial operation of the unit, which shall continue to be treated as the same unit.

b. For a unit with a date for commencement of commercial operation as defined in subdivision 2 of this definition and that is subsequently replaced by a unit at the same source (e.g., repowered), such date shall remain the replaced unit's date of commencement of commercial operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in subdivision 1 or 2 of this definition as appropriate.

"Commence operation" means:

1. To have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber, except as provided in subdivision 8 of 9VAC5-140-1840.

2. For a unit that undergoes a physical change (other than replacement of the unit by a unit at the same source) after the date the unit commences operation as defined in subdivision 1 of this definition, such date shall remain the date of commencement of operation of the unit, which shall continue to be treated as the same unit.

3. For a unit that is replaced by a unit at the same source (e.g., repowered) after the date the unit commences operation as defined in subdivision 1 of this definition, such date shall remain the replaced unit's date of commencement of operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in subdivision 1, 2, or 3 of this definition as appropriate, except as provided in subdivision 8 of 9VAC5-140-1840.

"Common stack" means a single flue through which emissions from 2 or more units are exhausted.

"Compliance account" means a CAIR NO_X Allowance Tracking System account, established by the administrator for a CAIR NO_X source under Article 6 (9VAC5-140-1500 et seq.) or Article 9 (9VAC5-140-1800 et seq.) of this part, in which any CAIR NO_X allowance allocations for the CAIR NO_X units at the source are initially recorded and in which are held any CAIR NO_X allowances available for use for a control period in order to meet the source's CAIR NO_X emissions limitation in accordance with 9VAC5-140-1540.

"Continuous emission monitoring system" or "CEMS" means the equipment required under Article 8 (9VAC5-140-1700 et seq.) of this part to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes (using an automated data acquisition and handling system (DAHS)), a permanent record of nitrogen oxides emissions, stack gas volumetric flow rate, stack gas moisture content, and oxygen or carbon dioxide concentration (as applicable), in a manner consistent with 40 CFR Part 75. The following systems are the principal types of continuous emission monitoring systems required under Article 8 (9VAC5-140-1700 et seq.) of this part:

1. A flow monitoring system, consisting of a stack flow rate monitor and an automated data acquisition and handling system and providing a permanent, continuous record of stack gas volumetric flow rate, in standard cubic feet per hour (scfh);

2. A nitrogen oxides concentration monitoring system, consisting of a NO_X pollutant concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of NO_X emissions, in parts per million (ppm);

3. A nitrogen oxides emission rate (or NO_X-diluent) monitoring system, consisting of a NO_X pollutant concentration monitor, a diluent gas (CO_2 or O_2) monitor, and an automated data acquisition and handling system and providing a permanent, continuous record of NO_X concentration, in parts per million (ppm), diluent gas concentration, in percent CO_2 or O_2, and NO_X emission rate, in pounds per million British thermal units (lb/mmBtu);

4. A moisture monitoring system, as defined in 40 CFR 75.11(b)(2) and providing a permanent, continuous record of the stack gas moisture content, in percent H_2O;

5. A carbon dioxide monitoring system, consisting of a CO_2 pollutant concentration monitor (or an oxygen monitor plus suitable mathematical equations from which the CO_2 concentration is derived) and an automated data acquisition and handling system and providing a permanent, continuous record of CO_2 emissions, in percent CO_2; and

6. An oxygen monitoring system, consisting of an O_2 concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of O_2, in percent O_2.

"Control period" means the period beginning January 1 of a calendar year, except as provided in 9VAC5-140-1060 C 2, and ending on December 31 of the same year, inclusive.

"EERE proponent" means any person who owns, leases, operates or controls an energy efficiency unit or a renewable energy unit, or an EERE representative.

"EERE representative" means a party that aggregates one or more energy efficiency units or renewable energy units. An EERE representative may include, without limitation, a common owner of projects, an energy service company, an emission trading broker or a state or municipal entity.

"Emissions" means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the administrator by the CAIR-designated representative and as determined by the administrator in accordance with Article 8 (9VAC5-140-1700 et seq.) of this part.

"Energy efficiency unit" means an end-use energy efficiency project implemented after January 1, 2006, that reduces electricity consumption at a building or facility located in Virginia according to an energy efficiency verification protocol acceptable to the permitting authority. Projects resulting in energy savings at a CAIR NO_X unit are not encompassed within this definition.

"Excess emissions" means any ton of nitrogen oxides emitted by the CAIR NO_X units at a CAIR NO_X source during a control period that exceeds the CAIR NO_X emissions limitation for the source.

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

"Fossil-fuel-fired" means, with regard to a unit, combusting any amount of fossil fuel in any calendar year.

"Fuel oil" means any petroleum-based fuel (including diesel fuel or petroleum derivatives such as oil tar) and any recycled or blended petroleum products or petroleum byproducts used as a fuel whether in a liquid, solid, or gaseous state.

"General account" means a CAIR NO_X Allowance Tracking System account, established under Article 6 (9VAC5-140-1500 et seq.) of this part, that is not a compliance account.

"Generator" means a device that produces electricity.

"Gross electrical output" means, with regard to a cogeneration unit, electricity made available for use, including any such electricity used in the power production process (which process includes, but is not limited to, any on-site processing or treatment of fuel combusted at the unit and any on-site emission controls).

"Heat input" means, with regard to a specified period of time, the product (in mmBtu/time) of the gross calorific value of the fuel (in Btu/lb) divided by 1,000,000 Btu/mmBtu and multiplied by the fuel feed rate into a combustion device (in lb of fuel/time), as measured, recorded, and reported to the administrator by the CAIR-designated representative and determined by the administrator in accordance with Article 8 (9VAC5-140-1700 et seq.) of this part and excluding the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

"Heat input rate" means the amount of heat input (in mmBtu) divided by unit operating time (in hr) or, with regard to a specific fuel, the amount of heat input attributed to the fuel (in mmBtu) divided by the unit operating time (in hr) during which the unit combusts the fuel.

"Hg Budget Trading Program" means a multistate Hg air pollution control and emission reduction program approved and administered by the administrator in accordance with Part VI (9VAC5-140-5010 et seq.) of this chapter and 40 CFR 60.24(h)(6), or established by the administrator under § 111 of the Clean Air Act, as a means of reducing national Hg emissions.

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

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

1. For the life of the unit;

2. For a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or

3. For a period no less than 25 years or 70% of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.

"Maximum design heat input" means the maximum amount of fuel per hour (in Btu/hr) that a unit is capable of combusting on a steady state basis as of the initial installation of the unit as specified by the manufacturer of the unit.

"Monitoring system" means any monitoring system that meets the requirements of Article 8 (9VAC5-140-1700 et seq.) of this part, including a continuous emissions monitoring system, an alternative monitoring system, or an excepted monitoring system under 40 CFR Part 75.

"Most stringent state or federal NO_X emissions limitation" means the lowest NO_X emissions limitation (in lb/mmBtu) that is applicable to the unit under the Virginia Air Pollution Control Law or federal law, regardless of the averaging period to which the emissions limitation applies. In cases where a unit is subject to a permit that provides for the use of multiple fuels, the primary fuel shall be used as the basis to determine the most stringent state or federal NO_X emissions limitation. The primary fuel shall be the fuel designated in the permit as such or resulting in the lowest emissions rate.

"Nameplate capacity" means, starting from the initial installation of a generator, the maximum electrical generating output (in MWe) that the generator is capable of producing on a steady state basis and during continuous operation (when not restricted by seasonal or other deratings) as of such installation as specified by the manufacturer of the generator or, starting from the completion of any subsequent physical change in the generator resulting in an increase in the maximum electrical generating output (in MWe) that the generator is capable of producing on a steady state basis and during continuous operation (when not restricted by seasonal or other deratings), such increased maximum amount as of such completion as specified by the person conducting the physical change.

"New energy efficiency/renewable energy unit set-aside budget" means the amount of tons of NO_X emissions in the CAIR NO_X Annual trading budget for each control period in 2009 and thereafter multiplied by 1.0%, rounded to the nearest whole allowance as appropriate.

"New unit set-aside budget" means the amount of tons of NO_X emissions in the CAIR NO_X Annual trading budget for the control period to which the new unit set-aside applies multiplied by the new unit set-aside percentage, rounded to the nearest whole allowance as appropriate.

"New unit set-aside percentage" means 4.0% for each control period in 2009 through 2013 or 1.0% for each control period in 2014 and thereafter.

"Nonattainment condition" means a condition where any area is shown by air quality monitoring data or that is shown by an air quality impact analysis (using modeling or other methods determined by the board to be reliable) to exceed the levels allowed by the ambient air quality standard for a given pollutant, regardless of whether such demonstration is based on current or projected emissions data.

"Oil-fired" means, for purposes of Article 5 (9VAC5-140-1400 et seq.) of this part, combusting fuel oil for more than 15% of the annual heat input in a specified year and not qualifying as coal-fired.

"Operator" means any person who operates, controls, or supervises a CAIR NO_X unit or a CAIR NO_X source and shall include, but not be limited to, any holding company, utility system, or plant manager of such a unit or source.

"Owner" means any of the following persons:

1. With regard to a CAIR NO_X source or a CAIR NO_X unit at a source, respectively:

a. Any holder of any portion of the legal or equitable title in a CAIR NO_X unit at the source or the CAIR NO_X unit;

b. Any holder of a leasehold interest in a CAIR NO_X unit at the source or the CAIR NO_X unit; or

c. Any purchaser of power from a CAIR NO_X unit at the source or the CAIR NO_X unit under a life of the unit, firm power contractual arrangement; provided that, unless expressly provided for in a leasehold agreement, the owner shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based (either directly or indirectly) on the revenues or income from such CAIR NO_X unit; or

2. With regard to any general account, any person who has an ownership interest with respect to the CAIR NO_X allowances held in the general account and who is subject to the binding agreement for the CAIR-authorized account representative to represent the person's ownership interest with respect to CAIR NO_X allowances.

"Permitting authority" means the state air pollution control agency, local agency, other state agency, or other agency authorized by the administrator to issue or revise permits to meet the requirements of the CAIR NO_X Annual Trading Program ~~in accordance with Article 3 (9VAC5-140-1200 et seq.) of this part~~ or, if no such agency has been so authorized, the administrator. For the Commonwealth of Virginia, the permitting authority shall be the State Air Pollution Control Board. The board will issue or revise permits to meet the requirements of the CAIR NO_X Annual Trading Program in accordance with Article 3 (9VAC5-140-1200 et seq.) of this part.

"Potential electrical output capacity" means ~~33.0%~~ 33% of a unit's maximum design heat input, divided by 3,413 Btu/kWh, divided by 1,000 kWh/MWh, and multiplied by 8,760 hr/yr.

"Receive" or "receipt of" means, when referring to the permitting authority or the administrator, to come into possession of a document, information, or correspondence (whether sent in hard copy or by authorized electronic transmission), as indicated in an official log, or by a notation made on the document, information, or correspondence, by the permitting authority or the administrator in the regular course of business.

"Recordation," "record," or "recorded" means, with regard to CAIR NO_X allowances, the movement of CAIR NO_X allowances by the administrator into or between CAIR NO_X Allowance Tracking System accounts, for purposes of allocation, transfer, or deduction.

"Reference method" means any direct test method of sampling and analyzing for an air pollutant as specified in 40 CFR 75.22.

"Renewable energy unit" means an electric generator that began commercial operation after January 1, 2006, and is powered by (i) wind, solar, ocean thermal, wave, tidal, geothermal, or biomass energy; or (ii) fuel cells powered by hydrogen generated by a renewable energy source. Renewable energy does not include energy derived from (i) material that has been treated or painted or derived from demolition or construction material; (ii) municipal, industrial or other multiple source solid waste; and (iii) co-firing of biomass with fossil fuels or solid waste.

"Replacement," "replace," or "replaced" means, with regard to a unit, the demolishing of a unit, or the permanent shutdown and permanent disabling of a unit, and the construction of another unit (the replacement unit) to be used instead of the demolished or shutdown unit (the replaced unit).

"Repowered" means, with regard to a unit, replacement of a coal-fired boiler with one of the following coal-fired technologies at the same source as the coal-fired boiler:

1. Atmospheric or pressurized fluidized bed combustion;

2. Integrated gasification combined cycle;

3. Magnetohydrodynamics;

4. Direct and indirect coal-fired turbines;

5. Integrated gasification fuel cells; or

6. As determined by the administrator in consultation with the Secretary of Energy, a derivative of one or more of the technologies under subdivisions 1 through 5 of this definition and any other coal-fired technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of January 1, 2005.

"Sequential use of energy" means:

1. For a topping-cycle cogeneration unit, the use of reject heat from electricity production in a useful thermal energy application or process; or

2. For a bottoming-cycle cogeneration unit, the use of reject heat from useful thermal energy application or process in electricity production.

"Serial number" means, for a CAIR NO_X allowance, the unique identification number assigned to each CAIR NO_X allowance by the administrator.

"Solid waste incineration unit" means a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine that is a "solid waste incineration unit" as defined in § 129(g)(1) of the Clean Air Act.

"Source" means all buildings, structures, or installations located in one or more contiguous or adjacent properties under common control of the same person or persons. For purposes of § 502(c) of the Clean Air Act, a "source," including a "source" with multiple units, shall be considered a single "facility."

"State" means the Commonwealth of Virginia. The term "state" shall have its conventional meaning where such meaning is clear from the context.

"State operating permit" means a permit issued under Article 5 (9VAC5-80-800 et seq.) of Part II of ~~9VAC5 Chapter 80~~ 9VAC5-80 (Permits for Stationary Sources).

"State operating permit regulations" means the regulations codified in Article 5 (9VAC5-80-800 et seq.) of Part II of ~~9VAC5 Chapter 80~~ 9VAC5-80 (Permits for Stationary Sources).

"Submit or serve" means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

1. In person;

2. By United States Postal Service; or

3. By other means of dispatch or transmission and delivery. Compliance with any "submission" or "service" deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

"Title V operating permit" means a permit issued under Article 1 (9VAC5-80-50 et seq.) or Article 3 (9VAC5-80-360 et seq.) of Part II of ~~9VAC5 Chapter 80~~ 9VAC5-80 (Permits for Stationary Sources).

"Title V operating permit regulations" means the regulations codified in Article 1 (9VAC5-80-50 et seq.), Article 2 (9VAC5-80-310 et seq.), Article 3 (9VAC5-80-360 et seq.), and Article 4 (9VAC5-80-710 et seq.) of Part II of 9VAC5-80 (Permits for Stationary Sources).

"Ton" means 2,000 pounds. For the purpose of determining compliance with the CAIR NO_X emissions limitation, total tons of nitrogen oxides emissions for a control period shall be calculated as the sum of all recorded hourly emissions (or the mass equivalent of the recorded hourly emission rates) in accordance with Article 8 (9VAC5-140-1700 et seq.) of this part, but with any remaining fraction of a ton equal to or greater than 0.50 tons deemed to equal one ton and any remaining fraction of a ton less than 0.50 tons deemed to equal zero tons.

"Topping-cycle cogeneration unit" means a cogeneration unit in which the energy input to the unit is first used to produce useful power, including electricity, and at least some of the reject heat from the electricity production is then used to provide useful thermal energy.

"Total energy input" means, with regard to a cogeneration unit, total energy of all forms supplied to the cogeneration unit, excluding energy produced by the cogeneration unit itself. Each form of energy supplied shall be measured by the lower heating value of that form of energy calculated as follows:

$$LHV = HHV - 10.55(W + 9H)$$

where:

LHV = lower heating value of fuel in Btu/lb.

HHV = higher heating value of fuel in Btu/lb.

W = Weight percent of moisture in fuel.

H = Weight percent of hydrogen in fuel.

"Total energy output" means, with regard to a cogeneration unit, the sum of useful power and useful thermal energy produced by the cogeneration unit.

"Unit" means a stationary, fossil-fuel-fired boiler or combustion turbine or other stationary, fossil-fuel-fired combustion device.

"Unit operating day" means a calendar day in which a unit combusts any fuel.

"Unit operating hour" or "hour of unit operation" means an hour in which a unit combusts any fuel.

"Useful power" means, with regard to a cogeneration unit, electricity or mechanical energy made available for use, excluding any such energy used in the power production process (which process includes, but is not limited to, any on-site processing or treatment of fuel combusted at the unit and any on-site emission controls).

"Useful thermal energy" means, with regard to a cogeneration unit, thermal energy that is:

1. Made available to an industrial or commercial process (not a power production process), excluding any heat contained in condensate return or makeup water;

2. Used in a heating application (e.g., space heating or domestic hot water heating); or

3. Used in a space cooling application (i.e., thermal energy used by an absorption chiller).

"Utility power distribution system" means the portion of an electricity grid owned or operated by a utility and dedicated to delivering electricity to customers.

9VAC5-140-1060. Standard requirements.

A. Permit requirements shall be as follows:

1. The CAIR-designated representative of each CAIR NO_X source required to have a Title V operating permit and each CAIR NO_X unit required to have a Title V operating permit at the source shall:

a. Submit to the permitting authority a complete CAIR permit application under 9VAC5-140-1220 in accordance with the deadlines specified in 9VAC5-140-1210; and

b. Submit in a timely manner any supplemental information that the permitting authority determines is necessary in order to review a CAIR permit application and issue or deny a CAIR permit.

2. The owners and operators of each CAIR NO_X source required to have a Title V operating permit and each CAIR NO_X unit required to have a Title V operating permit at the source shall have a CAIR permit issued by the permitting authority under Article 3 (9VAC5-140-1200 et seq.) of this part for the source and operate the source and the unit in compliance with such CAIR permit.

3. Except as provided in Article 9 (9VAC5-140-1800 et seq.) of this part, the owners and operators of a CAIR NO_X source that is not otherwise required to have a Title V operating permit and each CAIR NO_X unit that is not otherwise required to have a Title V operating permit are not required to submit a CAIR permit application, and to have a CAIR permit, under Article 3 (9VAC5-140-1200 et seq.) of this part for such CAIR NO_X source and such CAIR NO_X unit.

B. Monitoring, reporting, and recordkeeping shall be performed as follows:

1. The owners and operators, and the CAIR-designated representative, of each CAIR NO_X source and each CAIR NO_X unit at the source shall comply with the monitoring, reporting, and recordkeeping requirements of Article 8 (9VAC5-140-1700 et seq.) of this part.

2. The emissions measurements recorded and reported in accordance with Article 8 (9VAC5-140-1700 et seq.) of this part shall be used to determine compliance by each CAIR NO_X source with the CAIR NO_X emissions limitation under subsection C of this section.

C. Nitrogen oxides emission requirements shall be as follows:

1. As of the allowance transfer deadline for a control period, the owners and operators of each CAIR NO_X source and each CAIR NO_X unit at the source shall hold, in the source's compliance account, CAIR NO_X allowances available for compliance deductions for the control period under 9VAC5-140-1540 A in an amount not less than the tons of total nitrogen oxides emissions for the control period from all CAIR NO_X units at the source, as determined in accordance with Article 8 (9VAC5-140-1700 et seq.) of this part.

2. A CAIR NO_X unit shall be subject to the requirements under subdivision 1 of this subsection for the control period starting on the later of January 1, 2009, or the deadline for meeting the unit's monitor certification requirements under 9VAC5-140-1700 C 1, 2, or 5 and for each control period thereafter.

3. A CAIR NO_X allowance shall not be deducted, for compliance with the requirements under subdivision 1 of this subsection, for a control period in a calendar year before the year for which the CAIR NO_X allowance was allocated.

4. CAIR NO_X allowances shall be held in, deducted from, or transferred into or among CAIR NO_X Allowance Tracking System accounts in accordance with Article 5 (9VAC5-140-1400 et seq.), Article 6 (9VAC5-140-1500 et seq.), Article 7 (9VAC5-140-1600 et seq.), and Article 9 (9VAC5-140-1800 et seq.) of this part.

5. A CAIR NO_X allowance is a limited authorization to emit one ton of nitrogen oxides in accordance with the CAIR NO_X Annual Trading Program. No provision of the CAIR NO_X Annual Trading Program, the CAIR permit application, the CAIR permit, or an exemption under 9VAC5-140-1050 and no provision of law shall be

construed to limit the authority of the state or the United States to terminate or limit such authorization.

6. A CAIR NO_X allowance does not constitute a property right.

7. Upon recordation by the administrator under Article 5 (9VAC5-140-1400 et seq.), Article 6 (9VAC5-140-1500 et seq.), Article 7 (9VAC5-140-1600 et seq.), or Article 9 (9VAC5-140-1800 et seq.) of this part, every allocation, transfer, or deduction of a CAIR NO_X allowance to or from a CAIR NO_X source's compliance account is incorporated automatically in any CAIR permit of the source ~~that includes the CAIR NO_X unit~~.

D. If a CAIR NO_X source emits nitrogen oxides during any control period in excess of the CAIR NO_X emissions limitation, then:

1. The owners and operators of the source and each CAIR NO_X unit at the source shall surrender the CAIR NO_X allowances required for deduction under 9VAC5-140-1540 D 1 and pay any fine, penalty, or assessment or comply with any other remedy imposed, for the same violations, under the Clean Air Act or the Virginia Air Pollution Control Law; and

2. Each ton of such excess emissions and each day of such control period shall constitute a separate violation of this article, the Clean Air Act, and the Virginia Air Pollution Control Law.

E. Recordkeeping and reporting shall be performed as follows:

1. Unless otherwise provided, the owners and operators of the CAIR NO_X source and each CAIR NO_X unit at the source shall keep on site at the source each of the following documents for a period of five years from the date the document is created. This period may be extended for cause, at any time before the end of five years, in writing by the permitting authority or the administrator.

a. The certificate of representation under 9VAC5-140-1130 for the CAIR-designated representative for the source and each CAIR NO_X unit at the source and all documents that demonstrate the truth of the statements in the certificate of representation; provided that the certificate and documents shall be retained on site at the source beyond such five-year period until such documents are superseded because of the submission of a new certificate of representation under 9VAC5-140-1130 changing the CAIR-designated representative.

b. All emissions monitoring information, in accordance with Article 8 (9VAC5-140-1700 et seq.) of this part, provided that to the extent that Article 8 (9VAC5-140-1700 et seq.) of this part provides for a three-year period for recordkeeping, the three-year period shall apply.

c. Copies of all reports, compliance certifications, and other submissions and all records made or required under the CAIR NO_X Annual Trading Program.

d. Copies of all documents used to complete a CAIR permit application and any other submission under the CAIR NO_X Annual Trading Program or to demonstrate compliance with the requirements of the CAIR NO_X Annual Trading Program.

2. The CAIR-designated representative of a CAIR NO_X source and each CAIR NO_X unit at the source shall submit the reports required under the CAIR NO_X Annual Trading Program, including those under Article 8 (9VAC5-140-1700 et seq.) of this part.

F. Liability shall be assigned as follows:

1. Each CAIR NO_X source and each CAIR NO_X unit shall meet the requirements of the CAIR NO_X Annual Trading Program.

2. Any provision of the CAIR NO_X Annual Trading Program that applies to a CAIR NO_X source or the CAIR-designated representative of a CAIR NO_X source shall also apply to the owners and operators of such source and of the CAIR NO_X units at the source.

3. Any provision of the CAIR NO_X Annual Trading Program that applies to a CAIR NO_X unit or the CAIR-designated representative of a CAIR NO_X unit shall also apply to the owners and operators of such unit.

G. No provision of the CAIR NO_X Annual Trading Program, a CAIR permit application, a CAIR permit, or an exemption under 9VAC5-140-1050 shall be construed as exempting or excluding the owners and operators, and the CAIR-designated representative, of a CAIR NO_X source or CAIR NO_X unit from compliance with any other provision of the applicable implementation plan, a state operating permit, the Virginia Air Pollution Control Law, or the Clean Air Act.

Part III
NO_x Ozone Season Trading Program

Article 1
CAIR NO_x Ozone Season Trading Program General Provisions

9VAC5-140-2010. Purpose <u>and authority</u>.

<u>A.</u> This part establishes general provisions and the designated representative, permitting, allowance, monitoring, and opt-in provisions for the State Clean Air Interstate Rule (CAIR) NO_X Ozone Season Trading Program, under § 110 of the Clean Air Act and 40 CFR 51.123, as a means of mitigating interstate transport of ozone and nitrogen oxides.

<u>B. The purpose of this part is not to create the CAIR NO_X Ozone Season Trading Program only for CAIR NO_X Ozone Season units and CAIR NO_X Ozone Season sources</u>

geographically located within the borders of the Commonwealth of Virginia. Upon approval by EPA in accordance with 40 CFR 51.123 (o)(1) or (2), qualifying CAIR NO_X Ozone Season units and CAIR NO_X Ozone Season sources within the Commonwealth will become full participants in the EPA-administered regional CAIR NO_X Ozone Season Trading Program, which will include CAIR NO_X Ozone Season units and CAIR NO_X Ozone Season sources permitted by authorities in all other states that are participating in the regional CAIR NO_X Ozone Season Trading Program.

C. This part should not be interpreted to limit the CAIR NO_X Ozone Season Trading Program to Virginia CAIR NO_X Ozone Season units and CAIR NO_X Ozone Season sources, which would be contrary to the intention that CAIR NO_X Ozone Season units and CAIR NO_X Ozone Season sources covered by CAIR programs of other states approved in accordance with 40 CFR 51.123 (o)(1) or (2) or by the CAIR Federal Implementation Plan (subparts AA through II of 40 CFR Part 97) may trade allowances with CAIR NO_X Ozone Season units and CAIR NO_X Ozone Season sources in the Commonwealth. While the CAIR NO_X Ozone Season Trading Program must include CAIR NO_X Ozone Season units and CAIR NO_X Ozone Season sources and permitting authorities beyond the borders of the Commonwealth, the permitting authority for Virginia (the State Air Pollution Control Board) has no authority to ensure compliance with this part by any permitting authority, person or entity outside the Commonwealth.

D. The board has the authority under the Code of Virginia to regulate the allocations of allowances, issuance of the budget permits, the administration of the opt-in provisions and other duties assigned to the permitting authority only for CAIR NO_X Ozone Season units and CAIR NO_X Ozone Season sources in Virginia. The board authorizes the administrator to assist the board in implementing the CAIR NO_X Ozone Season Trading Program by carrying out the functions set forth for the administrator in this part.

9VAC5-140-2020. Definitions.

A. As used in this part, all words or terms not defined here shall have the meaning given them in ~~9VAC5 Chapter 10 (9VAC5-10),~~ 9VAC5-10 (General Definitions) unless otherwise required by context .

B. For the purpose of this part and any related use, the words or terms shall have the meaning given them in this ~~paragraph~~ subsection.

"Account number" means the identification number given by the administrator to each CAIR NO_X Ozone Season Allowance Tracking System account.

"Acid Rain emissions limitation" means a limitation on emissions of sulfur dioxide or nitrogen oxides under the Acid Rain Program.

"Acid Rain Program" means a multistate sulfur dioxide and nitrogen oxides air pollution control and emission reduction program established by the administrator under Title IV of the CAA and 40 CFR Parts 72 through 78.

"Administrator" means the administrator of the United States Environmental Protection Agency or the administrator's duly authorized representative.

"Allocate" or "allocation" means, with regard to CAIR NO_X Ozone Season allowances, the determination by a permitting authority or the administrator of the amount of such CAIR NO_X Ozone Season allowances to be initially credited to a CAIR NO_X Ozone Season unit, a new unit set-aside, a new energy efficiency/renewable energy set-aside, or other entity.

"Allocation year" means the year in which allowance allocations are calculated for a future year.

"Allowance transfer deadline" means, for a control period, midnight of November 30 (if it is a business day), or midnight of the first business day thereafter (if November 30 is not a business day), immediately following the control period and is the deadline by which a CAIR NO_X Ozone Season allowance transfer must be submitted for recordation in a CAIR NO_X Ozone Season source's compliance account in order to be used to meet the source's CAIR NO_X Ozone Season emissions limitation for such control period in accordance with 9VAC5-140-2540.

"Alternate CAIR-designated representative" means, for a CAIR NO_X Ozone Season source and each CAIR NO_X Ozone Season unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source, in accordance with Article 2 (9VAC5-140-2100 et seq.) and Article 9 (9VAC5-140-2800 et seq.) of this part, to act on behalf of the CAIR-designated representative in matters pertaining to the CAIR NO_X Ozone Season Trading Program. If the CAIR NO_X Ozone Season source is also a CAIR NO_X source, then this natural person shall be the same person as the alternate CAIR-designated representative under the CAIR NO_X Annual Trading Program. If the CAIR NO_X Ozone Season source is also a CAIR SO_2 source, then this natural person shall be the same person as the alternate CAIR-designated representative under the CAIR SO_2 Trading Program. If the CAIR NO_X Ozone Season source is also subject to the Acid Rain Program, then this natural person shall be the same person as the alternate designated representative under the Acid Rain Program. If the CAIR NO_X Ozone Season source is also subject to the Hg Budget Trading Program, then this natural person shall be the same person as the alternate Hg designated representative under the Hg Budget Trading Program.

"Automated data acquisition and handling system" or "DAHS" means that component of the continuous emission monitoring system, or other emissions monitoring system approved for use under Article 8 (9VAC5-140-2700 et seq.)

of this part, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required by Article 8 (9VAC5-140-2700 et seq.) of this part.

"Biomass" means:

1. Any organic material grown for the purpose of being converted to energy;

2. Any organic byproduct of agriculture that can be converted into energy; or

3. Any material that can be converted into energy and is nonmerchantable for other purposes, that is segregated from other nonmerchantable material, and that is:

a. A forest-related organic resource, including mill residues, precommercial thinnings, slash, brush, or byproduct from conversion of trees to merchantable material; or

b. A wood material, including pallets, crates, dunnage, manufacturing and construction materials (other than pressure-treated, chemically-treated, or painted wood products), and landscape or right-of-way tree trimmings.

"Biomass energy" means energy derived from the combustion or electro-chemical reaction (as with a fuel cell) of hydrocarbon materials of a biogenic origin using a solid, liquid or gaseous fuel. Biomass fuel materials include, but are not limited to, animal wastes (e.g., manure) and clean plant materials (e.g. wood chips, waste paper and crop wastes). Biomass fuels exclude products that have emissions that include heavy metals and other neurotoxins (e.g., municipal solid wastes). Biomass fuel materials may be converted to a gaseous fuel, such as landfills (i.e., landfill gas) or waste treatment facilities (i.e., digester gas), or to liquid fuels (e.g., biodiesel). To be considered a biomass facility, the facility must (i) employ maximum achievable control technology and continuous emission stack monitors for all chemical emissions of concern to human health and (ii) be listed in one of the following categories: anaerobic digestion systems operating on animal or plant wastes, methane gas, combustion of clean wood, bark or other plant material; or on combustion of fuels derived entirely from processing of clean wood, bark, or other plant or animal material, including processing by gasification, pyrolysis, fermentation, distillation, or densification.

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

"Bottoming-cycle cogeneration unit" means a cogeneration unit in which the energy input to the unit is first used to produce useful thermal energy and at least some of the reject heat from the useful thermal energy application or process is then used for electricity production.

"CAIR-authorized account representative" means, with regard to a general account, a responsible natural person who is authorized, in accordance with Article 2 (9VAC5-140-2100 et seq.), Article 6 (9VAC5-140-2500 et seq.) and Article 9 (9VAC5-140-2800 et seq.) of this part, to transfer and otherwise dispose of CAIR NO_X Ozone Season allowances held in the general account and, with regard to a compliance account, the CAIR-designated representative of the source.

"CAIR-designated representative" means, for a CAIR NO_X Ozone Season source and each CAIR NO_X Ozone Season unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source, in accordance with Article 2 (9VAC5-140-2100 et seq.) and Article 9 (9VAC5-140-2800 et seq.) of this part, to represent and legally bind each owner and operator in matters pertaining to the CAIR NO_X Ozone Season Trading Program. If the CAIR NO_X Ozone Season source is also a CAIR NO_X source, then this natural person shall be the same person as the CAIR-designated representative under the CAIR NO_X Annual Trading Program. If the CAIR NO_X Ozone Season source is also a CAIR SO_2 source, then this natural person shall be the same person as the CAIR-designated representative under the CAIR SO_2 Trading Program. If the CAIR NO_X Ozone Season source is also subject to the Acid Rain Program, then this natural person shall be the same person as the designated representative under the Acid Rain Program. If the CAIR NO_X Ozone Season source is also subject to the Hg Budget Trading Program, then this natural person shall be the same person as the Hg designated representative under the Hg Budget Trading Program.

"CAIR NO_X Annual Trading Program" means a multistate nitrogen oxides air pollution control and emission reduction program approved and administered by the administrator in accordance with Part II, subparts AA through II of 40 CFR Part 96, (9VAC5-140-1010 et seq.) of this chapter and 40 CFR 51.123 (o) (1) or (2) or established by the administrator in accordance with subparts AA through II of 40 CFR Part 97 and 40 CFR 51.123 (p) and 52.35, as a means of mitigating interstate transport of fine particulates and nitrogen oxides.

"CAIR NO_X Ozone Season allowance" means a limited authorization issued by a permitting authority or the administrator under Article 5 (9VAC5-140-2400 et seq.) of this part, provisions of an implementation plan that are approved under 40 CFR 51.123(aa)(1) or (2) and (bb)(1), (bb)(2), (dd), or (ee), or under subpart EEEE of 40 CFR Part 97 or 40 CFR 97.388, to emit one ton of nitrogen oxides during a control period of the specified calendar year for which the authorization is allocated or of any calendar year thereafter under the CAIR NO_X Ozone Season Trading Program or a limited authorization issued by a permitting authority for a control period during 2003 through 2008 under

the NO_X Budget Trading Program under Part I (9VAC5-140-10 et seq.) of this chapter or in accordance with 40 CFR 51.121(p) to emit one ton of nitrogen oxides during a control period, provided that the provision in 40 CFR 51.121(b)(2)(ii)(E) shall not be used in applying this definition and the limited authorization shall not have been used to meet the allowance-holding requirement under the NOx Budget Trading Program. An authorization to emit nitrogen oxides that is not issued under Article 5 (9VAC5-140-2400 et seq.) of this part, provisions of an implementation plan approved under 40 CFR 51.123(aa)(1) or (2) and (bb) (1), (bb) (2), (dd), or (ee) or subpart EEEE of 40 CFR Part 97 or 40 CFR 97.388 or under the NO_X Budget Trading Program as described in the prior sentence shall not be a CAIR NO_X Ozone Season allowance. No provision of the CAIR NO_X Ozone Season Program, the CAIR permit application, the CAIR permit, or an exemption under 9VAC5-140-2050 and no provision of law shall be construed to limit the authority of the United States or the board to terminate or limit such authorization, which does not constitute a property right.

"CAIR NO_X Ozone Season allowance deduction" or "deduct CAIR NO_X Ozone Season allowances" means the permanent withdrawal of CAIR NO_X Ozone Season allowances by the administrator from a compliance account, e.g., in order to account for a specified number of tons of total nitrogen oxides emissions from all CAIR NO_X Ozone Season units at a CAIR NO_X Ozone Season source for a control period, determined in accordance with Article 8 (9VAC5-140-2700 et seq.) of this part, or to account for excess emissions.

"CAIR NO_X Ozone Season Allowance Tracking System" means the system by which the administrator records allocations, deductions, and transfers of CAIR NO_X Ozone Season allowances under the CAIR NO_X Ozone Season Trading Program. Such allowances will be allocated, held, deducted, or transferred only as whole allowances.

"CAIR NO_X Ozone Season Allowance Tracking System account" means an account in the CAIR NO_X Ozone Season Allowance Tracking System established by the administrator for purposes of recording the allocation, holding, transferring, or deducting of CAIR NO_X Ozone Season allowances.

"CAIR NO_X Ozone Season allowances held" or "hold CAIR NO_X Ozone Season allowances" means the CAIR NO_X Ozone Season allowances recorded by the administrator, or submitted to the administrator for recordation, in accordance with Article 6 (9VAC5-140-2500 et seq.), Article 7 (9VAC5-140-2600 et seq.), and Article 9 (9VAC5-140-2800 et seq.) of this part, in a CAIR NO_X Ozone Season Allowance Tracking System account.

"CAIR NO_X Ozone Season core trading budget" means the amount of tons of NO_X emissions in the CAIR NO_X Ozone Season trading budget for the control period minus the amount of tons of NO_X emissions under subdivision 1 of the definition of new unit set-aside budget and the new energy efficiency/renewable energy unit set-aside budget.

"CAIR NO_X Ozone Season emissions limitation" means, for a CAIR NO_X Ozone Season source, the tonnage equivalent, in NO_X emissions in a control period, of the CAIR NO_X Ozone Season allowances available for deduction for the source under 9VAC5-140-2540 A and B for the control period.

"CAIR NO_X Ozone Season source" means a source that includes one or more CAIR NO_X Ozone Season units.

"CAIR NO_X Ozone Season trading budget" means the total number of NO_X tons set forth in 9VAC5-140-2400 and apportioned to all CAIR NO_X Ozone Season units and energy efficiency/renewable energy units in accordance with the CAIR NO_X Ozone Trading Program, for use in a given control period.

"CAIR NO_X Ozone Season Trading Program" means a multistate nitrogen oxides air pollution control and emission reduction program approved and administered by the administrator in accordance with this part, subparts AAAA through IIII of 40 CFR Part 96, and 40 CFR 51.123 (aa)(1) or (2) and (bb)(1), (bb)(2), or (dd) or established by the administrator in accordance with subparts AAAA through IIII of 40 CFR Part 97 and 40 CFR 51.123(ee) and 52.35, as a means of mitigating interstate transport of ozone and nitrogen oxides.

"CAIR NO_X Ozone Season unit" means a unit that is subject to the CAIR NO_X Ozone Season Trading Program under 9VAC5-140-2040 and, except for purposes of 9VAC5-140-2050 and Article 5 (9VAC5-140-2400 et seq.) of this part, a CAIR NO_X Ozone Season opt-in unit under Article 9 (9VAC5-140-2800 et seq.) of this part.

"CAIR NO_X source" means a source that is subject to the CAIR NO_X Annual Trading Program.

"CAIR permit" means the terms and conditions in a Title V operating permit or state operating permit, issued by the permitting authority under Article 3 (9VAC5-140-2200 et seq.) of this part, including any permit revisions, specifying the CAIR NO_X Ozone Season Trading Program requirements applicable to a CAIR NO_X Ozone Season source, to each CAIR NO_X Ozone Season unit at the source, and to the owners and operators and the CAIR-designated representative of the source and each such unit.

"CAIR SO_2 source" means a source that is subject to the CAIR SO_2 Trading Program.

"CAIR SO_2 Trading Program" means a multistate sulfur dioxide air pollution control and emission reduction program approved and administered by the administrator in accordance with Part IV (9VAC5-140-3010 et seq.) of this chapter, subparts AAA through IIII of 40 CFR Part 96, and 40 CFR 51.124 (o)(1) or (2) or established by the administrator in accordance with subparts AAA through III of 40 CFR Part 97

and 40 CFR 51.124(r) and 52.36, as a means of mitigating interstate transport of fine particulates and sulfur dioxide.

"Clean Air Act" or "CAA" means the Clean Air Act, 42 USC § 7401 et seq.

"Coal" means any solid fuel classified as anthracite, bituminous, subbituminous, or lignite.

"Coal-derived fuel" means any fuel (whether in a solid, liquid, or gaseous state) produced by the mechanical, thermal, or chemical processing of coal.

"Coal-fired" means:

1. Except for purposes of Article 5 (9VAC5-140-2400 et seq.) of this part, combusting any amount of coal or coal-derived fuel, alone or in combination with any amount of any other fuel, during any year; or

2. For purposes of Article 5 (9VAC5-140-2400 et seq.) of this part, combusting any amount of coal or coal-derived fuel, alone or in combination with any amount of any other fuel, during a specified year.

"Cogeneration unit" means a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine:

1. Having equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy; ~~and~~

2. Producing during the 12-month period starting on the date the unit first produces electricity and during any calendar year after the calendar year in which the unit first produces electricity:

a. For a topping-cycle cogeneration unit~~,~~ :

(1) Useful thermal energy not less than 5.0% of total energy output; and

(2) Useful power that, when added to one-half of useful thermal energy produced, is not less then 42.5% of total energy input, if useful thermal energy produced is 15% or more of total energy output, or not less than 45% of total energy input, if useful thermal energy produced is less than 15% of total energy output.

b. For a bottoming-cycle cogeneration unit, useful power not less than 45% of total energy input~~.~~; and

3. Provided that the total energy input under subdivisions 2 a (2) and 2 b of this definition shall equal the unit's total energy input from all fuel except biomass if the unit is a boiler.

"Combustion turbine" means:

1. An enclosed device comprising a compressor, a combustor, and a turbine and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine; and

2. If the enclosed device under subdivision 1 of this definition is combined cycle, any associated duct burner, heat recovery steam generator, and steam turbine.

"Commence commercial operation" means, with regard to a unit:

1. To have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation, except as provided in 9VAC5-140-2050 and subdivision 8 of 9VAC5-140-2840.

a. For a unit that is a CAIR NO_X Ozone Season unit under 9VAC50-140-2040 on the later of November 15, 1990, or the date the unit commences commercial operation as defined in subdivision 1 of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the date of commencement of commercial operation of the unit which shall continue to be treated as the same unit.

b. For a unit that is a CAIR NO_X Ozone Season unit under 9VAC5-140-2040 the later of November 15 1990, or on the date the unit commences commercial operation as defined in subdivision 1 of this definition and that is subsequently replaced by a unit at the same source (e.g., repowered), such date shall remain the replaced unit's date of commencement of commercial operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in subdivision 1 or 2 of this definition as appropriate.

2. Notwithstanding subdivision 1 of this definition and except as provided in 9VAC5-140-2050, for a unit that is not a CAIR NO_X Ozone Season unit under 9VAC5-140-2040 on the later of November 15, 1990, or the date the unit commences commercial operation as defined in subdivision 1 of this definition, the unit's date for commencement of commercial operation shall be the date on which the unit becomes a CAIR NO_X Ozone Season unit under 9VAC5-140-2040.

a. For a unit with a date for commencement of commercial operation as defined in subdivision 2 of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the date of commencement of commercial operation of the unit, which shall continue to be treated as the same unit.

b. For a unit with a date for commencement of commercial operation as defined in subdivision 2 of this definition and that is subsequently replaced by a unit at the same source (e.g., repowered), such date shall remain the replaced unit's date of commencement of commercial operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of

commercial operation as defined in subdivision 1 or 2 of this definition as appropriate.

"Commence commercial operation" means, with regard to an existing nonelectric generating unit that serves a generator, to have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation. For a unit that is a CAIR NO_X Ozone Season unit under 9VAC5-140-2040 C 2 on the date the unit commences commercial operation, such date shall remain the unit's date of commencement of commercial operation even if the unit is subsequently modified, reconstructed, or repowered. Except as provided in Article 9 (9VAC5-140-2800 et seq.) of this part, for a unit that is not a CAIR NO_X Ozone Season unit under 9VAC5-140-2040 C 2 on the date the unit commences commercial operation, the date the unit becomes a CAIR NO_X Ozone Season unit under 9VAC5-140-2040 C 2 shall be the unit's date of commencement of commercial operation.

"Commence operation" means:

1. To have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber, except as provided in subdivision 8 of 9VAC5-140-2840.

2. For a unit that undergoes a physical change (other than replacement of the unit by a unit at the same source) after the date the unit commences operation as defined in subdivision 1 of this definition, such date shall remain the date of commencement of operation of the unit, which shall continue to be treated as the same unit.

3. For a unit that is replaced by a unit at the same source (e.g., repowered) after the date the unit commences operation as defined in subdivision 1 of this definition, such date shall remain the replaced unit's date of commencement of operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in subdivisions 1, 2, or 3 of this definition as appropriate, except as provided in subdivision 8 of 9VAC5-140-2840.

"Commence operation" means, with regard to an existing nonelectric generating unit, to have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber. For a unit that is a CAIR NO_X Ozone Season unit under 9VAC5-140-2040 C 2 on the date of commencement of operation, such date shall remain the unit's date of commencement of operation even if the unit is subsequently modified, reconstructed, or repowered. Except as provided in Article 9 (9VAC5-140-2800 et seq.) of this part, for a unit that is not a CAIR NO_X Ozone Season unit under 9VAC5-140-2040 C 2 on the date of commencement of operation, the date the unit becomes a CAIR NO_X Ozone Season unit under 9VAC5-140-2040 C 2 shall be the unit's date of commencement of operation.

"Common stack" means a single flue through which emissions from 2 or more units are exhausted.

"Compliance account" means a CAIR NO_X Ozone Season Allowance Tracking System account, established by the administrator for a CAIR NO_X Ozone Season source under Article 6 (9VAC5-140-2500 et seq.) or Article 9 (9VAC5-140-2800 et seq.) of this part, in which any CAIR NO_X Ozone Season allowance allocations for the CAIR NO_X Ozone Season units at the source are initially recorded and in which are held any CAIR NO_X Ozone Season allowances available for use for a control period in order to meet the source's CAIR NO_X Ozone Season emissions limitation in accordance with 9VAC5-140-2540.

"Continuous emission monitoring system" or "CEMS" means the equipment required under Article 8 (9VAC5-140-2700 et seq.) of this part to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes (using an automated data acquisition and handling system (DAHS)), a permanent record of nitrogen oxides emissions, stack gas volumetric flow rate, stack gas moisture content, and oxygen or carbon dioxide concentration (as applicable), in a manner consistent with 40 CFR Part 75. The following systems are the principal types of continuous emission monitoring systems required under Article 8 (9VAC5-140-2700 et seq.) of this part:

1. A flow monitoring system, consisting of a stack flow rate monitor and an automated data acquisition and handling system and providing a permanent, continuous record of stack gas volumetric flow rate, in standard cubic feet per hour (scfh);

2. A nitrogen oxides concentration monitoring system, consisting of a NO_X pollutant concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of NO_X emissions, in parts per million (ppm);

3. A nitrogen oxides emission rate (or NO_X-diluent) monitoring system, consisting of a NO_X pollutant concentration monitor, a diluent gas (CO_2 or O_2) monitor, and an automated data acquisition and handling system and providing a permanent, continuous record of NO_X concentration, in parts per million (ppm), diluent gas concentration, in percent CO_2 or O_2, and NO_X emission rate, in pounds per million British thermal units (lb/mmBtu);

4. A moisture monitoring system, as defined in 40 CFR 75.11(b)(2) and providing a permanent, continuous record of the stack gas moisture content, in percent H_2O;

5. A carbon dioxide monitoring system, consisting of a CO_2 pollutant concentration monitor (or an oxygen monitor plus suitable mathematical equations from which the CO_2 concentration is derived) and an automated data acquisition and handling system and providing a

permanent, continuous record of CO_2 emissions, in percent CO_2; and

6. An oxygen monitoring system, consisting of an O_2 concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of O_2, in percent O_2.

"Control period" or "ozone season" means the period beginning May 1 of a calendar year, except as provided in 9VAC5-140-2060 C 2, and ending on September 30 of the same year, inclusive.

"EERE proponent" means any person who owns, leases, operates or controls an energy efficiency unit or a renewable energy unit, or an EERE representative.

"EERE representative" means a party that aggregates one or more energy efficiency units or renewable energy units. An EERE representative may include, without limitation, a common owner of projects, an energy service company, an emission trading broker or a state or municipal entity.

"Electricity for sale under firm contract to the grid" means electricity for sale where the capacity involved is intended to be available at all times during the period covered by a guaranteed commitment to deliver, even under adverse conditions.

"Emissions" means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the administrator by the CAIR-designated representative and as determined by the administrator in accordance with Article 8 (9VAC5-140-2700 et seq.) of this part.

"Energy efficiency unit" means an end-use energy efficiency project implemented after January 1, 2006, that reduces electricity consumption at a building or facility located in Virginia according to an energy efficiency verification protocol acceptable to the permitting authority. Projects resulting in energy savings at a CAIR NO_X Ozone Season unit are not encompassed within this definition.

"Excess emissions" means any ton of nitrogen oxides emitted by the CAIR NO_X Ozone Season units at a CAIR NO_X Ozone Season source during a control period that exceeds the CAIR NO_X Ozone Season emissions limitation for the source.

"Existing nonelectric generating unit" means a source of NO_X emissions that is a CAIR NO_X Ozone Season unit under 9VAC5-140-2040 C 1 and listed in 9VAC5-140-2430.

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

"Fossil-fuel-fired" means, with regard to a unit, combusting any amount of fossil fuel in any calendar year.

"Fossil fuel-fired" means, with regard to an existing nonelectric generating unit:

1. For units that commenced operation before January 1, 1996, the combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than 50% of the annual heat input on a Btu basis during 1995 or, if a unit had no heat input in 1995, during the last year of operation of the unit prior to 1995;

2. For units that commenced operation on or after January 1, 1996, and before January 1, 1997, the combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than 50% of the annual heat input on a Btu basis during 1996; or

3. For units that commence operation on or after January 1, 1997:

a. The combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than 50% of the annual heat input on a Btu basis during any year; or

b. The combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel is projected to comprise more than 50% of the annual heat input on a Btu basis during any year, provided that the unit shall be "fossil fuel-fired" as of the date, during such year, on which the unit begins combusting fossil fuel.

"Fuel oil" means any petroleum-based fuel (including diesel fuel or petroleum derivatives such as oil tar) and any recycled or blended petroleum products or petroleum by-products used as a fuel whether in a liquid, solid, or gaseous state.

"General account" means a NO_X Ozone Season Allowance Tracking System account, established under Article 6 (9VAC5-140-2500 et seq.) of this part, that is not a compliance account.

"Generator" means a device that produces electricity.

"Gross electrical output" means, with regard to a cogeneration unit, electricity made available for use, including any such electricity used in the power production process (which process includes, but is not limited to, any on-site processing or treatment of fuel combusted at the unit and any on-site emission controls).

"Heat input" means, with regard to a specified period of time, the product (in mmBtu/time) of the gross calorific value of the fuel (in Btu/lb) divided by 1,000,000 Btu/mmBtu and multiplied by the fuel feed rate into a combustion device (in lb of fuel/time), as measured, recorded, and reported to the administrator by the CAIR-designated representative and determined by the administrator in accordance with Article 8 (9VAC5-140-2700 et seq.) of this part and excluding the heat

derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

"Heat input rate" means the amount of heat input (in mmBtu) divided by unit operating time (in hr) or, with regard to a specific fuel, the amount of heat input attributed to the fuel (in mmBtu) divided by the unit operating time (in hr) during which the unit combusts the fuel.

"Hg Budget Trading Program" means a multistate Hg air pollution control and emission reduction program approved and administered by the administrator in accordance with Part VI (9VAC5-140-5010 et seq.) of this chapter and 40 CFR 60.24(h)(6), or established by the administrator under § 111 of the Clean Air Act, as a means of reducing national Hg emissions.

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

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

1. For the life of the unit;

2. For a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or

3. For a period no less than 25 years or ~~70.0%~~ 70% of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.

"Maximum design heat input" means the maximum amount of fuel per hour (in Btu/hr) that a unit is capable of combusting on a steady state basis as of the initial installation of the unit as specified by the manufacturer of the unit.

"Monitoring system" means any monitoring system that meets the requirements of Article 8 (9VAC5-140-2700 et seq.) of this part, including a continuous emissions monitoring system, an alternative monitoring system, or an excepted monitoring system under 40 CFR Part 75.

"Most stringent state or federal NO_X emissions limitation" means the lowest NO_X emissions limitation (in lb/mmBtu) that is applicable to the unit under the Virginia Air Pollution Control Law or federal law, regardless of the averaging period to which the emissions limitation applies. In cases where a unit is subject to a permit which provides for the use of multiple fuels, the primary fuel shall be used as the basis to determine the most stringent state or federal NO_X emissions limitation. The primary fuel shall be the fuel designated in the permit as such or resulting in the lowest emissions rate.

"Nameplate capacity" means, starting from the initial installation of a generator, the maximum electrical generating output (in MWe) that the generator is capable of producing on a steady state basis and during continuous operation (when not restricted by seasonal or other deratings) as of such installation as specified by the manufacturer of the generator or, starting from the completion of any subsequent physical change in the generator resulting in an increase in the maximum electrical generating output (in MWe) that the generator is capable of producing on a steady state basis and during continuous operation (when not restricted by seasonal or other deratings), such increased maximum amount as of such installation as specified by the person conducting the physical change.

"New energy efficiency/renewable energy unit set-aside budget" means the amount of tons of NO_X emissions in the CAIR NO_X Ozone Season trading budget for each control period in 2009 and thereafter multiplied by 1.0%, rounded to the nearest whole allowance as appropriate.

"New nonelectric generating unit" means a source of NO_X emissions that is a CAIR NO_X Ozone Season unit under 9VAC5-140-2040 C 2.

"New unit set-aside budget" means the sum of:

1. The amount of tons of NO_X emissions in the CAIR NO_X Ozone Season trading budget for the control period to which the new unit set-aside applies multiplied by the new unit set-aside percentage, rounded to the nearest whole allowance as appropriate.

2. 736 tons of NO_X emissions for each control period.

"New unit set-aside percentage" means 4.0% for each control period in 2009 through 2013 or 1.0 % for each control period in 2014 and thereafter.

"Nonelectric generating unit" means a source of NO_X emissions that is a CAIR NO_X Ozone Season unit under 9VAC5-140-2040 C but is not covered under 9VAC5-140-2040 A.

"Nonattainment condition" means a condition where any area is shown by air quality monitoring data or which is shown by an air quality impact analysis (using modeling or other methods determined by the board to be reliable) to exceed the levels allowed by the ambient air quality standard for a given pollutant, regardless of whether such demonstration is based on current or projected emissions data.

"Oil-fired" means, for purposes of Article 5 (9VAC5-140-2400 et seq.) of this part, combusting fuel oil for more than ~~15.0%~~ 15% of the annual heat input in a specified year and not qualifying as coal-fired.

"Operator" means any person who operates, controls, or supervises a CAIR NO_X Ozone Season unit or a CAIR NO_X Ozone Season source and shall include, but not be limited to, any holding company, utility system, or plant manager of such a unit or source.

"Owner" means any of the following persons:

1. With regard to a CAIR NO_X Ozone Season source or a CAIR NO_X Ozone Season unit at a source, respectively:

a. Any holder of any portion of the legal or equitable title in a CAIR NO_X Ozone Season unit at the source or the CAIR NO_X Ozone Season unit;

b. Any holder of a leasehold interest in a CAIR NO_X Ozone Season unit at the source or the CAIR NO_X Ozone Season unit; or

c. Any purchaser of power from a CAIR NO_X Ozone Season unit at the source or the CAIR NO_X Ozone Season unit under a life of the unit, firm power contractual arrangement; provided that, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based (either directly or indirectly) on the revenues or income from such CAIR NO_X Ozone Season unit; or

2. With regard to any general account, any person who has an ownership interest with respect to the CAIR NO_X Ozone Season allowances held in the general account and who is subject to the binding agreement for the CAIR-authorized account representative to represent the person's ownership interest with respect to CAIR NO_X Ozone Season allowances.

"Permitting authority" means the state air pollution control agency, local agency, other state agency, or other agency authorized by the administrator to issue or revise permits to meet the requirements of the CAIR NO_X Ozone Season Trading Program ~~in accordance with Article 3 (9VAC5-140-2200 et seq.) of this part~~ or, if no such agency has been so authorized, the administrator. For the Commonwealth of Virginia, the permitting authority shall be the State Air Pollution Control Board. The board will issue or revise permits to meet the requirements of the CAIR NO_X Ozone Season Trading Program in accordance with Article 3 (9VAC5-140-2200 et seq.) of this part.

"Potential electrical output capacity" means ~~33.0%~~ 33% of a unit's maximum design heat input, divided by 3,413 Btu/kWh, divided by 1,000 kWh/MWh, and multiplied by 8,760 hr/yr.

"Receive or receipt of" means, when referring to the permitting authority or the administrator, to come into possession of a document, information, or correspondence (whether sent in hard copy or by authorized electronic transmission), as indicated in an official log, or by a notation made on the document, information, or correspondence, by the permitting authority or the administrator in the regular course of business.

"Recordation," "record," or "recorded" means, with regard to CAIR NO_X Ozone Season allowances, the movement of CAIR NO_X Ozone Season allowances by the administrator into or between CAIR NO_X Ozone Season Allowance Tracking System accounts, for purposes of allocation, transfer, or deduction.

"Reference method" means any direct test method of sampling and analyzing for an air pollutant as specified in 40 CFR 75.22.

"Renewable energy unit" means an electric generator that began commercial operation after January 1, 2006, and is powered by (i) wind, solar, ocean thermal, wave, tidal, geothermal, or biomass energy, or (ii) fuel cells powered by hydrogen generated by a renewable energy source. Renewable energy does not include energy derived from: (i) material that has been treated or painted or derived from demolition or construction material; (ii) municipal, industrial or other multiple source solid waste; and (iii) co-firing of biomass with fossil fuels or solid waste.

"Replacement," "replace," or "replaced" means, with regard to a unit, the demolishing of a unit, or the permanent shutdown and permanent disabling of a unit, and the construction of another unit (the replacement unit) to be used instead of the demolished or shutdown unit (the replaced unit).

"Repowered" means, with regard to a unit, replacement of a coal-fired boiler with one of the following coal-fired technologies at the same source as the coal-fired boiler:

1. Atmospheric or pressurized fluidized bed combustion;

2. Integrated gasification combined cycle;

3. Magnetohydrodynamics;

4. Direct and indirect coal-fired turbines;

5. Integrated gasification fuel cells; or

6. As determined by the administrator in consultation with the Secretary of Energy, a derivative of one or more of the technologies under subdivisions 1 through 5 of this definition and any other coal-fired technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of January 1, 2005.

"Sequential use of energy" means:

1. For a topping-cycle cogeneration unit, the use of reject heat from electricity production in a useful thermal energy application or process; or

2. For a bottoming-cycle cogeneration unit, the use of reject heat from useful thermal energy application or process in electricity production.

"Serial number" means, for a CAIR NO_X Ozone Season allowance, the unique identification number assigned to each CAIR NO_X Ozone Season allowance by the administrator.

"Solid waste incineration unit" means a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine that is a "solid waste incineration unit" as defined in § 129(g)(1) of the Clean Air Act.

"Source" means all buildings, structures, or installations located in one or more contiguous or adjacent properties under common control of the same person or persons. For purposes of § 502(c) of the Clean Air Act, a "source," including a "source" with multiple units, shall be considered a single "facility."

"State" means the Commonwealth of Virginia. The term "state" shall have its conventional meaning where such meaning is clear from the context.

"State operating permit" means a permit issued under Article 5 (9VAC5-80-800 et seq.) of ~~Part II of 9VAC5 Chapter 80~~ 9VAC5-80 (Permits for Stationary Sources).

"State operating permit regulations" means the regulations codified in Article 5 (9VAC5-80-800 et seq.) of Part II of ~~9VAC5 Chapter 80~~ 9VAC5-80 (Permits for Stationary Sources).

"Submit or serve" means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

1. In person;

2. By United States Postal Service; or

3. By other means of dispatch or transmission and delivery. Compliance with any "submission" or "service" deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

"Title V operating permit" means a permit issued under Article 1 (9VAC5-80-50 et seq.) or Article 3 (9VAC5-80-360 se seq.) of Part II of ~~9VAC5 Chapter 80~~ 9VAC5-80 (Permits for Stationary Sources).

"Title V operating permit regulations" means the regulations codified in Article 1 (9VAC5-80-50 et seq.), Article 2 (9VAC5-80-310 et seq.), Article 3 (9VAC5-80-360 et seq.), and Article 4 (9VAC5-80-710 et seq.) of Part II of ~~9VAC5 Chapter 80~~ 9VAC5-80 (Permits for Stationary Sources).

"Ton" means 2,000 pounds. For the purpose of determining compliance with the CAIR NO_X Ozone Season emissions limitation, total tons of nitrogen oxides emissions for a control period shall be calculated as the sum of all recorded hourly emissions (or the mass equivalent of the recorded hourly emission rates) in accordance with Article 8 (9VAC5-140-2700 et seq.) of this part, but with any remaining fraction of a ton equal to or greater than 0.50 tons deemed to equal one ton and any remaining fraction of a ton less than 0.50 tons deemed to equal zero tons.

"Topping-cycle cogeneration unit" means a cogeneration unit in which the energy input to the unit is first used to produce useful power, including electricity, and at least some of the reject heat from the electricity production is then used to provide useful thermal energy.

"Total energy input" means, with regard to a cogeneration unit, total energy of all forms supplied to the cogeneration unit, excluding energy produced by the cogeneration unit itself. Each form of energy supplied shall be measured by the lower heating value of that form of energy calculated as follows:

$$LHV = HHV - 10.55(W + 9H)$$

where:

LHV = lower heating value of fuel in Btu/lb.

HHV = higher heating value of fuel in Btu/lb.

W = Weight percent of moisture in fuel.

H = Weight percent of hydrogen in fuel.

"Total energy output" means, with regard to a cogeneration unit, the sum of useful power and useful thermal energy produced by the cogeneration unit.

"Unit" means a stationary, fossil-fuel-fired boiler or combustion turbine or other stationary, fossil-fuel-fired combustion device.

"Unit operating day" means a calendar day in which a unit combusts any fuel.

"Unit operating hour" or "hour of unit operation" means an hour in which a unit combusts any fuel.

"Useful power" means, with regard to a cogeneration unit, electricity or mechanical energy made available for use, excluding any such energy used in the power production process (which process includes, but is not limited to, any on-site processing or treatment of fuel combusted at the unit and any on-site emission controls).

"Useful thermal energy" means, with regard to a cogeneration unit, thermal energy that is:

1. Made available to an industrial or commercial process (not a power production process), excluding any heat contained in condensate return or makeup water;

2. Used in a heating application (e.g., space heating or domestic hot water heating); or

3. Used in a space cooling application (i.e., thermal energy used by an absorption chiller).

"Utility power distribution system" means the portion of an electricity grid owned or operated by a utility and dedicated to delivering electricity to customers.

Part IV
SO_2 Annual Trading Program

Article 1
CAIR SO_2 Trading Program General Provisions

9VAC5-140-3010. Purpose and authority.

A. This part establishes general provisions and the designated representative, permitting, allowance, monitoring, and opt-in provisions for the State Clean Air Interstate Rule (CAIR) SO_2 Trading Program, under § 110 of the Clean Air Act and 40 CFR 51.124, as a means of mitigating interstate transport of fine particulates and sulfur dioxide.

B. The purpose of this part is not to create the CAIR SO_2 Trading Program only for CAIR SO_2 units and CAIR SO_2 sources geographically located within the borders of the Commonwealth of Virginia. Upon approval by EPA in accordance with 40 CFR 51.124 (o)(1) or (2), qualifying CAIR SO_2 units and CAIR SO_2 sources within the Commonwealth will become full participants in the EPA-administered regional CAIR SO_2 Annual Trading Program, which will include CAIR SO_2 units and CAIR SO_2 sources permitted by authorities in all other states that are participating in the regional CAIR SO_2 Trading Program.

C. This part should not be interpreted to limit the CAIR SO_2 Trading Program to Virginia CAIR SO_2 units and CAIR SO_2 sources, which would be contrary to the intention that CAIR SO_2 units and CAIR SO_2 sources covered by CAIR programs of other states approved in accordance with 40 CFR 51.124 (o)(1) or (2) or by the CAIR Federal Implementation Plan (subparts AAA through III of 40 CFR Part 97) may trade allowances with CAIR SO_2 units and CAIR SO_2 sources in the Commonwealth. While the CAIR SO_2 Trading Program must include CAIR SO_2 units and CAIR SO_2 sources and permitting authorities beyond the borders of the Commonwealth, the permitting authority for Virginia (the State Air Pollution Control Board) has no authority to ensure compliance with this part by any permitting authority, person or entity outside the Commonwealth.

D. The board has the authority under the Code of Virginia to regulate the allocations of allowances, issuance of the budget permits, the administration of the opt-in provisions and other duties assigned to the permitting authority only for CAIR SO_2 units and CAIR SO_2 sources in Virginia. The board authorizes the administrator to assist the board in implementing the CAIR SO_2 Trading Program by carrying out the functions set forth for the administrator in this part.

9VAC5-140-3020. Definitions.

A. As used in this part, all words or terms not defined here shall have the meaning given them in ~~9VAC5 Chapter 10 (9VAC5-10),~~ 9VAC5-10 (General Definitions) unless otherwise required by context.

B. For the purpose of this part and any related use, the words or terms shall have the meaning given them in this subsection.

"Account number" means the identification number given by the administrator to each CAIR SO_2 Allowance Tracking System account.

"Acid rain emissions limitation" means a limitation on emissions of sulfur dioxide or nitrogen oxides under the Acid Rain Program.

"Acid Rain Program" means a multistate sulfur dioxide and nitrogen oxides air pollution control and emission reduction program established by the administrator under Title IV of the CAA and 40 CFR Parts 72 through 78.

"Administrator" means the administrator of the United States Environmental Protection Agency or the administrator's duly authorized representative.

"Allocate" or "allocation" means, with regard to CAIR SO_2 allowances issued under the Acid Rain Program, the determination by the administrator of the amount of such CAIR SO_2 allowances to be initially credited to a CAIR SO_2 unit or other entity and, with regard to CAIR SO_2 allowances issued under provisions of a state implementation plan that are approved under 40 CFR 51.124 (o) (1) or (2) or (r) or 9VAC5-140-3880, the determination by a permitting authority of the amount of such CAIR SO_2 allowances to be initially credited to a CAIR SO_2 unit or other entity.

"Allowance transfer deadline" means, for a control period, midnight of March 1, (if it is a business day), or midnight of the first business day thereafter (if March 1 is not a business day) immediately following the control period and is the deadline by which a CAIR SO_2 allowance transfer must be submitted for recordation in a CAIR SO_2 source's compliance account in order to be used to meet the source's CAIR SO_2 emissions limitation for such control period in accordance with 9VAC5-140-3540.

"Alternate CAIR-designated representative" means, for a CAIR SO_2 source and each CAIR SO_2 unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source, in accordance with Articles 2 (9VAC5-140-3100 et seq.) and 9 (9VAC5-140-3800 et seq.) of this part, to act on behalf of the CAIR-designated representative in matters pertaining to the CAIR SO_2 Trading Program. If the CAIR SO_2 source is also a CAIR

NO_X source, then this natural person shall be the same person as the alternate CAIR-designated representative under the CAIR NO_X Annual Trading Program. If the CAIR SO_2 source is also a CAIR NO_X Ozone Season source, then this natural person shall be the same person as the alternate CAIR-designated representative under the CAIR NO_X Ozone Season Trading Program. If the CAIR SO_2 source is also subject to the Acid Rain Program, then this natural person shall be the same person as the alternate designated representative under the Acid Rain Program. If the CAIR SO_2 source is also subject to the Hg Budget Trading Program, then this natural person shall be the same person as the alternate Hg designated representative under the Hg Budget Trading Program.

"Automated data acquisition and handling system" or "DAHS" means that component of the continuous emission monitoring system, or other emissions monitoring system approved for use under Article 8 (9VAC5-140-3700 et seq.) of this part, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required by Article 8 (9VAC5-140-3700 et seq.) of this part.

"Biomass" means:

1. Any organic material grown for the purpose of being converted to energy;

2. Any organic byproduct of agriculture that can be converted into energy; or

3. Any material that can be converted into energy and is nonmerchantable for other purposes, that is segregated from other nonmerchantable material, and that is:

a. A forest-related organic resource, including mill residues, precommercial thinnings, slash, brush, or byproduct from conversion of trees to merchantable material; or

b. A wood material, including pallets, crates, dunnage, manufacturing and construction materials (other than pressure-treated, chemically-treated, or painted wood products), and landscape or right-of-way tree trimmings.

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

"Bottoming-cycle cogeneration unit" means a cogeneration unit in which the energy input to the unit is first used to produce useful thermal energy and at least some of the reject heat from the useful thermal energy application or process is then used for electricity production.

"CAIR-authorized account representative" means, with regard to a general account, a responsible natural person who is authorized, in accordance with Articles 2 (9VAC5-140-3100 et seq.), 6 (9VAC5-140-3500 et seq.) and 9 (9VAC5-140-3800 et seq.) of this part, to transfer and otherwise dispose of CAIR SO_2 allowances held in the general account and, with regard to a compliance account, the CAIR-designated representative of the source.

"CAIR-designated representative" means, for a CAIR SO_2 source and each CAIR SO_2 unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source, in accordance with Articles 2 (9VAC5-140-3100 et seq.), 6 (9VAC5-140-3500 et seq.) and 9 (9VAC5-140-3800 et seq.) of this part, to represent and legally bind each owner and operator in matters pertaining to the CAIR SO_2 Trading Program. If the CAIR SO_2 source is also a CAIR NO_X source, then this natural person shall be the same person as the CAIR-designated representative under the CAIR NO_X Annual Trading Program. If the CAIR SO_2 source is also a CAIR NO_X Ozone Season source, then this natural person shall be the same person as the CAIR-designated representative under the CAIR NO_X Ozone Season Trading Program. If the CAIR SO_2 source is also subject to the Acid Rain Program, then this natural person shall be the same person as the designated representative under the Acid Rain Program. If the CAIR SO_2 source is also subject to the Hg Budget Trading Program, then this natural person shall be the same person as the alternate Hg designated representative under the Hg Budget Trading Program.

"CAIR NO_X Annual Trading Program" means a multistate nitrogen oxides air pollution control and emission reduction program approved and administered by the administrator in accordance with Part II (9VAC5-140-1010 et seq.) of this chapter, subparts AA through II of 40 CFR Part 96, and 40 CFR 51.123 (o)(1) or (2) or established by the administrator in accordance with subparts AA through II of 40 CFR Part 97 and 40 CFR 51.123(p) and 52.35, as a means of mitigating interstate transport of fine particulates and nitrogen oxides.

"CAIR NO_X Ozone Season source" means a source that is subject to the CAIR NO_X Ozone Season Trading Program.

"CAIR NO_X Ozone Season Trading Program" means a multistate nitrogen oxides air pollution control and emission reduction program approved and administered by the administrator in accordance with Part III (9VAC5-140-2010 et seq.) of this chapter, subparts AAAA through IIII of 40 CFR Part 96, and 40 CFR 51.123 (aa)(1) or (2) and (bb)(1), (bb)(2), or (dd) or established by the administrator in accordance with subparts AAAA through IIII of 40 CFR Part 97 and 40 CFR 51.123(ee) and 52.35, as a means of mitigating interstate transport of ozone and nitrogen oxides.

"CAIR NO_X source" means a source that is subject to the CAIR NO_X Annual Trading Program.

"CAIR permit" means the terms and conditions in a Title V operating permit or state operating permit, issued by the permitting authority under Article 3 (9VAC5-140-3200 et seq.) of this part, including any permit revisions, specifying the CAIR SO_2 Trading Program requirements applicable to a CAIR SO_2 source, to each CAIR SO_2 unit at the source, and to the owners and operators and the CAIR-designated representative of the source and each such unit.

"CAIR SO_2 allowance" means a limited authorization issued by the administrator under the Acid Rain Program, or by a permitting authority under 9VAC5-140-3880, provisions of an implementation plan that are approved under 40 CFR 51.124(o)(1) or (2) or (r), or 40 CFR 97.288, to emit sulfur dioxide during the control period of the specified calendar year for which the authorization is allocated or of any calendar year thereafter under the CAIR SO_2 Trading Program as specified in subdivisions 1 through 3 of this definition. No provision of the CAIR SO_2 Annual Trading Program, the CAIR permit application, the CAIR permit, or an exemption under 9VAC5-140-3040 B or 9VAC5-140-3050 and no provision of law shall be construed to limit the authority of the United States or the board to terminate or limit such authorization, which does not constitute a property right.

1. For one CAIR SO_2 allowance allocated for a control period in a year before 2010, one ton of sulfur dioxide, except as provided in 9VAC5-140-3540 B;

2. For one CAIR SO_2 allowance allocated for a control period in 2010 through 2014, 0.50 ton of sulfur dioxide, except as provided in 9VAC5-140-3540 B; and

3. For one CAIR SO_2 allowance allocated for a control period in 2015 or later, 0.35 ton of sulfur dioxide, except as provided in 9VAC5-140-3540 B.

4. An authorization to emit sulfur dioxide that is not issued under 9VAC5-140-3880, under the Acid Rain Program under the provisions of a state implementation plan that are approved under 40 CFR 51.124(o)(1) or (2) or (r), or under 40 CFR 97.288 shall not be a CAIR SO_2 allowance.

"CAIR SO_2 allowance deduction" or "deduct CAIR SO_2 allowances" means the permanent withdrawal of CAIR SO_2 allowances by the administrator from a compliance account, e.g., in order to account for a specified number of tons of total sulfur dioxide emissions from all CAIR SO_2 units at a CAIR SO_2 source for a control period, determined in accordance with Article 8 (9VAC5-140-3700 et seq.) of this part, or to account for excess emissions.

"CAIR SO_2 Allowance Tracking System" means the system by which the administrator records allocations, deductions, and transfers of CAIR SO_2 allowances under the CAIR SO_2 Trading Program. This is the same system as the Allowance Tracking System under 40 CFR 72.2 by which the administrator records allocations, deduction, and transfers of acid rain SO_2 allowances under the Acid Rain Program.

"CAIR SO_2 Allowance Tracking System account" means an account in the CAIR SO_2 Allowance Tracking System established by the administrator for purposes of recording the allocation, holding, transferring, or deducting of CAIR SO_2 allowances. Such allowances will be allocated, held, deducted, or transferred only as whole allowances.

"CAIR SO_2 allowances held" or "hold CAIR SO_2 allowances" means the CAIR SO_2 allowances recorded by the administrator, or submitted to the administrator for recordation, in accordance with Articles 6 (9VAC5-140-3500 et seq.), 7 (9VAC5-140-3600 et seq.), and 9 (9VAC5-140-3800 et seq.) of this part or 40 CFR Part 73, in a CAIR SO_2 Allowance Tracking System account.

"CAIR SO_2 emissions limitation" means, for a CAIR SO_2 source, the tonnage equivalent, in SO_2 emissions in a control period, of the CAIR SO_2 allowances available for deduction for the source under 9VAC5-140-3540 A and B for the control period.

"CAIR SO_2 source" means a source that includes one or more CAIR SO_2 units.

"CAIR SO_2 Trading Program" means a multi-state sulfur dioxide air pollution control and emission reduction program approved and administered by the administrator in accordance with this part, subparts AAA through III of 40 CFR Part 96, and 40 CFR 51.124 (o)(1) or (2) or established by the administrator in accordance with subparts AAA through III of 40 CFR Part 97 and 40 CFR 51.124(r) and 52.36, as a means of mitigating interstate transport of fine particulates and sulfur dioxide.

"CAIR SO_2 unit" means a unit that is subject to the CAIR SO_2 Trading Program under 9VAC5-140-3040 and, except for purposes of 9VAC5-140-3050, a CAIR SO_2 opt-in unit under Article 9 (9VAC5-140-3800 et seq.) of this part.

"Clean Air Act" or "CAA" means the Clean Air Act, 42 USC § 7401 et seq.

"Coal" means any solid fuel classified as anthracite, bituminous, subbituminous, or lignite.

"Coal-derived fuel" means any fuel (whether in a solid, liquid, or gaseous state) produced by the mechanical, thermal, or chemical processing of coal.

"Coal-fired" means combusting any amount of coal or coal-derived fuel, alone, or in combination with any amount of any other fuel.

"Cogeneration unit" means a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine:

1. Having equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy; ~~and~~

2. Producing during the 12-month period starting on the date the unit first produces electricity and during any calendar year after the calendar year in which the unit first produces electricity:

a. For a topping-cycle cogeneration unit~~,~~ :

(1) Useful thermal energy not less than 5.0% of total energy output; and

(2) Useful power that, when added to one-half of useful thermal energy produced, is not less then 42.5% of total energy input, if useful thermal energy produced is ~~15.0%~~ 15% or more of total energy output, or not less than ~~45.0%~~ 45% of total energy input, if useful thermal energy produced is less than ~~15.0%~~ 15% of total energy output.

b. For a bottoming-cycle cogeneration unit, useful power not less than ~~45.0%~~ 45% of total energy input~~.~~; and

3. Provided that the total energy input under subdivisions 2 a (2) and 2 b of this definition shall equal the unit's total energy input from all fuel except biomass if the unit is a boiler.

"Combustion turbine" means:

1. An enclosed device comprising a compressor, a combustor, and a turbine and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine; and

2. If the enclosed device under subdivision 1 of this definition is combined cycle, any associated duct burner, heat recovery steam generator, and steam turbine.

"Commence commercial operation" means, with regard to a unit:

1. To have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation, except as provided in 9VAC5-140-3050 and subdivision 8 of 9VAC5-140-3840.

a. For a unit that is a CAIR SO_2 unit under 9VAC5-140-3040 on the later of November 15, 1990, or the date the unit commences commercial operation as defined in subdivision 1 of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the date of commencement of commercial operation of the unit, which shall continue to be treated as the same unit.

b. For a unit that is a CAIR SO_2 unit under 9VAC5-140-3040 on the later of November 15, 1990, or the date the unit commences commercial operation as defined in subdivision 1 of this definition and that is subsequently replaced by a unit at the same source (e.g., repowered), such date shall remain the replaced unit's date of commencement of commercial operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in subdivision 1 or 2 of this definition as appropriate.

2. Notwithstanding subdivision 1 of this definition and except as provided in 9VAC5-140-3050, for a unit that is not a CAIR SO_2 unit under 9VAC5-140-3040 on the later of November 15, 1990, or the date the unit commences commercial operation as defined in subdivision 1 of this definition, the unit's date for commencement of commercial operation shall be the date on which the unit becomes a CAIR SO_2 unit under 9VAC5-140-3040.

a. For a unit with a date for commencement of commercial operation as defined in subdivision 2 of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the date of commencement of commercial operation of the unit, which shall continue to be treated as the same unit.

b. For a unit with a date for commencement of commercial operation as defined in subdivision 2 of this definition and that is subsequently replaced by a unit at the same source (e.g., repowered), such date shall remain the replaced unit's date of commencement of commercial operation and the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in subdivision 1 or 2 of this definition as appropriate.

"Commence operation" means:

1. To have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber, except as provided in subdivision 8 of 9VAC5-140-3840.

2. For a unit that undergoes a physical change (other than replacement of the unit by a unit at the same source) after the date the unit commences operation as defined in subdivision 1 of this definition, such date shall remain the date of commencement of operation of the unit, which shall continue to be treated as the same unit.

3. For a unit that is replaced by a unit at the same source (e.g., repowered) after the date the unit commences operation as defined in subdivision 1 of this definition, such date shall remain the replaced unit's date of commencement of operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in subdivision 1, 2, or 3 of this definition as appropriate, except as provided in subdivision 8 of 9VAC5-140-3840.

"Common stack" means a single flue through which emissions from two or more units are exhausted.

"Compliance account" means a CAIR SO_2 Allowance Tracking System account, established by the administrator for a CAIR SO_2 source subject to an acid rain emissions limitations under 40 CFR 73.31(a) or (b) or for any other CAIR SO_2 source under Article 6 (9VAC5-140-3500 et seq.) or Article 9 (9VAC5-140-3800 et seq.) of this part, in which any CAIR SO_2 allowance allocations for the CAIR SO_2 units at the source are initially recorded and in which are held any CAIR SO_2 allowances available for use for a control period in order to meet the source's CAIR SO_2 emissions limitation in accordance with 9VAC5-140-3540.

"Continuous emission monitoring system" or "CEMS" means the equipment required under Article 8 (9VAC5-140-3700 et seq.) of this part to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes (using an automated data acquisition and handling system (DAHS)), a permanent record of sulfur dioxide emissions, stack gas volumetric flow rate, stack gas moisture content, and oxygen or carbon dioxide concentration (as applicable), in a manner consistent with 40 CFR Part 75. The following systems are the principal types of continuous emission monitoring systems required under Article 8 (9VAC5-140-3700 et seq.) of this part:

1. A flow monitoring system, consisting of a stack flow rate monitor and an automated data acquisition and handling system and providing a permanent, continuous record of stack gas volumetric flow rate, in standard cubic feet per hour (scfh);

2. A sulfur dioxide monitoring system, consisting of a SO_2 pollutant concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of SO_2 emissions, in parts per million (ppm);

3. A moisture monitoring system, as defined in 40 CFR 75.11(b)(2) and providing a permanent, continuous record of the stack gas moisture content, in percent H_2O;

4. A carbon dioxide monitoring system, consisting of a CO_2 pollutant concentration monitor (or an oxygen monitor plus suitable mathematical equations from which the CO_2 concentration is derived) and an automated data acquisition and handling system and providing a permanent, continuous record of CO_2 emissions, in percent CO_2; and

5. An oxygen monitoring system, consisting of an O_2 concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of O_2 in percent O_2.

"Control period" means the period beginning January 1 of a calendar year, except as provided in 9VAC5-140-3060 C 2, and ending on December 31 of the same year, inclusive.

"Emissions" means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the administrator by the CAIR-designated representative and as determined by the administrator in accordance with Article 8 (9VAC5-140-3700 et seq.) of this part.

"Excess emissions" means any ton, or portion of a ton, of sulfur dioxide emitted by the CAIR SO_2 units at a CAIR SO_2 source during a control period that exceeds the CAIR SO_2 emissions limitation for the source, provided that any portion of a ton of excess emissions shall be treated as one ton of excess emissions.

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

"Fossil-fuel-fired" means, with regard to a unit, combusting any amount of fossil fuel in any calendar year.

"General account" means a CAIR SO_2 Allowance Tracking System account, established under Article 6 (9VAC5-140-3500 et seq.) of this part, that is not a compliance account.

"Generator" means a device that produces electricity.

"Heat input" means, with regard to a specified period of time, the product (in mmBtu/time) of the gross calorific value of the fuel (in Btu/lb) divided by 1,000,000 Btu/mmBtu and multiplied by the fuel feed rate into a combustion device (in lb of fuel/time), as measured, recorded, and reported to the administrator by the CAIR-designated representative and determined by the administrator in accordance with Article 8 (9VAC5-140-3700 et seq.) of this part and excluding the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

"Heat input rate" means the amount of heat input (in mmBtu) divided by unit operating time (in hr) or, with regard to a specific fuel, the amount of heat input attributed to the fuel (in mmBtu) divided by the unit operating time (in hr) during which the unit combusts the fuel.

"Hg Budget Trading Program" means a multistate Hg air pollution control and emission reduction program approved and administered by the administrator in accordance with Part VI (9VAC5-140-5010 et seq.) of this chapter and 40 CFR 60.24(h)(6), or established by the administrator under § 111 of the Clean Air Act, as a means of reducing national Hg emissions.

"Implementation plan" means the portion or portions of the state implementation plan, or the most recent revision thereof, which has been approved in subpart VV of 40 CFR Part 52 by the administrator under § 110 of the CAA, or promulgated under § 110(c) of the CAA, or promulgated or approved

pursuant to regulations promulgated under § 301(d) of the CAA and which implements the relevant requirements of the CAA.

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

1. For the life of the unit;

2. For a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or

3. For a period no less than 25 years or ~~70.0%~~ 70% of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.

"Maximum design heat input" means the maximum amount of fuel per hour (in Btu/hr) that a unit is capable of combusting on a steady state basis as of the initial installation of the unit as specified by the manufacturer of the unit.

"Monitoring system" means any monitoring system that meets the requirements of Article 8 (9VAC5-140-3700 et seq.) of this part, including a continuous emissions monitoring system, an alternative monitoring system, or an excepted monitoring system under 40 CFR Part 75.

"Most stringent state or federal SO_2 emissions limitation" means, with regard to a unit, the lowest SO_2 emissions limitation (in terms of lb/mmBtu) that is applicable to the unit under the Virginia Air Pollution Control Law or federal law, regardless of the averaging period to which the emissions limitation applies. In cases where a unit is subject to a permit that provides for the use of multiple fuels, the primary fuel shall be used as the basis to determine the most stringent state or federal SO_2 emissions limitation. The primary fuel shall be the fuel designated in the permit as such or resulting in the lowest emissions rate.

"Nameplate capacity" means, starting from the initial installation of a generator, the maximum electrical generating output (in MWe) that the generator is capable of producing on a steady state basis and during continuous operation (when not restricted by seasonal or other deratings) as of such installation as specified by the manufacturer of the generator or, starting from the completion of any subsequent physical change in the generator resulting in an increase in the maximum electrical generating output (in MWe) that the generator is capable of producing on a steady state basis and during continuous operation (when not restricted by seasonal or other deratings), such increased maximum amount as of such completion as specified by the person conducting the physical change.

"Nonattainment condition" means a condition where any area is shown by air quality monitoring data or that is shown by an air quality impact analysis (using modeling or other methods determined by the board to be reliable) to exceed the levels allowed by the ambient air quality standard for a given pollutant, regardless of whether such demonstration is based on current or projected emissions data.

"Operator" means any person who operates, controls, or supervises a CAIR SO_2 unit or a CAIR SO_2 source and shall include, but not be limited to, any holding company, utility system, or plant manager of such a unit or source.

"Owner" means any of the following persons:

1. With regard to a CAIR SO_2 source or a CAIR SO_2 unit at a source, respectively:

a. Any holder of any portion of the legal or equitable title in a CAIR SO_2 unit at the source or the CAIR SO_2 unit;

b. Any holder of a leasehold interest in a CAIR SO_2 unit at the source or the CAIR SO_2 unit; or

c. Any purchaser of power from a CAIR SO_2 unit at the source or the CAIR SO_2 unit under a life of the unit, firm power contractual arrangement; provided that, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based (either directly or indirectly) on the revenues or income from such CAIR SO_2 unit; or

2. With regard to any general account, any person who has an ownership interest with respect to the CAIR SO_2 allowances held in the general account and who is subject to the binding agreement for the CAIR-authorized account representative to represent the person's ownership interest with respect to CAIR SO_2 allowances.

"Permitting authority" means the state air pollution control agency, local agency, other state agency, or other agency authorized by the administrator to issue or revise permits to meet the requirements of the CAIR SO_2 Trading Program ~~in accordance with Article 3 (9VAC5-140-3200 et seq.) of this part~~ or, if no such agency has been so authorized, the administrator. For the Commonwealth of Virginia, the permitting authority shall be the State Air Pollution Control Board. The board will issue or revise permits to meet the requirements of the CAIR SO_2 Trading Program in accordance with Article 3 (9VAC5-140-3200 et seq.) of this part.

"Potential electrical output capacity" means ~~33.0%~~ 33% of a unit's maximum design heat input, divided by 3,413 Btu/kWh, divided by 1,000 kWh/MWh, and multiplied by 8,760 hr/yr.

"Receive or receipt of" means, when referring to the permitting authority or the administrator, to come into possession of a document, information, or correspondence (whether sent in hard copy or by authorized electronic transmission), as indicated in an official log, or by a notation made on the document, information, or correspondence, by the permitting authority or the administrator in the regular course of business.

"Recordation," "record," or "recorded" means, with regard to CAIR SO_2 allowances, the movement of CAIR SO_2 allowances by the administrator into or between CAIR SO_2 Allowance Tracking System accounts, for purposes of allocation, transfer, or deduction.

"Reference method" means any direct test method of sampling and analyzing for an air pollutant as specified in 40 CFR 75.22.

"Replacement," "replace," or "replaced" means, with regard to a unit, the demolishing of a unit, or the permanent shutdown and permanent disabling of a unit, and the construction of another unit (the replacement unit) to be used instead of the demolished or shutdown unit (the replaced unit).

"Repowered" means, with regard to a unit, replacement of a coal-fired boiler with one of the following coal-fired technologies at the same source as the coal-fired boiler:

1. Atmospheric or pressurized fluidized bed combustion;

2. Integrated gasification combined cycle;

3. Magnetohydrodynamics;

4. Direct and indirect coal-fired turbines;

5. Integrated gasification fuel cells; or

6. As determined by the administrator in consultation with the Secretary of Energy, a derivative of one or more of the technologies under subdivisions 1 through 5 of this definition and any other coal-fired technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of January 1, 2005.

"Sequential use of energy" means:

1. For a topping-cycle cogeneration unit, the use of reject heat from electricity production in a useful thermal energy application or process; or

2. For a bottoming-cycle cogeneration unit, the use of reject heat from useful thermal energy application or process in electricity production.

"Serial number" means, for a CAIR SO_2 allowance, the unique identification number assigned to each CAIR SO_2 allowance by the administrator.

"Solid waste incineration unit" means a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine that is a "solid waste incineration unit" as defined in § 129(g)(1) of the Clean Air Act.

"Source" means all buildings, structures, or installations located in one or more contiguous or adjacent properties under common control of the same person or persons. For purposes of § 502(c) of the Clean Air Act, a "source," including a "source" with multiple units, shall be considered a single "facility."

"State" means the Commonwealth of Virginia. The term "state" shall have its conventional meaning where such meaning is clear from the context.

"State operating permit" means a permit issued under Article 5 (9VAC5-80-800 et seq.) of Part II of ~~9VAC5 Chapter 80~~ 9VAC5-80 (Permits for Stationary Sources).

"State operating permit regulations" means the regulations codified in Article 5 (9VAC5-80-800 et seq.) of Part II of ~~9VAC5 Chapter 80~~ 9VAC5-80 (Permits for Stationary Sources).

"Submit or serve" means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

1. In person;

2. By United States Postal Service; or

3. By other means of dispatch or transmission and delivery. Compliance with any "submission" or "service" deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

"Title V operating permit" means a permit issued under Article 1 (9VAC5-80-50 et seq.) or Article 3 (9VAC5-80-360 se seq.) of Part II of ~~9VAC5 Chapter 80~~ 9VAC5-80 (Permits for Stationary Sources).

"Title V operating permit regulations" means the regulations codified in Article 1 (9VAC5-80-50 et seq.), Article 2 (9VAC5-80-310 et seq.), Article 3 (9VAC5-80-360 et seq.), and Article 4 (9VAC5-80-710 et seq.) of Part II of ~~9VAC5 Chapter 80~~ 9VAC5-80 (Permits for Stationary Sources).

"Ton" means 2,000 pounds. For the purpose of determining compliance with the CAIR SO_2 emissions limitation, total tons of sulfur dioxide emissions for a control period shall be calculated as the sum of all recorded hourly emissions (or the mass equivalent of the recorded hourly emission rates) in accordance with Article 8 (9VAC5-140-3700 et seq.) of this part, but with any remaining fraction of a ton equal to or greater than 0.50 tons deemed to equal one ton and any

remaining fraction of a ton less than 0.50 tons deemed to equal zero tons.

"Topping-cycle cogeneration unit" means a cogeneration unit in which the energy input to the unit is first used to produce useful power, including electricity, and at least some of the reject heat from the electricity production is then used to provide useful thermal energy.

"Total energy input" means, with regard to a cogeneration unit, total energy of all forms supplied to the cogeneration unit, excluding energy produced by the cogeneration unit itself. Each form of energy supplied shall be measured by the lower heating value of that form of energy calculated as follows:

LHV = HHV – 10.55(W + 9H)

where:

LHV = lower heating value of fuel in Btu/lb.

HHV = higher heating value of fuel in Btu/lb.

W = Weight percent of moisture in fuel.

H = Weight percent of hydrogen in fuel.

"Total energy output" means, with regard to a cogeneration unit, the sum of useful power and useful thermal energy produced by the cogeneration unit.

"Unit" means a stationary, fossil-fuel-fired boiler or combustion turbine or other stationary, fossil-fuel-fired combustion device.

"Unit operating day" means a calendar day in which a unit combusts any fuel.

"Unit operating hour" or "hour of unit operation" means an hour in which a unit combusts any fuel.

"Useful power" means, with regard to a cogeneration unit, electricity or mechanical energy made available for use, excluding any such energy used in the power production process (which process includes, but is not limited to, any on-site processing or treatment of fuel combusted at the unit and any on-site emission controls).

"Useful thermal energy" means, with regard to a cogeneration unit, thermal energy that is:

1. Made available to an industrial or commercial process (not a power production process), excluding any heat contained in condensate return or makeup water;

2. Used in a heating application (e.g., space heating or domestic hot water heating); or

3. Used in a space cooling application (i.e., thermal energy used by an absorption chiller).

"Utility power distribution system" means the portion of an electricity grid owned or operated by a utility and dedicated to delivering electricity to customers.

VA.R. Doc. No. R09-1686; Filed January 21, 2009, 3:35 p.m.

STATE WATER CONTROL BOARD

Final Regulation

Title of Regulation: **9VAC25-260. Water Quality Standards (amending 9VAC25-260-10, 9VAC25-260-20, 9VAC25-260-30, 9VAC25-260-50, 9VAC25-260-90, 9VAC25-260-140, 9VAC25-260-160, 9VAC25-260-170, 9VAC25-260-185, 9VAC25-260-187, 9VAC25-260-310, 9VAC25-260-350, 9VAC25-260-360, 9VAC25-260-380, 9VAC25-260-390, 9VAC25-260-400, 9VAC25-260-410, 9VAC25-260-415, 9VAC25-260-420, 9VAC25-260-430, 9VAC25-260-440, 9VAC25-260-450, 9VAC25-260-460, 9VAC25-260-470, 9VAC25-260-480, 9VAC25-260-490, 9VAC25-260-500, 9VAC25-260-510, 9VAC25-260-520, 9VAC25-260-530, 9VAC25-260-540; repealing 9VAC25-260-55, 9VAC25-260-290, 9VAC25-260-320).**

Statutory Authority: § 62.1-44.15 of the Code of Virginia; 33 USC § 1251 et seq. of the federal Clean Water Act; 40 CFR Part 131.

Effective Date: Effective upon filing notice of U.S. EPA approval with the Registrar of Regulations.

Agency Contact: David C. Whitehurst, Department of Environmental Quality, P.O. Box 1105, 629 East Main Street, Richmond, VA 23218, telephone (804) 698-4121, FAX (804) 698-4116, or email dcwhitehurst@deq.virginia.gov.

Summary:

The most important potential changes to the water quality standards are a narrative criterion to recognize that certain waters in the Commonwealth are naturally low in dissolved oxygen and pH (swamp waters), and updates to the toxics and bacteria criteria and special standards to reflect site specific conditions. There are changes in many other sections of the regulation during this review. These include the updates to the Chesapeake Bay nutrient related criteria, updates to stream classifications in the river basin section tables, deletions of sections that are unused or no longer needed, and miscellaneous updates and clarifications.

The following substantive changes have been made since the proposed action was published: retention of the existing E. coli bacteria criteria in 9VAC25-260-170 at the current 0.8% risk level for freshwater recreation with some updates to more closely reflect Environmental Protection Agency (EPA) recommendations; and postponement of revisions to the freshwater aquatic life criteria for cadmium and lead until considered more fully by the triennial review ad hoc advisory committee that will be

reconvened to consider updates to aquatic life criteria for these two parameters as well as ammonia, copper, and cyanide in 9VAC25-260-140.

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.

9VAC25-260-10. Designation of uses.

A. All state waters, including wetlands, are designated for the following uses: recreational uses, e.g., swimming and boating; the propagation and growth of a balanced, indigenous population of aquatic life, including game fish, which might reasonably be expected to inhabit them; wildlife; and the production of edible and marketable natural resources, e.g., fish and shellfish.

B. Subcategories of the propagation and growth of a balanced indigenous population of aquatic life, including game fish designated use for waters in the Chesapeake Bay and its tidal tributaries are listed in this subsection.

1. Migratory Fish Spawning and Nursery Designated Use: waters in the Chesapeake Bay and its tidal tributaries that protect the survival, growth and propagation of the early life stages of a balanced, indigenous population of anadromous, semi-anadromous, catadromous and tidal-fresh resident fish species inhabiting spawning and nursery grounds. This designated use extends from the end of tidal waters to the downriver end of spawning and nursery habitats that have been determined through a composite of all targeted anadromous and semi-anadromous fish species' spawning and nursery habitats (see boundaries in U.S. Environmental Protection Agency, 2004, Technical Support Document for Identification of Chesapeake Bay Designated Uses and Attainability 2004 Addendum, Chesapeake Bay Program Office, Annapolis, Maryland). This designated use extends horizontally from the shoreline of the body of water to the adjacent shoreline, and extends down through the water column to the bottom water-sediment interface. This use applies February 1 through May 31 and applies in addition to the open-water use described in this subsection.

2. Shallow-water Submerged Aquatic Vegetation Designated Use: waters in the Chesapeake Bay and its tidal tributaries that support the survival, growth and propagation of submerged aquatic vegetation (rooted, underwater bay grasses). This use applies April 1 through October 31 in tidal-fresh, oligohaline and mesohaline Chesapeake Bay Program segments, and March 1 through November 30 in polyhaline Chesapeake Bay Program segments and applies in addition to the open-water use described in this subsection.

3. Open Water Aquatic Life Designated Use: waters in the Chesapeake Bay and its tidal tributaries that protect the survival, growth and propagation of a balanced, indigenous population of aquatic life inhabiting open-water habitats. This designated use applies year-round but the vertical boundaries change seasonally. October 1 through May 31, the open water aquatic life use extends horizontally from the shoreline at mean low water, to the adjacent shoreline, and extending through the water column to the bottom water-sediment interface. June 1 through September 30, if a pycnocline is present and, in combination with bottom bathymetry and water column circulation patterns, presents a barrier to oxygen replenishment of deeper waters, this designated use extends down into the water column only as far as the upper boundary of the pycnocline. June 1 through September 30, if a pycnocline is present but other physical circulation patterns (such as influx of oxygen rich oceanic bottom waters) provide for oxygen replenishment of deeper waters, the open-water aquatic life designated use extends down into the bottom water-sediment interface (see boundaries in U.S. Environmental Protection Agency, 2004 Technical Support Document for Identification of Chesapeake Bay Designated Uses and Attainability 2004 Addendum, Chesapeake Bay Program Office, Annapolis, Maryland). This designated use includes the migratory fish spawning and nursery and shallow-water submerged aquatic vegetation uses.

4. Deep Water Aquatic Life Designated Use: waters in the Chesapeake Bay and its tidal tributaries that protect the survival and growth of a balanced, indigenous population of aquatic life inhabiting deep-water habitats. This designated use extends to the tidally influenced waters located between the upper and lower boundaries of the pycnocline where, in combination with bottom bathymetry and water circulation patterns, a pycnocline is present and presents a barrier to oxygen replenishment of deeper waters. In some areas, the deep-water designated use extends from the upper boundary of the pycnocline down to the bottom water-sediment interface (see boundaries in U.S. Environmental Protection Agency, 2004 Technical Support Document for Identification of Chesapeake Bay Designated Uses and Attainability 2004 Addendum, Chesapeake Bay Program Office, Annapolis, Maryland). This use applies June 1 through September 30.

5. Deep Channel Seasonal Refuge Designated Use: waters in the Chesapeake Bay and its tidal tributaries that protect the survival of a balanced, indigenous population of benthic infauna and epifauna inhabiting deep-channel habitats. This designated use extends to the tidally influenced waters at depths greater than the lower boundary of the pycnocline in areas where, in combination with bottom bathymetry and water circulation patterns, the pycnocline presents a barrier to oxygen replenishment of deeper waters (see boundaries in U.S. Environmental Protection Agency, 2004 Technical Support Document for Identification of Chesapeake Bay Designated Uses and

Attainability 2004 Addendum, Chesapeake Bay Program Office, Annapolis, Maryland). This use applies June 1 through September 30.

C. In designating uses of a water body and the appropriate criteria for those uses, the board shall take into consideration the water quality standards of downstream waters and shall ensure that its water quality standards provide for the attainment and maintenance of the water quality standards of downstream waters.

D. The board may adopt subcategories of a use and set the appropriate criteria to reflect varying needs of such subcategories of uses, for instance, to differentiate between cold water (trout streams) and warm water fisheries.

E. At a minimum, uses are deemed attainable if they can be achieved by the imposition of effluent limits required under ~~§§ 301(b)~~ §§ 301(b)(1)(A) and (B) and 306 of the Clean Water Act and cost-effective and reasonable best management practices for nonpoint source control.

F. Prior to adding or removing any use, or establishing subcategories of a use, the board shall provide notice and an opportunity for a public hearing under the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

G. The board may adopt seasonal uses as an alternative to reclassifying a water body or segment thereof to uses requiring less stringent water quality criteria. If seasonal uses are adopted, water quality criteria should be adjusted to reflect the seasonal uses; however, such criteria shall not preclude the attainment and maintenance of a more protective use in another season.

H. The board may remove a designated use which is not an existing use, or establish subcategories of a use, if the board can demonstrate that attaining the designated use is not feasible because:

1. Naturally occurring pollutant concentrations prevent the attainment of the use;

2. Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating state water conservation requirements to enable uses to be met;

3. Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place;

4. Dams, diversions or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the water body to its original condition or to operate such modification in a way that would result in the attainment of the use;

5. Physical conditions related to the natural features of the water body, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, preclude attainment of aquatic life protection uses; or

6. Controls more stringent than those required by §§ 301(b) and 306 of the Clean Water Act would result in substantial and widespread economic and social impact.

I. The board may not remove designated uses if:

1. They are existing uses, unless a use requiring more stringent criteria is added; or

2. Such uses will be attained by implementing effluent limits required under ~~§§ 301(b)~~ §§ 301(b)(1)(A) and (B) and 306 of the Clean Water Act and by implementing cost-effective and reasonable best management practices for nonpoint source control.

J. Where existing water quality standards specify designated uses less than those which are presently being attained, the board shall revise its standards to reflect the uses actually being attained.

K. The board must conduct a use attainability analysis whenever:

1. The board designates or has designated uses that do not include the uses specified in § 101(a)(2) of the Clean Water Act; or

2. The board wishes to remove a designated use that is specified in § 101(a)(2) of the Clean Water Act or to adopt subcategories of uses specified in § 101(a)(2) of the Clean Water Act which require less stringent criteria.

L. The board is not required to conduct a use attainability analysis under this chapter whenever designating uses which include those specified in subsection A of this section.

9VAC25-260-20. General criteria.

A. State waters, including wetlands, shall be free from substances attributable to sewage, industrial waste, or other waste in concentrations, amounts, or combinations which contravene established standards or interfere directly or indirectly with designated uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life.

Specific substances to be controlled include, but are not limited to: floating debris, oil, scum, and other floating materials; toxic substances (including those which bioaccumulate); substances that produce color, tastes, turbidity, odors, or settle to form sludge deposits; and substances which nourish undesirable or nuisance aquatic plant life. Effluents which tend to raise the temperature of the receiving water will also be controlled. Conditions within mixing zones established according to 9VAC25-260-20 B do not violate the provisions of this subsection.

B. The board may use mixing zone concepts in evaluating limitations for Virginia Pollutant Discharge Elimination System permits.

1. Mixing zones evaluated or established by the board in fresh water shall not:

a. Prevent movement of or cause lethality to passing and drifting aquatic organisms through the water body in question;

b. Constitute more than one half of the width of the receiving watercourse nor constitute more than one third of the area of any cross section of the receiving watercourse;

c. Extend downstream at any time a distance more than five times the width of the receiving watercourse at the point of discharge.

2. Mixing zones evaluated or established by the board in open ocean, estuarine and transition zone waters (see 9VAC25-260-140 C) shall not:

a. Prevent movement of or cause lethality to passing and drifting aquatic organisms through the water body in question;

b. Extend more than five times in any direction the average depth along a line extending 1/3 of the way across the receiving water from the discharge point to the opposite shore.

3. A subsurface diffuser shall be required for any new or expanded freshwater discharge greater than or equal to 0.5 MGD to open ocean, estuarine and transition zone waters (see 9VAC25-260-140 C) and the acute and chronic criteria shall be met at the edge of the zone of initial mixing. The zone of initial mixing is the area where mixing of ambient water and effluent is driven by the jet effect and/or momentum of the effluent. Beyond this zone the mixing is driven by ambient turbulence.

4. Mixing zones shall not be allowed by the board for effluents discharged to wetlands, swamps, marshes, lakes or ponds.

5. An allocated impact zone may be allowed within a mixing zone. This zone is the area of initial dilution of the effluent with the receiving water where the concentration of the effluent will be its greatest in the water column. Mixing within these allocated impact zones shall be as quick as practical and shall be sized to prevent lethality to passing and drifting aquatic organisms. The acute aquatic life criteria are not required to be attained in the allocated impact zone.

6. Mixing zones shall be evaluated or established such that acute criteria are met outside the allocated impact zone and chronic criteria are met at the edge of the mixing zone.

7. No mixing zone shall be used for, or considered as, a substitute for minimum treatment technology required by the Clean Water Act and other applicable state and federal laws.

8. The board shall not approve a mixing zone that violates the federal Endangered Species Act of 1973 (16 USCA §§ 1531-1543) or the Virginia Endangered Species Act, Article 6 (§ 29.1-563 et seq.) of Chapter 5 of Title 29.1 of the Code of Virginia.

9. Mixing zones shall not be allowed for the bacteria criteria in 9VAC25-260-170.

10. The board may waive the requirements of subdivisions ~~B~~ 1 b and c, ~~B~~ 2 b, ~~B~~ 3 and ~~B~~ 4 of this subsection on a case-by-case basis if:

a. The board determines that a complete mix assumption is appropriate; or

b. A discharger provides an acceptable demonstration of:

(1) Information defining the actual boundaries of the mixing zone in question; and

(2) Information and data demonstrating no violation of subdivisions B 1 a, 2 a and B 7 of this subsection by the mixing zone in question.

~~10.~~ 11. The size of a thermal mixing zone shall be determined on a case-by-case basis. This determination shall be based upon a sound rationale and be supported by substantial biological, chemical, physical, and engineering evidence and analysis. Any such determination shall show to the board's satisfaction that no adverse changes in the protection and propagation of balanced indigenous populations of fish, aquatic life, and wildlife may reasonably be expected to occur. A satisfactory showing made in conformance with § 316(a) of the Clean Water Act shall be deemed as compliance with the requirements of this section.

~~11.~~ 12. Notwithstanding the above, no new or expanded mixing zone shall:

a. Be allowed in waters listed in 9VAC25-260-30 A 3 c;

b. Be allowed in waters defined in 9VAC25-260-30 A 2 for new or ~~increased~~ existing discharges unless the requirements outlined in 9VAC25-260-30 A 2 are satisfied.

9VAC25-260-30. Antidegradation policy.

A. All surface waters of the Commonwealth shall be provided one of the following three levels, or tiers, of antidegradation protection. This antidegradation policy shall be applied whenever any activity is proposed that has the potential to affect existing surface water quality.

1. As a minimum, existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.

2. Where the quality of the waters exceed water quality standards, that quality shall be maintained and protected unless the board finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the Commonwealth's continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation or lower water quality, the board shall assure water quality adequate to protect existing uses fully. Further, the board shall assure that there shall be achieved the highest statutory and regulatory requirements applicable to all new or existing point source discharges of effluent and all cost-effective and reasonable best management practices for nonpoint source control.

3. Surface waters, or portions of these, which provide exceptional environmental settings and exceptional aquatic communities or exceptional recreational opportunities may be designated and protected as described in subdivisions 3 a, b and c of this subsection.

a. Designation procedures.

(1) Designations shall be adopted in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) and the board's public participation guidelines.

(2) Upon receiving a nomination of a waterway or segment of a waterway for designation as an exceptional state water pursuant to the board's antidegradation policy, as required by 40 CFR 131.12, the board shall notify each locality in which the waterway or segment lies and shall make a good faith effort to provide notice to impacted riparian property owners. The written notice shall include, at a minimum: (i) a description of the location of the waterway or segment; (ii) the procedures and criteria for designation as well as the impact of the designation; (iii) the name of the person making the nomination; and (iv) the name of a contact person at the Department of Environmental Quality who is knowledgeable about the nomination and the waterway or segment. Notice to property owners shall be based on names and addresses taken from local tax rolls. Such names and addresses shall be provided by the Commissioners of the Revenue or the tax assessor's office of the affected jurisdiction upon request by the board. After receipt of the notice of the nomination, localities shall be provided 60 days to comment on the consistency of the nomination with the locality's comprehensive plan. The comment period established by subdivision 3 a (2) of this subsection shall in no way impact a locality's ability to comment during any additional comment periods established by the board.

b. Implementation procedures.

(1) The quality of waters designated in subdivision 3 c of this subsection shall be maintained and protected to prevent permanent or long-term degradation or impairment.

(2) No new, additional, or increased discharge of sewage, industrial wastes or other pollution into waters designated in subdivision 3 c of this subsection shall be allowed.

(3) Activities causing temporary sources of pollution may be allowed in waters designated in subdivision 3 c of this subsection even if degradation may be expected to temporarily occur provided that after a minimal period of time the waters are returned or restored to conditions equal to or better than those existing just prior to the temporary source of pollution.

c. Surface waters designated under this subdivision are as follows:

(1) Little Stony Creek in Giles County from the first footbridge above the Cascades picnic area, upstream to the 3,300-foot elevation.

(2) Bottom Creek in Montgomery County and Roanoke County from Route 669 (Patterson Drive) downstream to the last property boundary of the Nature Conservancy on the southern side of the creek.

(3) Lake Drummond, located on U.S. Fish and Wildlife Service property, ~~is nominated~~ in its entirety within the cities of Chesapeake and Suffolk excluding any ditches and/or tributaries.

(4) North Creek in Botetourt County from the first bridge above the United States Forest Service North Creek Camping Area to its headwaters.

(5) Brown Mountain Creek, located on U.S. Forest Service land in Amherst County, from the City of Lynchburg property boundary upstream to the first crossing with the national forest property boundary.

(6) Laurel Fork, located on U.S. Forest Service land in Highland County, from the national forest property boundary below Route 642 downstream to the Virginia/West Virginia state line.

(7) North Fork of the Buffalo River, located on U.S. Forest Service land in Amherst County, from its confluence with Rocky Branch upstream to its headwaters.

(8) Pedlar River, located on U.S. Forest Service land in Amherst County, from where the river crosses FR 39

upstream to the first crossing with the national forest property boundary.

(9) Ramseys Draft, located on U.S. Forest Service land in Augusta County, from its headwaters (which includes Right and Left Prong Ramseys Draft) downstream to the Wilderness Area boundary.

(10) Whitetop Laurel Creek, located on U.S. Forest Service land in Washington County, from the national forest boundary immediately upstream from the second railroad trestle crossing the creek above Taylors Valley upstream to the confluence of Green Cove Creek.

(11) Ragged Island Creek in Isle of Wight County from its confluence with the James River at a line drawn across the creek mouth at N36°56.306'/W76°29.136' to N36°55.469'/W76°29.802' upstream to a line drawn across the main stem of the creek at N36°57.094'/W76°30.473' to N36°57.113'/W76°30.434', excluding wetlands and impounded areas and including only those tributaries completely contained within the Ragged Island Creek Wildlife Management Area on the northeastern side of the creek.

(12) Big Run in Rockingham County from its headwaters downstream to the first crossing with the Shenandoah National Park boundary and all tributaries to this segment of Big Run within the confines of Shenandoah National Park.

(13) Doyles River in Albemarle County from its headwaters to the first crossing with the Shenandoah National Park boundary and Jones Falls Run from its headwaters to its confluence with Doyles River and all tributaries to these segments of Doyles River and Jones Fall Run within the confines of Shenandoah National Park.

(14) East Hawksbill Creek in Page County from its headwaters downstream to the first crossing with the Shenandoah National Park boundary and all tributaries to this segment of East Hawksbill Creek within the confines of Shenandoah National Park.

(15) Jeremys Run in Page County from its headwaters downstream to the first crossing with the Shenandoah National Park boundary and all tributaries to this segment of Jeremys Run within the confines of Shenandoah National Park.

(16) East Branch Naked Creek in Page County from its headwaters downstream to the first crossing with the Shenandoah National Park boundary and all tributaries to this segment of East Branch Naked Creek within the confines of Shenandoah National Park.

(17) Piney River in Rappahannock County from its headwaters downstream to the first crossing with the Shenandoah National Park boundary and all tributaries to this segment of the Piney River within the confines of Shenandoah National Park.

(18) North Fork Thornton River in Rappahannock County from its headwaters downstream to the first crossing with the Shenandoah National Park boundary and all tributaries to this segment of the North Fork Thornton River within the confines of Shenandoah National Park.

(19) Blue Suck Branch from its headwaters downstream to the first crossing with the George Washington National Forest boundary.

(20) Downy Branch from its headwaters downstream to the first crossing with the George Washington National Forest boundary.

(21) North Branch Simpson Creek (Brushy Run) from its headwaters downstream to its confluence with Simpson Creek.

(22) Roberts Creek from its confluence with the Pedlar River upstream to its first crossing with the National Forest boundary.

(23) Shady Mountain Creek from its headwaters downstream to its confluence with the Pedlar River.

(24) Cove Creek from its headwaters downstream to the National Forest boundary.

(25) Little Cove Creek and its tributaries from the headwaters downstream to the National Forest boundary.

(26) Rocky Branch from its headwaters downstream to its confluence with the North Fork of the Buffalo River.

(27) North Fork of the Buffalo River from its confluence with Rocky Branch downstream to the National Forest Boundary.

(28) The Hazel River in Rappahannock County from its headwaters to the first downstream crossing with the Shenandoah National Park boundary and all tributaries within this segment within the confines of Shenandoah National Park.

(29) Little Stony Creek in Scott County from Bark Camp Lake dam to its confluence with Bakers Branch.

(30) North River in Augusta County from the Staunton Reservoir dam to the first crossing with National Forest lands boundary (near Girl Scout Camp May Flather).

B. Any determinations concerning thermal discharge limitations made under § 316(a) of the Clean Water Act will be considered to be in compliance with the antidegradation policy.

9VAC25-260-50. Numerical criteria for dissolved oxygen, pH, and maximum temperature.***

[~~CLASS*****~~ CLASS]	DESCRIPTION OF WATERS	DISSOLVED OXYGEN (mg/l)****		pH	Max. Temp. (°C)
		Min.	Daily Avg.		
I	Open Ocean	5.0	--	6.0-9.0	--
II	Estuarine Waters (Tidal Water-Coastal Zone to Fall Line)	4.0	5.0	6.0-9.0	--
III	Nontidal Waters (Coastal and Piedmont Zones)	4.0	5.0	6.0-9.0	32
IV	Mountainous Zones Waters	4.0	5.0	6.0-9.0	31
V	Stockable Trout Waters	5.0	6.0	6.0-9.0	21
VI	Natural Trout Waters	6.0	7.0	6.0-9.0	20
VII	Swamp Waters	*	*	~~4.3-9.0*~~ 3.7-8.0*	**

*This classification recognizes that the natural quality of these waters may ~~fall~~ fluctuate outside of the ~~ranges~~ values for D.O. and pH set forth above as water quality criteria~~;~~ ~~therefore, on a case-by-case basis,~~ in Class I through VI waters. The natural quality of these waters is the water quality found or expected in the absence of human-induced pollution. Water quality standards will not be considered violated when conditions are determined by the board to be natural and not due to human-induced sources. The board may develop site specific criteria for ~~specific~~ Class VII waters ~~can be developed~~ that reflect the natural quality of the waterbody when the evidence is sufficient to demonstrate that the site specific criteria rather than narrative criterion will fully protect aquatic life uses. Virginia Pollutant Discharge Elimination System limitations in Class VII waters shall ~~meet pH of 6.0—9.0~~ not cause significant changes to the naturally occurring dissolved oxygen and pH fluctuations in these waters.

**Maximum temperature will be the same as that for Classes I through VI waters as appropriate.

***The water quality criteria in this section do not apply below the lowest flow averaged (arithmetic mean) over a period of seven consecutive days that can be statistically expected to occur once every 10 climatic years (a climatic year begins April 1 and ends March 31). See 9VAC25-260-310 and 9VAC25-260-380 through 9VAC25-260-540 for site specific adjustments to these criteria.

~~****See 9VAC25-260-55 for implementation of these criteria in waters naturally low in dissolved oxygen.~~

[~~*****For~~ ****For] a thermally stratified man-made lake or reservoir in Class III, IV, V or VI waters that are listed in 9VAC25-260-187, these dissolved oxygen criteria apply only to the epilimnion [~~in the lacustrine portion~~] of the water body. When these waters are not stratified, the dissolved oxygen criteria apply throughout the water column.

9VAC25-260-55. ~~Implementation procedure for dissolved oxygen criteria in waters naturally low in dissolved oxygen.~~ (Repealed.)

~~A. The board shall implement this procedure when assessing dissolved oxygen data in preparation of Clean Water Act §§ 305(b) and 303(d) reports in accordance with § 62.1-44.19:5 of the Water Quality Monitoring Information and Restoration Act. The board recognizes that dissolved oxygen concentrations may seasonally fall below the criteria established in 9VAC25-260-50 due to nonanthropogenic sources and physical and chemical processes resulting from:~~

~~1. Density stratification and depth in Class II waters that prevent mixing and reaeration of the deep waters;~~

~~2. Temperature stratification and depth in lakes and reservoirs in Class III, IV, V and VI waters that prevent mixing and reaeration of the deep waters; or~~

~~3. Minimal flow velocity and decomposition of vegetation that prevent mixing and reaeration of stagnant, shallow waters.~~

~~B. In preparation of the Clean Water Act §§ 305(b) and 303(d) reports, the board shall list waters as naturally impaired in accordance with § 62.1-44.19:5 C of the Code of Virginia when the board determines that the low dissolved oxygen concentrations result from nonanthropogenic sources and the physical and chemical processes described in subsection A of this section. The board shall make this determination based upon an evaluation of aquatic life, habitat (including anadromous fish spawning areas), monitoring data, computer modeling results or other accepted scientific principles. The board shall also conduct a watershed assessment to document anthropogenic sources that individually or cumulatively cause low dissolved oxygen~~

~~concentrations including locating and identifying all point and nonpoint sources of pollution and identifying any man-made activities (such as water withdrawals) that cause low flow conditions and result in low dissolved oxygen levels.~~

~~C. The proposed determinations in subsection B of this section shall be subject to public comment on draft § 303(d) reports.~~

~~D. The final determinations in subsection B of this section shall be made available to the public in final § 303(d) reports.~~

~~E. Following a determination made under subsection B of this section, the board shall initiate a rulemaking to set site-specific criteria that reflect the natural quality of that water body or segment.~~

9VAC25-260-90. ~~Site-specific temperature requirements~~ Thermal variances.

~~A.~~ The temperature limits set forth in 9VAC25-260-50 through 9VAC25-260-80 may be superseded in certain locations ~~by Site-Specific Temperature Criteria or in the case~~ where a thermal variance demonstration is performed in accordance with § 316(a) of the Clean Water Act. ~~The protocol for development of site-specific temperature requirements is found in subsection A of this section. Information regarding § 316(a) demonstrations is found in subsection B of this section.~~

~~B. Protocol for Developing Site-Specific Temperature Criteria. For any specified time of year there shall be two upper limiting temperatures for a location based on temperature requirements of important sensitive species found at the location at that time. These limiting temperatures are:~~

~~1. A maximum weekly average temperature that:~~

~~a. In the warmer months is determined by adding to the physiological optimum temperature (usually the optimum for growth) for the most sensitive important species (and appropriate life stage) that normally is found at that location and time; a factor calculated as one third of the difference between the ultimate upper incipient lethal temperature and the optimum temperature for that species;~~

~~b. In the cooler months is an elevated temperature that would still ensure that important species would survive if the temperature suddenly dropped to the normal ambient temperature;~~

~~c. During reproduction seasons meets specific site requirements for successful migration, spawning, egg incubation, fry rearing, and other reproductive functions of important species; and~~

~~d. At a specific site is found necessary to preserve normal species diversity or prevent undesirable growths of nuisance organisms.~~

~~2. A time-dependent maximum temperature for short exposures.~~

~~Baseline thermal conditions shall be measured at a site where there is no unnatural thermal addition from any source, which site is in reasonable proximity to the thermal discharge (within five miles), and which has similar hydrography to that of the receiving waters at the point of discharge.~~

~~Criteria development should be in accordance with Water Quality Criteria 1972: A Report of the Committee on Water Quality Criteria and Quality Criteria for Water, U.S. Environmental Protection Agency.~~

~~C. § 316(a) Determinations.~~ A successful demonstration accepted by the board concerning thermal discharge limits carried out under § 316(a) of the Clean Water Act shall constitute compliance with the temperature requirements of these standards. A successful demonstration must assure the protection and propagation of a balanced indigenous population of aquatic species and wildlife in or on the water into which the discharge is made. When making a determination concerning thermal discharge limits under § 316(a) of the Clean Water Act, the board shall provide notice and opportunity for a public hearing.

9VAC25-260-140. Criteria for surface water.

A. Instream water quality conditions shall not be ~~acutely~~[2] acutely[1] or ~~chronically~~[3] chronically[2] toxic except as allowed in 9VAC25-260-20 B (mixing zones). The following are definitions of acute and chronic toxicity conditions:

"Acute toxicity" means an adverse effect that usually occurs shortly after exposure to a pollutant. Lethality to an organism is the usual measure of acute toxicity. Where death is not easily detected, immobilization is considered equivalent to death.

"Chronic toxicity" means an adverse effect that is irreversible or progressive or occurs because the rate of injury is greater than the rate of repair during prolonged exposure to a pollutant. This includes low level, long-term effects such as reduction in growth or reproduction.

B. The following table is a list of numerical water quality criteria for specific parameters.

~~When information has become available from the Environmental Protection Agency to calculate additional aquatic life or human health criteria not contained in the table, the board may employ these values in establishing effluent limitations or other limitations pursuant to 9VAC25-260-20 A necessary to protect designated uses until the board has completed the regulatory standards adoption process.~~

Table of Parameters [6,7]

PARAMETER CAS Number	USE DESIGNATION					
	AQUATIC LIFE				HUMAN HEALTH	
	FRESHWATER		SALTWATER			
	Acute[1]	Chronic[2]	Acute[1]	Chronic[2]	Public Water Supply[3]	All Other Surface Waters[4]
Acenapthene (µg/l) 83329					~~1,200~~ 670	~~2,700~~ 990
Acrolein (µg/l) 107028					~~320~~ 6.1	~~780~~ 9.3
Acrylonitrile (µg/l) 107131 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					~~0.59~~ 0.51	~~6.6~~ 2.5
Aldrin (µg/l) 309002 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.	3.0		1.3		~~0.0013~~ 0.00049	~~0.0014~~ 0.00050
Ammonia (µg/l) 766-41-7 Chronic criterion is a 30-day average concentration not to be exceeded more than once every three (3) years on the average. (see 9VAC25-260-155)						
Anthracene (µg/l) 120127					~~9,600~~ 8,300	~~110,000~~ 40,000
Antimony (µg/l) 7440360					~~14~~ 5.6	~~4,300~~ 640
Arsenic (µg/l)[5] 7440382	340	150	69	36	10	
Bacteria (see 9VAC25-260-160 and 170)						
Barium (µg/l) 7440393					2,000	
Benzene (µg/l) 71432 Known or suspected carcinogen; human health criteria at risk level 10^{-5}					~~12~~ 22	~~710~~ 510
Benzidine (µg/l) 92875					~~0.0012~~ 0.00086	~~0.0054~~ 0.0020

Known or suspected carcinogen; human health criteria at risk level 10^{-5}						
Benzo (a) anthracene (µg/l) 56553 Known or suspected carcinogen; human health criteria at risk level 10^{-5}					~~0.044~~ 0.038	~~0.49~~ 0.18
Benzo (b) fluoranthene (µg/l) 205992 Known or suspected carcinogen; human health criteria at risk level 10^{-5}					~~0.044~~ 0.038	~~0.49~~ 0.18
Benzo (k) fluoranthene (µg/l) 207089 Known or suspected carcinogen; human health criteria at risk level 10^{-5}					~~0.044~~ 0.038	~~0.49~~ 0.18
Benzo (a) pyrene (µg/l) 50328 Known or suspected carcinogen; human health criteria at risk level 10^{-5}					~~0.044~~ 0.038	~~0.49~~ 0.18
Bis2-Chloroethyl Ether 111444 Known or suspected carcinogen; human health criteria at risk level 10^{-5}					~~0.31~~ 0.30	~~14~~ 5.3
Bis2-Chloroisopropyl Ether (µg/l) ~~39638329~~ 108601					1,400	~~170,000~~ 65,000
Bis2-Ethylhexyl Phthalate (µg/l) 117817 Known or suspected carcinogen; human health criteria at risk level 10^{-5}. Synonym = Di-2-Ethylhexyl Phthalate.					12	22
Bromoform (µg/l) 75252 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					~~44~~ 43	~~3,600~~ 1,400
Butyl benzyl phthalate (µg/l) 85687					~~3,000~~ 1,500	~~5,200~~ 1,900

Cadmium (µg/l)[5] 7440439 Freshwater values are a function of total hardness as calcium carbonate ($CaCO_3$) mg/l and the WER. The minimum hardness allowed for use in the equation below shall be 25 and the maximum hardness shall be 400 even when the actual ambient hardness is less than 25 or greater than 400. Freshwater acute criterion (µg/l) [WER $e^{\{1.128[\ln(\text{hardness})] - 3.828\}}$] ~~WER [$e^{\{1.0166[\ln(\text{hardness})] - 3.924\}}$][(CFa)~~] Freshwater chronic criterion (µg/l) [WER [$e^{\{0.7852[\ln(\text{hardness})] - 3.490\}}$] ~~WER [$e^{\{0.7409[\ln(\text{hardness})] - 4.719\}}$][(CFc)~~] WER = Water Effect Ratio = 1 unless ~~shown~~ determined otherwise under 9VAC25-260-140 F ~~and listed in 9VAC25-260-310~~ e = natural antilogarithm ln = natural logarithm [~~CF = conversion factor a (acute) or c (chronic)~~ ~~CFa= 1.136672 [(ln hardness)(0.041838)]~~ ~~CFc= 1.101672 [(ln hardness)(0.041838)]~~ ~~Acute criteria are 24-hour averages not to be exceeded more than once every three years on the average.~~]	[3.9 ~~2.0~~] ~~WER=1;~~ $CaCO_3$ = 100	[1.1 ~~0.25~~] ~~WER=1;~~ $CaCO_3$ = 100	40 ~~WER=1~~ X WER	8.8 ~~WER=1~~ X WER	5	
Carbon tetrachloride (µg/l) 56235 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					~~2.5~~ 2.3	~~44~~ 16
Chlordane (µg/l) 57749 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.	2.4	0.0043	0.09	0.0040	~~0.021~~ 0.0080	~~0.022~~ 0.0081

Chloride (µg/l) 16887006 Human Health criterion to maintain acceptable taste and aesthetic quality and applies at the drinking water intake. Chloride criteria do not apply in Class II transition zones (see subsection C of this section).	860,000	230,000			250,000	
Chlorine, Total Residual (µg/l) 7782505 In DGIF class i and ii trout waters ~~(9VAC25-260 subsections 390-540)~~ (9VAC25-260-390 through 9VAC25-260-540) or waters with threatened or endangered species are subject to the halogen ban ~~(subsection 110)~~ (9VAC25-260-110).	19 See 9VAC25-260-110	11 See 9VAC25-260-110				
Chlorine Produced Oxidant (µg/l) 7782505			13	7.5		
Chlorobenzene (µg/l) 108907					~~680~~ 130	~~21,000~~ 1,600
Chlorodibromomethane (µg/l) 124481 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					~~4.1~~ 4.0	~~340~~ 130
Chloroform (µg/l) 67663 ~~Known or suspected carcinogen; however, non-carcinogen calculation used and is protective of carcinogenic effects. Use 30Q5 as default design flow (see footnote 6).~~					~~350~~ 340	~~29,000~~ 11,000
2-Chloronaphthalene (µg/l) 91587					~~1,700~~ 1,000	~~4,300~~ 1,600
2-Chlorophenol (µg/l) 95578					~~120~~ 81	~~400~~ 150
Chlorpyrifos (µg/l) 2921882	0.083	0.041	0.011	0.0056		

Chromium III (µg/l)[5] 16065831 Freshwater values are a function of total hardness as calcium carbonate ~~($CaCO_3$)~~ $CaCO_3$ mg/l and the WER. The minimum hardness allowed for use in the equation below shall be 25 and the maximum hardness shall be 400 even when the actual ambient hardness is less than 25 or greater than 400. Freshwater acute criterion ~~(µg/l)~~ µg/l WER $[e^{\{0.8190[\ln(\text{hardness})]+3.7256\}}]$ (CF_a) Freshwater chronic criterion ~~(µg/l)~~ µg/l WER $[e^{\{0.8190[\ln(\text{hardness})]+0.6848\}}]$ (CF_c) WER = Water Effect Ratio = 1 unless ~~shown~~ determined otherwise under 9VAC25-260-140.F ~~and listed in 9VAC25-260-310~~ e = natural antilogarithm ln=natural logarithm CF = conversion factor a (acute) or c (chronic) CF_a= 0.316 CF_c=0.860	570 ~~(WER=1; ($CaCO_3$ = 100)~~	74 ~~(WER=1; ($CaCO_3$ = 100)~~			100 (total Cr)	
Chromium VI (µg/l)[5] 18540299	16	11	1,100	50		
Chrysene (µg/l) 218019 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					~~0.044~~ 0.0038	~~0.49~~ 0.018

Copper (µg/l)[5] 7440508 Freshwater values are a function of total hardness as calcium carbonate ~~($CaCO_3$)~~ $CaCO_3$ mg/l and the WER. The minimum hardness allowed for use in the equation below shall be 25 and the maximum hardness shall be 400 even when the actual ambient hardness is less than 25 or greater than 400. Freshwater acute criterion (µg/l) WER [$e^{\{0.9422[\ln(\text{hardness})]-1.700\}}$] ($CF_a$) Freshwater chronic criterion (µg/l) WER [$e^{\{0.8545[\ln(\text{hardness})]-1.702\}}$] ($CF_c$) WER = Water Effect Ratio = 1 unless ~~shown~~ determined otherwise under 9VAC25-260-140 F ~~and listed in 9VAC25-260-310~~. e = natural antilogarithm ln=natural logarithm CF = conversion factor a (acute) or c (chronic) CF_a = 0.960 CF_c = 0.960 Acute saltwater criterion is a 24-hour average not to be exceeded more than once every three years on the average.	13 ~~WER=1;~~ $CaCO_3$ = 100	9.0 ~~WER=1;~~ $CaCO_3$ = 100	9.3 ~~WER=1~~ X WER	6.0 ~~WER=1~~ X WER	1,300	
Cyanide, Free (µg/l) 57125	22	5.2	1.0	1.0	~~700~~ 140	~~220,000~~ 16,000
DDD (µg/l) 72548 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					~~0.0083~~ 0.0031	~~0.0084~~ 0.0031
DDE (µg/l) 72559 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					~~0.0059~~ 0.0022	~~0.0059~~ 0.0022

DDT (µg/l) 50293 Known or suspected carcinogen; human health criteria at risk level $10^{-5.}$ Total concentration of DDT and metabolites shall not exceed aquatic life criteria.	1.1	0.0010	0.13	0.0010	~~0.0059~~ 0.0022	~~0.0059~~ 0.0022
Demeton (µg/l) 8065483		0.1		0.1		
Diazinon 333415	0.17	0.17	0.82	0.82		
Dibenz (a, h) anthracene (µg/l) 53703 Known or suspected carcinogen; human health criteria at risk level $10^{-5.}$	-	-	-	-	~~0.044~~ 0.038	~~0.49~~ 0.18
[~~Dibutyl phthalate (µg/l)~~ ~~84742~~]					~~2,700~~ [~~2,000~~]	~~12,000~~ [~~4,500~~]
~~Dichloromethane (µg/l)~~ ~~75092~~ ~~Known or suspected carcinogen; human health criteria at risk level 10^{-5}~~ ~~Synonym = Methylene Chloride~~					~~47~~	~~16,000~~
1,2–Dichlorobenzene (µg/l) 95501					~~2,700~~ 420	~~17,000~~ 1,300
1,3– Dichlorobenzene (µg/l) 541731					~~400~~ 320	~~2,600~~ 960
1,4 Dichlorobenzene (µg/l) 106467					~~400~~ 63	~~2,600~~ 190
3,3 Dichlorobenzidine 91941 Known or suspected carcinogen; human health criteria at risk level $10^{-5.}$					~~0.4~~ 0.21	~~0.77~~ 0.28
Dichlorobromomethane (µg/l) 75274 Known or suspected carcinogen; human health criteria at risk level $10^{-5.}$					~~5.6~~ 5.5	~~460~~ 170

1,2 Dichloroethane (µg/l) 107062 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					3.8	~~990~~ 370
1,1 Dichloroethylene (µg/l) 75354					~~310~~ 330	~~17,000~~ 7,100
1,2-trans-dichloroethylene (µg/l) 156605					~~700~~ 140	~~140,000~~ 10,000
2,4 Dichlorophenol (µg/l) 120832					~~93~~ 77	~~790~~ 290
2,4 Dichlorophenoxy acetic acid (2,4-D) (µg/l) 94757					100	
1,2-Dichloropropane (µg/l) 78875 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					~~5.2~~ 5.0	~~390~~ 150
1,3-Dichloropropene (µg/l) 542756 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					~~10~~ 3.4	~~1,700~~ 210
Dieldrin (µg/l) 60571 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.	0.24	0.056	0.71	0.0019	~~0.0014~~ 0.00052	~~0.0014~~ 0.00054
Diethyl Phthalate (µg/l) 84662					~~23,000~~ 17,000	~~120,000~~ 44,000
~~Di-2-Ethylhexyl Phthalate (µg/l)~~ ~~117817~~ ~~Known or suspected carcinogen; human health criteria at risk level 10^{-5}. Synonym = Bis2-Ethylhexyl Phthalate.~~					~~18~~	~~59~~
2,4 Dimethylphenol (µg/l) 105679					~~540~~ 380	~~2,300~~ 850
Dimethyl Phthalate (µg/l) 131113					~~313,000~~ 270,000	~~2,900,000~~ 1,100,000
Di-n-Butyl Phthalate (µg/l) 84742					~~2,700~~ 2,000	~~12,000~~ 4,500
2,4 Dinitrophenol (µg/l) 51285					~~70~~ 69	~~14,000~~ 5,300

2-Methyl-4,6-Dinitrophenol (µg/l) 534521					~~13.4~~ 13	~~765~~ 280
2,4 Dinitrotoluene (µg/l) 121142 Known or suspected carcinogen; human health criteria at risk level 10^{-5}					1.1	~~91~~ 34
~~Dioxin (2, 3, 7, 8-tetrachlorodibenzo-p-dioxin) (ppq)~~ Dioxin 2, 3, 7, 8-tetrachlorodibenzo-p-dioxin (µg/l) 1746016 ~~Criteria are based on a risk level of 10^{-5} and potency of 1.75×10^{-4} $(mg/kg\ day)^{-1}$. To calculate an average effluent permit limit, use mean annual stream flow.~~					~~1.2~~ 5.0 E-8	~~1.2~~ 5.1 E-8
1,2-Diphenylhydrazine (µg/l) 122667 Known or suspected carcinogen; human health criteria at risk level 10^{-5}					~~0.40~~ 0.36	~~5.4~~ 2.0
Dissolved Oxygen ~~(mg/l)~~ (µg/l) ~~See~~ (See 9VAC25-260-50 ~~and 9VAC25-260-55~~)						
Alpha-Endosulfan (µg/l) 959988 Total concentration alpha and beta-endosulfan shall not exceed aquatic life criteria.	0.22	0.056	0.034	0.0087	~~110~~ 62	~~240~~ 89
Beta-Endosulfan (µg/l) 33213659 Total concentration alpha and beta-endosulfan shall not exceed aquatic life criteria.	0.22	0.056	0.034	0.0087	~~110~~ 62	~~240~~ 89
Endosulfan Sulfate (µg/l) 1031078					~~110~~ 62	~~240~~ 89
Endrin (µg/l) 72208	0.086	0.036	0.037	0.0023	~~0.76~~ 0.059	~~0.81~~ 0.060
Endrin Aldehyde (µg/l) 7421934					~~0.76~~ 0.29	~~0.81~~ 0.30
Ethylbenzene (µg/l) 100414					~~3,100~~ 530	~~29,000~~ 2,100

Fecal Coliform (see [9VAC25-260-160] ~~and 9VAC25-260-170)~~						
Fluoranthene (µg/l) 206440					~~300~~ 130	~~370~~ 140
Fluorene (µg/l) 86737					~~1,300~~ 1,100	~~14,000~~ 5,300
Foaming Agents (µg/l) Criterion measured as methylene blue active substances. Criterion to maintain acceptable taste, odor, or aesthetic quality of drinking water and applies at the drinking water intake.					500	
Guthion (µg/l) 86500		0.01		0.01		
Heptachlor (µg/l) 76448 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.	0.52	0.0038	0.053	0.0036	~~0.0021~~ 0.00079	~~0.0021~~ 0.00079
Heptachlor Epoxide (µg/l) 1024573 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.	0.52	0.0038	0.053	0.0036	~~0.0010~~ 0.00039	~~0.0011~~ 0.00039
Hexachlorobenzene (µg/l) 118741 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					~~0.0075~~ 0.0028	~~0.0077~~ 0.0029
Hexachlorobutadiene (µg/l) 87683 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					4.4	~~500~~ 180
Hexachlorocyclohexane Alpha-BHC (µg/l) 319846 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					~~0.039~~ 0.026	~~0.13~~ 0.049

Hexachlorocyclohexane Beta-BHC (µg/l) 319857 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					~~0.14~~ 0.091	~~0.46~~ 0.17
Hexachlorocyclohexane (µg/l) (Lindane) Gamma-BHC 58899 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.	0.95		0.16		~~0.19~~ 0.98	~~0.63~~ 1.8
Hexachlorocyclopentadiene (µg/l) 77474					~~240~~ 40	~~17,000~~ 1,100
Hexachloroethane (µg/l) 67721 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					~~19~~ 14	~~89~~ 33
Hydrogen sulfide (µg/l) 7783064		2.0		2.0		
Indeno (1,2,3,-cd) pyrene (µg/l) 193395 Known or suspected carcinogen; human health criteria at risk level $10^{-5.}$					~~0.044~~ 0.038	~~0.49~~ 0.18
Iron (µg/l) 7439896 Criterion to maintain acceptable taste, odor or aesthetic quality of drinking water and applies at the drinking water intake.					300	
Isophorone (µg/l) 78591 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					~~360~~ 350	~~26,000~~ 9,600
Kepone (µg/l) 143500		zero		zero		

Lead (µg/l)[5] 7439921 Freshwater values are a function of total hardness as calcium carbonate ~~($CaCO_3$)~~ $CaCO_3$ mg/l and the water effect ratio. The minimum hardness allowed for use in the equation below shall be 25 and the maximum hardness shall be 400 even when the actual ambient hardness is less than 25 or greater than 400. Freshwater acute criterion (µg/l) [WER [$e^{\{1.273[\ln(\text{hardness})]-1.084\}}$] ~~WER [$e^{\{1.273[\ln(\text{hardness})]-1.084\}}$][$CF_a$)~~] Freshwater chronic criterion (µg/l) [WER [$e^{\{1.273[\ln(\text{hardness})]-3.259\}}$] ~~WER [$e^{\{1.273[\ln(\text{hardness})]-3.259\}}$][$CF_c$)~~] WER = Water Effect Ratio = 1 unless ~~shown~~ determined otherwise under 9VAC25-260-140 F ~~and listed in 9VAC25-260-310~~ e = natural antilogarithm ln = natural logarithm [~~CF = conversion factor a (acute) or c (chronic)~~ ~~CF_a = 1.46203 [(ln hardness)(0.145712)]~~ ~~CF_c = 1.46203 [(ln hardness)(0.145712)]~~]	[120 ~~94~~] ~~WER=1;~~ $CaCO_3$ = 100	[14 ~~11~~] ~~WER=1;~~ $CaCO_3$ = 100	~~240~~ ~~WER=1~~ [~~230~~ 240] X WER	~~9.3~~ ~~WER=1~~ [~~8.8~~ 9.3] X WER	15	
Malathion (µg/l) 121755		0.1		0.1		
Manganese (µg/l) 7439965 Criterion to maintain acceptable taste, odor or aesthetic quality of drinking water and applies at the drinking water intake.					50	
Mercury (µg/l)[5] 7439976	1.4	0.77	1.8	0.94	~~0.050~~	~~0.051~~
Methyl Bromide (µg/l) 74839					~~48~~ 47	~~4,000~~ 1,500

Methyl Mercury (Fish Tissue Criterion mg/kg) [8] 22967926					0.30	0.30
Methylene Chloride (µg/l) 75092 Known or suspected carcinogen; human health criteria at risk level 10^{-5} Synonym = Dichloromethane					46	5,900
Methoxychlor (µg/l) 72435		0.03		0.03	100	
Mirex (µg/l) 2385855		zero		zero		
~~Monochlorobenzene (µg/l)~~ ~~108907~~					~~680~~	~~21,000~~
Nickel ~~(µg/L)~~[5] (µg/l)[5] 744002 Freshwater values are a function of total hardness as calcium carbonate ~~($CaCO_3$)~~ $CaCO_3$ mg/l and the WER. The minimum hardness allowed for use in the equation below shall be 25 and the maximum hardness shall be 400 even when the actual ambient hardness is less than 25 or greater than 400. Freshwater acute criterion ~~(µg/l)~~ µg/l WER [$e^{\{0.8460[\ln(\text{hardness})] + 1.312\}}$] ($CF_a$) Freshwater chronic criterion (µg/l) WER [$e^{\{0.8460[\ln(\text{hardness})] - 0.8840\}}$] ($CF_c$) WER = Water Effect Ratio = 1 unless ~~shown~~ determined otherwise under 9VAC25-260-140 F ~~and listed in 9VAC25-250-310~~ e = natural antilogarithm ln = natural logarithm CF = conversion factor a (acute) or c (chronic) ~~(CF_a)~~ CF_a = 0.998 ~~(CF_c)~~ CF_c = 0.997	180 ~~WER=1;~~ $CaCO_3$ = 100	20 ~~WER=1;~~ $CaCO_3$ = 100	74 X WER ~~WER=1~~	8.2 X WER ~~WER=1~~	610	4,600

Nitrate as N (µg/l) 14797558					10,000	
Nitrobenzene (µg/l) 98953					17	~~1,900~~ 690
N-Nitrosodimethylamine (µg/l) 62759 Known or suspected carcinogen; human health criteria at risk level $10^{-5.}$					0.0069	~~81~~ 30
N-Nitrosodiphenylamine (µg/l) 86306 Known or suspected carcinogen; human health criteria at risk level $10^{-5.}$					~~50~~ 33	160 60
N-Nitrosodi-n-propylamine (µg/l) 621647 Known or suspected carcinogen; human health criteria at risk level $10^{-5.}$					~~0.05~~ 0.050	~~14~~ 5.1
Nonylphenol 1044051	28	6.6	7.0	1.7		
Parathion (µg/l) 56382	0.065	0.013				
~~PCB 1260 (µg/l) 11096825~~		~~0.014~~		~~0.030~~		
~~PCB 1254 (µg/l) 11097691~~		~~0.014~~		~~0.030~~		
~~PCB 1248 (µg/l) 12672296~~		~~0.014~~		~~0.030~~		
~~PCB 1242 (µg/l) 53469219~~		~~0.014~~		~~0.030~~		
~~PCB 1232 (µg/l) 11141165~~		~~0.014~~		~~0.030~~		
~~PCB 1221 (µg/l) 11104282~~		~~0.014~~		~~0.030~~		
~~PCB 1016 (µg/l) 12674112~~		~~0.014~~		~~0.030~~		
PCB Total (µg/l) 1336363 Known or suspected carcinogen; human health criteria at risk level 10^{-5}		0.014		0.030	~~0.0017~~ 0.00064	~~0.0017~~ 0.00064

Pentachlorophenol (µg/l) 87865 Known or suspected carcinogen; human health criteria risk level at 10^{-5} Freshwater acute criterion (µg/l) $e^{(1.005(pH)-4.869)}$ Freshwater chronic criterion (µg/l) $e^{(1.005(pH)-5.134)}$	8.7 pH = 7.0	6.7 pH = 7.0	13	7.9	~~2.8~~ 2.7	~~82~~ 30
pH See 9VAC25-260-50						
Phenol (µg/l) 108952					~~21,000~~ 10,000	~~4,600,000~~ 860,000
Phosphorus ~~(Elemental µg/l)~~ Elemental (µg/l) 7723140				0.10		
Pyrene (µg/l) 129000					~~960~~ 830	~~11,000~~ 4,000
Radionuclides Gross Alpha Particle Activity (pCi/L) Beta Particle & Photon Activity (mrem/yr) (formerly man-made radio nuclides) ~~Strontium 90 (pCi/L)~~ ~~Tritium (pCi/L)~~ Combined Radium 226 and 228 (pCi/L) Uranium (µg/L)					15 4 ~~8~~ ~~20,000~~ 5 30	~~15~~ ~~4~~ ~~8~~ ~~20,000~~
Selenium (µg/l)[5] 7782492 WER shall not be used for freshwater acute and chronic criteria. Freshwater criteria expressed as total recoverable.	20	5.0	~~300~~ ~~WER=1~~ 290 X WER	71 ~~WER=1~~ X WER	170	~~11,000~~ 4,200

Silver (µg/l)[5] 7440224 Freshwater values are a function of total hardness as calcium carbonate ($CaCO_3$) mg/l and the WER. The minimum hardness allowed for use in the equation below shall be 25 and the maximum hardness shall be 400 even when the actual ambient hardness is less than 25 or greater than 400. Freshwater acute criterion (µg/l) WER [$e^{\{1.72[\ln(\text{hardness})]-6.52\}}$] ($CF_a$) WER = Water Effect Ratio = 1 unless ~~shown~~ determined otherwise under 9VAC25-260-140 F ~~and listed in 9VAC25-260-310~~ e = natural antilogarithm ln=natural logarithm CF = conversion factor a (acute) or c (chronic) ~~(CF_a)~~ CF_a = 0.85	3.4 ~~WER=1~~; $CaCO_3$ = 100		~~2.0~~ ~~WER=1~~ 1.9 X WER			
Sulfate (µg/l) Criterion to maintain acceptable taste, odor or aesthetic quality of drinking water and applies at the drinking water intake.					250,000	
Temperature See 9VAC25-260-50						
1,1,2,2-Tetrachloroethane (µg/l) 79345 Known or suspected carcinogen; human health criteria at risk level 10^{-5})					1.7	~~110~~ 40
Tetrachloroethylene (µg/l) 127184 Known or suspected carcinogen; human health criteria at risk level 10^{-5})					~~8.0~~ 6.9	~~89~~ 33
Thallium (µg/l) 7440280					~~1.7~~ 0.24	~~6.3~~ 0.47
Toluene (µg/l) 108883					~~6,800~~ 510	~~200,000~~ 6,000

Total Dissolved Solids (µg/l) Criterion to maintain acceptable taste, odor or aesthetic quality of drinking water and applies at the drinking water intake.					500,000	
Toxaphene (µg/l) 8001352 ~~The chronic aquatic life criteria have been calculated to also protect wildlife from harmful effects through ingestion of contaminated tissue.~~ Known or suspected carcinogen; human health criteria at risk level 10^{-5}.	0.73	0.0002	0.21	0.0002	~~0.0073~~ 0.0028	~~0.0075~~ 0.0028
Tributyltin (µg/l) 60105	0.46	~~0.063~~ 0.072	~~0.38~~ 0.42	~~0.001~~ 0.0074		
1, 2, 4 Trichlorobenzene (µg/l) 120821					~~260~~ 35	~~940~~ 70
1,1,2-Trichloroethane (µg/l) 79005 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					~~6.0~~ 5.9	~~420~~ 160
Trichloroethylene (µg/l) 79016 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					~~27~~ 25	~~810~~ 300
2, 4, 6 –Trichlorophenol 88062 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					~~21~~ 14	~~65~~ 24
2–(2, 4, 5 –Trichlorophenoxy propionic acid (Silvex) (µg/l) 93721					50	
Vinyl Chloride (µg/l) 75014 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					~~0.23~~ 0.25	~~61~~ 24

Zinc (µg/l)[5] 744066 Freshwater values are a function of total hardness as calcium carbonate ($CaCO_3$) mg/l and the WER. The minimum hardness allowed for use in the equation below shall be 25 and the maximum, hardness shall be 400 even when the actual ambient hardness is less than 25 or greater than 400. Freshwater acute criterion ~~(µg/l)~~ µg/l WER [$e^{\{0.8473[\ln(\text{hardness})]+0.884\}}$] ($CF_a$) Freshwater chronic criterion ~~(µg/l)~~ µg/l WER [$e^{\{0.8473[\ln(\text{hardness})]+0.884\}}$] ($CF_c$) WER = Water Effect Ratio = 1 unless ~~shown~~ determined otherwise under 9VAC25-260-140 F ~~and listed in 9VAC25-260-310~~ e = base e exponential function. ln = log normal function CF_a = 0.978 CF_c = 0.986	120 ~~WER=1;~~ $CaCO_3$ = 100	120 ~~WER=1;~~ $CaCO_3$ = 100	90 ~~WER=1~~ X WER	81 ~~WER=1~~ X WER	~~9,100~~ 7,400	~~69,000~~ 26,000

[1]One hour average concentration not to be exceeded more than once every 3 years on the average, unless otherwise noted.

[2]Four-day average concentration not to be exceeded more than once every 3 years on the average, unless otherwise noted.

[3]Criteria have been calculated to protect human health from toxic effects through drinking water and fish consumption, unless otherwise noted and apply in segments designated as PWS in 9VAC25-260-390-540.

[4]Criteria have been calculated to protect human health from toxic effects through fish consumption, unless otherwise noted and apply in all other surface waters not designated as PWS in 9VAC25-260-390-540.

[5]Acute and chronic saltwater and freshwater aquatic life criteria apply to the biologically available form of the metal and apply as a function of the pollutant's water effect ratio (WER) as defined in 9VAC25-260-140 F (WER X criterion). Metals measured as dissolved shall be considered to be biologically available, or, because local receiving water characteristics may otherwise affect the biological availability of the metal, the biologically available equivalent measurement of the metal can be further defined by determining a Water Effect Ratio (WER) and multiplying the numerical value shown in 9VAC25-260-140 B by the WER. Refer to 9VAC25-260-140 F. Values displayed above in the table are examples and correspond to a WER of 1.0. Metals criteria have been adjusted to convert the total recoverable fraction to dissolved fraction using a conversion factor. Criteria that change with hardness have the conversion factor listed in the table above.

[6] = The flows listed below are default design flows for calculating steady state waste load allocations unless statistically valid methods are employed which demonstrate compliance with the duration and return frequency of the water quality criteria.

Aquatic Life:	
Acute criteria	1Q10
Chronic criteria	7Q10
Chronic criteria (ammonia)	30Q10
Human Health:	
Noncarcinogens	30Q5
Carcinogens	Harmonic mean ~~(An exception to this is for the carcinogen dioxin. The applicable stream flow for dioxin is the mean annual stream flow.)~~

The following are defined for this section:

"1Q10" means the lowest flow averaged over a period of one day which on a statistical basis can be expected to occur once every 10 climatic years.

"7Q10" means the lowest flow averaged over a period of seven consecutive days that can be statistically expected to occur once every 10 climatic years.

"30Q5" means the lowest flow averaged over a period of 30 consecutive days that can be statistically expected to occur once every five climatic years.

"30Q10" means the lowest flow averaged over a period of 30 consecutive days that can be statistically expected to occur once every 10 climatic years.

"Averaged" means an arithmetic mean.

"Climatic year" means a year beginning on April 1 and ending on March 31.

[7]The criteria listed in this table are two significant digits. For other criteria that are referenced to other sections of this regulation in this table, all numbers listed as criteria values are significant.

[[8]The fish tissue criterion for methylmercury applies to a concentration of 0.30 mg/kg as wet weight in edible tissue for species of fish and/or shellfish resident in a waterbody that are commonly eaten in the area and have commercial, recreational, or subsistence value.]

C. Application of freshwater and saltwater numerical criteria. The numerical water quality criteria listed in subsection B of this section (excluding dissolved oxygen, pH, temperature) shall be applied according to the following classes of waters (see 9VAC25-260-50) and boundary designations:

CLASS OF WATERS	NUMERICAL CRITERIA
I and II (Estuarine Waters)	Saltwater criteria apply
II (Transition Zone)	More stringent of either the freshwater or saltwater criteria apply
II (Tidal Freshwater), III, IV, V, VI and VII	Freshwater criteria apply

The following ~~described~~ describes the boundary designations for Class II, (estuarine, transition zone and tidal freshwater waters) by river basin:

1. Rappahannock Basin. Tidal freshwater is from the fall line of the Rappahannock River to ~~Buoy 37 near Tappahannock, Virginia,~~ the upstream boundary of the transition zone including all tidal tributaries that enter the tidal freshwater Rappahannock River.

~~Transition zone is from Buoy 37 to Buoy 11 near Morattico, Virginia, including all tidal tributaries that enter the transition zone of the Rappahannock River.~~

Transition zone upstream boundary – 38° 4' 56.59"/-76° 58' 47.93" (430 feet east of Hutchinson Swamp) to 38° 5' 23.33"/-76° 58' 24.39" (0.7 miles upstream of Peedee Creek).

Transition zone downstream boundary - 37° 58' 45.80"/-76° 55' 28.75" (1,000 feet downstream of Jenkins Landing) to 37° 59' 20.07/ -76° 53' 45.09" (0.33 miles upstream of Mulberry Point). All tidal waters that enter the transition zone are themselves transition zone waters.

Estuarine waters are from ~~Buoy 11~~ the downstream boundary of the transition zone to the mouth of the Rappahannock River (Buoy 6), including all tidal tributaries that enter the estuarine waters of the Rappahannock River.

2. York Basin. Tidal freshwater is from the fall line of the Mattaponi River at N37° 47' 20.03"/W77° 6' 15.16" (800 feet upstream of the Route 360 bridge in Aylett) to ~~Clifton, Virginia~~ the upstream boundary of the Mattaponi River transition zone, and from the fall line of the Pamunkey River at N37° 41' 22.64" /W77° 12' 50.83" (2,000 feet upstream of Totopotomy Creek) to ~~Sweet Hall Landing, Virginia~~ the upstream boundary of the Pamunkey River transition zone, including all tidal tributaries that enter the tidal freshwaters of the Mattaponi and Pamunkey Rivers.

~~Transition~~ Mattaponni River transition zone upstream boundary ~~of the Mattaponi River is from Clifton, Virginia to the York River and the transition zone of the Pamunkey River is from Sweet Hall Landing, Virginia, to the York River~~ – N37° 39' 29.65"/W76° 52' 53.29" (1,000 feet

upstream of Mitchell Hill Creek) to N37° 39' 24.20"/W76° 52' 55.87" (across from Courthouse Landing). Mattaponi River transition zone downstream boundary – N37° 32' 19.76"/W76° 47' 29.41" (old Lord Delaware Bridge, west side) to N37° 32' 13.25"/W76° 47' 10.30" (old Lord Delaware Bridge, east side).

Pamunkey River transition zone upstream boundary – N37° 32' 36.63"/W76° 58' 29.88" (Cohoke Marsh, 0.9 miles upstream of Turkey Creek) to N37° 32' 36.51"/W76° 58' 36.48" (0.75 miles upstream of creek at Cook Landing). Pamunkey River transition zone downstream boundary – N37° 31' 57.90"/ 76° 48' 38.22" (old Eltham Bridge, west side) to N37° 32' 6.25"/W76° [~~14'~~ 48'] 18.82" (old Eltham Bridge, east side).

~~The transition zone for the York River is from West Point, Virginia, to Buoy 13 near Poropotank Bay.~~ All tidal tributaries that enter the transition zones of the Mattaponi~~,~~ and Pamunkey~~, and York~~ Rivers are themselves in the transition zone.

Estuarine waters are from ~~Buoy 13~~ the downstream boundary of the transition zones of the Mattaponi and Pamunkey Rivers to the mouth of the York River (Tue Marsh Light) including all tidal tributaries that enter the estuarine waters of the York River.

3. James Basin. Tidal Freshwater is from the fall line of the James River in the City of Richmond upstream of Mayo Bridge to the ~~confluence of the Chickahominy River (Buoy 70)~~ upstream boundary of the transition zone, including all tidal tributaries that enter the tidal freshwater James River.

~~Transition~~ James River transition zone ~~is from Buoy 70 to Buoy 47 near Jamestown Island including all tidal tributaries that enter the transition zone of the James River~~ upstream boundary – N37° 14' 28.25"/W76° 56' 44.47" (at Tettington) to N37° 13' 38.56"/W76° 56' 47.13" 0.3 miles downstream of Sloop Point.

Chickahominy River transition zone upstream boundary – N37° 25' 44.79"/W77° 1' 41.76" (Holly Landing).

Transition zone downstream boundary – N37° 12' 7.23/W76° 37' 34.70" (near Carters Grove Home, 1.25 downstream of Grove Creek) to N37° 9' 17.23/W76° 40' 13.45" (0.7 miles upstream of Hunnicutt Creek). All tidal waters that enter the transition zone are themselves transition zone waters.

Estuarine waters are from ~~Buoy 47~~ the downstream transition zone boundary to the mouth of the James River (Buoy 25) including all tidal tributaries that enter the estuarine waters of the James River.

4. Potomac Basin. Tidal Freshwater includes all tidal tributaries that enter the Potomac River from its fall line at the Chain Bridge (N38° 55' 46.28"/W77° 6' 59.23") to ~~Buoy 43~~ the upstream transition zone boundary near Quantico, Virginia.

Transition zone includes all tidal tributaries that enter the Potomac River from ~~Buoy 43~~ N38° 31' 27.05"/W77° 17' 7.06" (midway between Shipping Point and Quantico Pier) to ~~Buoy 33 near Dahlgren, Virginia~~ N38° 23' 22.78"/W77° 1' 45.50" (one mile southeast of Mathias Point).

Estuarine waters includes all tidal tributaries that enter the Potomac River from ~~Buoy 33~~ the downstream transition zone boundary to the mouth of the Potomac River (Buoy 44B).

5. Chesapeake Bay, Atlantic Ocean, and small coastal basins. Estuarine waters include the Atlantic Ocean tidal tributaries, and the Chesapeake Bay and its small coastal basins from the Virginia state line to the mouth of the bay (a line from Cape Henry drawn through Buoys 3 and 8 to Fishermans Island), and its tidal tributaries, excluding the Potomac tributaries and those tributaries listed above.

6. Chowan River Basin. Tidal freshwater includes the Northwest River and its tidal tributaries from the Virginia-North Carolina state line to the free flowing portion, the Blackwater River and its tidal tributaries from the Virginia-North Carolina state line to the end of tidal waters at approximately state route 611 at river mile 20.90, the Nottoway River and its tidal tributaries from the Virginia-North Carolina state line to the end of tidal waters at approximately Route 674, and the North Landing River and its tidal tributaries from the Virginia-North Carolina state line to the Great Bridge Lock.

Transition zone includes Back Bay and its tributaries in the City of Virginia Beach to the Virginia-North Carolina state line.

D. Site-specific modifications to numerical water quality criteria.

1. The board may consider site-specific modifications to numerical water quality criteria in subsection B of this section where the applicant or permittee demonstrates that the alternate numerical water quality criteria are sufficient to protect all designated uses (see 9VAC25-260-10) of that particular surface water segment or body.

2. Any demonstration for site-specific human health criteria shall be restricted to a reevaluation of the bioconcentration or bioaccumulation properties of the pollutant. The exceptions to this restriction are for site-specific criteria for taste, odor, and aesthetic compounds noted by double asterisks in subsection B of this section and nitrates.

3. ~~Site-specific temperature requirements are found in 9VAC25-260-90.~~

~~4.~~ Procedures for promulgation and review of site-specific modifications to numerical water quality criteria resulting from subdivisions 1 and 2 of this subsection.

a. Proposals describing the details of the site-specific study shall be submitted to the board's staff for approval prior to commencing the study.

b. Any site-specific modification shall be promulgated as a regulation in accordance with the Administrative Process Act. All site-specific modifications shall be listed in 9VAC25-260-310 (Special standards and requirements).

E. Variances to water quality standards.

1. A variance from numeric criteria may be granted to a discharger if it can be demonstrated that one or more of the conditions in 9VAC25-260-10 ~~G~~ H limit the attainment of one or more specific designated uses.

a. Variances shall apply only to the discharger to whom they are granted and shall be reevaluated and either continued, modified or revoked at the time of permit issuance. At that time the permittee shall make a showing that the conditions for granting the variance still apply.

b. Variances shall be described in the public notice published for the permit. The decision to approve a variance shall be subject to the public participation requirements of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation, 9VAC25-31 (Permit Regulation).

c. Variances shall not prevent the maintenance and protection of existing uses or exempt the discharger or regulated activity from compliance with other appropriate technology or water quality-based limits or best management practices.

d. Variances granted under this section shall not apply to new discharges.

e. Variances shall be submitted by the department's Division of Scientific Research or its successors to the Environmental Protection Agency for review and approval/disapproval.

f. A list of variances granted shall be maintained by the department's Division of Scientific Research or its successors.

2. None of the variances in this subsection shall apply to the halogen ban section (9VAC25-260-110) or temperature criteria in 9VAC25-260-50 if superseded by § 316(a) of the Clean Water Act requirements. No variances in this subsection shall apply to the criteria that are designed to protect human health from carcinogenic and noncarcinogenic toxic effects (subsection B of this section) with the exception of the metals, and the taste, odor, and aesthetic compounds noted by double asterisks and nitrates, listed in subsection B of this section.

F. Water effect ratio.

1. A water effects ratio (WER) shall be determined by measuring the effect of receiving water (as it is or will be affected by any discharges) on the bioavailability or toxicity of a metal by using standard test organisms and a metal to conduct toxicity tests simultaneously in receiving water and laboratory water. The ratio of toxicities of the metal(s) in the two waters is the WER (toxicity in receiving water divided by toxicity in laboratory water = WER). Once an acceptable WER for a metal is established, the numerical value for the metal in subsection B of this section is multiplied by the WER to produce an instream concentration that will protect designated uses. This instream concentration shall be utilized in permitting decisions.

2. The WER shall be assigned a value of 1.0 unless the applicant or permittee demonstrates to the department's satisfaction in a permit proceeding that another value is appropriate, or unless available data allow the department to compute a WER for the receiving waters. The applicant or permittee is responsible for proposing and conducting the study to develop a WER. The study may require multiple testing over several seasons. The applicant or permittee shall obtain the department's Division of Scientific Research or its successor approval of the study protocol and the final WER.

3. The Permit Regulation at 9VAC25-31-230 C requires that permit limits for metals be expressed as total recoverable measurements. To that end, the study used to establish the WER may be based on total recoverable measurements of the metals.

4. The Environmental Protection Agency views the WER in any particular case as a site-specific criterion. Therefore, the department's Division of Scientific Research or its successor shall submit the results of the study to the Environmental Protection Agency for review and approval/disapproval within 30 days of the receipt of certification from the state's Office of the Attorney General. Nonetheless, the WER is established in a permit proceeding, shall be described in the public notice associated with the permit proceeding, and applies only to the applicant or permittee in that proceeding. The department's action to approve or disapprove a WER is a case decision, not an amendment to the present regulation.

The decision to approve or disapprove a WER shall be subject to the public participation requirements of the Permit Regulation, 9VAC25-31-260 et seq. A list of final WERs will be maintained by the department's Division of Scientific Research or its successor.

5. A WER shall not be used for the freshwater and saltwater chronic mercury criteria or the freshwater acute and chronic selenium criteria.

Part II
Standards with More Specific Application

[9VAC25-260-160. Fecal coliform bacteria; shellfish waters.

In all open ocean or estuarine waters capable of propagating shellfish or in specific areas where public or leased private shellfish beds are present, and including those waters on which condemnation ~~or restriction classifications~~ are established by the State Department of Health, the following criteria for fecal coliform bacteria shall apply:

The geometric mean fecal coliform value for a sampling station shall not exceed an MPN (most probable number) or MF (membrane filtration using mTEC culture media) of 14 per 100 milliliters (ml). The estimated 90th percentile shall not exceed an MPN of 43 per 100 ml for a 5-tube ~~, 3 dilution~~ decimal dilution test or an MPN of 49 per 100 ml for a 3-tube ~~, 3 dilution~~ decimal dilution test or MF test of 31 CFU (colony forming units) per 100 ml.]

9VAC25-260-170. Bacteria; other recreational waters.

A. ~~In surface waters, except shellfish waters and certain waters identified in subsections B and C of this section, the~~ The following bacteria criteria (colony forming units (CFU)/100 ml) shall apply to protect primary contact recreational uses in surface waters, except waters identified in subsection B of this section:

~~1. Fecal coliform bacteria shall not exceed a geometric mean of 200 fecal coliform bacteria per 100 ml of water for two or more samples over a calendar month nor shall more than 10% of the total samples taken during any calendar month exceed 400 fecal coliform bacteria per 100 ml of water. This criterion shall not apply for a sampling station after the bacterial indicators described in subdivision 2 of this subsection have a minimum of 12 data points or after June 30, 2008, whichever comes first.~~

~~2. E. coli and enterococci bacteria per 100 ml of water shall not exceed the following:~~

	~~Geometric Mean[1]~~	~~Single Sample Maximum[2]~~
~~Freshwater[3]~~		
~~E. coli~~	~~126~~	~~235~~
~~Saltwater and Transition Zone[3]~~		
~~enterococci~~	~~35~~	~~104~~

~~[1]For two or more samples taken during any calendar month.~~

~~[2]No single sample maximum for enterococci and E. coli shall exceed a 75% upper one-sided confidence limit based on a site specific log standard deviation. If site data are insufficient to establish a site specific log standard deviation, then 0.4 shall be used as the log standard deviation in fresh water and 0.7 shall be as the log standard deviation in saltwater and transition zone. Values shown are based on a log standard deviation of 0.4 in freshwater and 0.7 in saltwater.~~

~~[3]See 9 VAC 25-260-140 C for freshwater and transition zone delineation.~~

E.coli bacteria shall not exceed a monthly geometric mean of 126 CFU/100 ml in freshwater [~~, or E.coli bacteria shall not exceed a monthly geometric mean of 206 CFU/100 ml in freshwater~~].

Enterococci bacteria shall not exceed a monthly geometric mean of 35 CFU/100 ml in transition and saltwater.

1. See 9VAC25-260-140 C for boundary delineations for freshwater, transition and saltwater.

2. Geometric means shall be calculated using all data collected during any calendar month with a minimum of four weekly samples.

3. If there [~~is~~ are] insufficient data to calculate monthly geometric means in freshwater, no more than 10% of the total samples in the assessment period shall exceed 235 E.coli CFU/100 ml [~~, or if there is insufficient data to calculate monthly geometric means in freshwater, no more than 10% of the total samples in the assessment period shall exceed 384 E.coli CFU/100 ml~~].

4. If there [~~is~~ are] insufficient data to calculate monthly geometric means in transition and saltwater, no more than 10% of the total samples in the assessment period shall exceed enterococci 104 CFU/100 ml.

5. For beach advisories or closures, a single sample maximum of 235 E.coli CFU/100 ml in freshwater and a single sample maximum of 104 enterococci CFU/100 ml in saltwater and transition zones shall apply [~~, or for beach advisories or closures, a single sample maximum of 384 E.coli CFU/100 ml in freshwater and a single sample maximum of 104 enterococci CFU/100 ml in saltwater and transition zones shall apply~~].

~~B. Notwithstanding the above, all sewage discharges shall be disinfected to achieve the applicable bacteria concentrations in subdivision A 2 of this section prior to discharge.~~

~~However, the board, with the advice of the State Department of Health, may determine that reduced or no disinfection of a discharge is appropriate on a seasonal or year-round basis. In making such a determination, the board shall consider the~~

~~designated uses of these waters and the seasonal nature of those uses. Such determinations will be made during the process of approving, issuing, or reissuing the discharge permit and shall be in conformance with a board approved site-specific use-attainability analysis performed by the permittee. When making a case-by-case determination concerning the appropriate level of disinfection for sewage discharges into these waters, the board shall provide a 45-day public notice period and opportunity for a public hearing.~~

~~C. Surface waters, or portions of these, may be designated in accordance with 9VAC25-260-10 to protect secondary contact recreation.~~

~~1. Sewage discharges to secondary contact recreational waters shall meet the requirements of the disinfection policy set forth in subsection B of this section.~~

~~2. In surface waters, except shellfish waters, designated for secondary contact recreation under this subsection, the~~ B. The following bacteria criteria per 100 ml (CFU/100 ml) of water shall apply:

	~~Geometric Mean[1]~~	~~Single Sample Maximum[2]~~
~~Freshwater[3]~~		
~~E. coli~~	~~630~~	~~1173~~
~~Saltwater and Transition Zone[3]~~		
~~enterococci~~	~~175~~	~~519~~

~~[1]Calendar month average for two or more samples.~~

~~[2]No single sample maximum for enterococci and E. coli in secondary contact waters shall exceed a 75% upper one-sided confidence limit based on a site-specific log standard deviation. If site data are insufficient to establish a site-specific log standard deviation, then 0.4 shall be the log standard deviation in fresh and transition zone waters and 0.7 shall be the log standard deviation in saltwater. Values shown are based on a log standard deviation of 0.4 in freshwater and 0.7 in saltwater.~~

~~[3]See subsection 9 VAC 25-260-140 C for freshwater and transition zone delineation.~~

E.coli bacteria shall not exceed a monthly geometric mean of 630 CFU/100 ml in freshwater.

Enterococci bacteria shall not exceed a monthly geometric mean of 175 CFU/100 ml in transition and saltwater.

1. See 9VAC25-260-140 C for boundary delineations for freshwater, transition and saltwater.

2. Geometric means shall be calculated using all data collected during any calendar month with a minimum of four weekly samples.

3. If there is insufficient data to calculate monthly geometric means in freshwater, no more than 10% of the total samples in the assessment period shall exceed 1173 E.coli CFU/100 ml.

4. If there is insufficient data to calculate monthly geometric means in transition and saltwater, no more than 10% of the total samples in the assessment period shall exceed 519 enterococci CFU/100 ml.

5. Where the existing water quality for bacteria is below the geometric mean criteria in a water body designated for secondary contact in subdivision 6 of this subsection that higher water quality will be maintained in accordance with 9VAC25-260-30 A 2.

~~3.~~ 6. Surface waters designated under this subsection are as follows:

a. (Reserved)

b. (Reserved)

c. (Reserved)

9VAC25-260-185. Criteria to protect designated uses from the impacts of nutrients and suspended sediment in the Chesapeake Bay and its tidal tributaries.

A. Dissolved oxygen.

Designated Use	Criteria Concentration/ Duration	Temporal Application
Migratory fish spawning and nursery	7-day mean ≥ 6 mg/l (tidal habitats with 0-0.5 ppt salinity)	February 1-May 31
	Instantaneous minimum ≥ 5 mg/l	
Open water[1]	30 day mean ≥ 5.5 mg/l (tidal habitats with 0-0.5 ppt salinity)	~~year-round~~ year-round[2] [~~June 1-September 30~~ ~~October 1-May 31~~]
	30 day mean ≥ 5 mg/l (tidal habitats with > 0.5 ppt salinity)	
	7 day mean ≥ 4 mg/l	
	Instantaneous minimum ≥ 3.2 mg/l at temperatures < 29°C	
	Instantaneous minimum ≥ 4.3 mg/l at temperatures ≥ 29°C	

Deep water	30 day mean ≥ 3 mg/l	June 1-September 30
	1 day mean ≥ 2.3 mg/l	
	Instantaneous minimum ≥ 1.7 mg/l	
Deep channel	Instantaneous minimum ≥ 1 mg/l	June 1-September 30

[1]In applying this open water instantaneous criterion to the Chesapeake Bay and its tidal tributaries where the existing water quality for dissolved oxygen exceeds an instantaneous minimum of 3.2 mg/l, that higher water quality for dissolved oxygen shall be provided antidegradation protection in accordance with 9 VAC 25-610-30 A 2.

[2]Open-water dissolved oxygen criteria attainment is assessed separately over two time periods: summer (June 1-September 30) and nonsummer (October 1-May 31) months.

B. Submerged aquatic vegetation and water clarity. ~~If the submerged aquatic vegetation (SAV) acres in this subsection are met in any individual Chesapeake Bay Program segment as described in subsection D of this section, then the shallow water submerged aquatic vegetation use is met in that segment. If the SAV acres in this subsection are not met in any individual Chesapeake Bay Program segment, then the water clarity criteria shall apply to the water clarity acres in that segment. If these water clarity criteria are met to the bottom water sediment interface for the number of water clarity acres in that segment, then the shallow water submerged aquatic vegetation use is met; regardless of the number of acres of SAV in that segment.~~ Attainment of the shallow-water submerged aquatic vegetation designated use shall be determined using any [one] of the following criteria:

Designated Use	Chesapeake Bay Program Segment	SAV Acres[1]	~~Water Clarity Criteria (percent light through water)~~[2] Percent Light-Through-Water[2]	Water Clarity Acres[1]	Temporal Application
Shallow Water Submerged Aquatic Vegetation Use	CB5MH	7,633	22%	14,514	April 1 - October 31
	CB6PH	1,267	22%	3,168	March 1 - November 30
	CB7PH	15,107	22%	34,085	March 1 - November 30
	CB8PH	11	22%	28	March 1 - November 30
	POTTF	2,093	13%	5,233	April 1 - October 31
	POTOH	1,503	13%	3,758	April 1 - October 31
	POTMH	4,250	22%	10,625	April 1 - October 31
	RPPTF	66	13%	165	April 1 - October 31
	RPPOH	~~0~~ 4	13%	~~0~~ 10	April 1 - October 31
	RPPMH	1700	22%	5000	April 1 - October 31
	CRRMH	768	22%	1,920	April 1 - October 31
	PIAMH	3,479	22%	8,014	April 1 - October 31
	MPNTF	85	13%	213	April 1 - October 31
	MPNOH	~~0~~ -	-	~~0~~ -	-
	PMKTF	187	13%	468	April 1 - October 31
	PMKOH	~~0~~ -	-	~~0~~ -	-

	YRKMH	239	22%	598	April 1 - October 31
	YRKPH	2,793	22%	6,982	March 1 - November 30
	MOBPH	15,901	22%	33,990	March 1 - November 30
	JMSTF2	200	13%	500	April 1 - October 31
	JMSTF1	1000	13%	2500	April 1 - October 31
	APPTF	379	13%	948	April 1 - October 31
	JMSOH	15	13%	38	April 1 - October 31
	CHKOH	535	13%	1,338	April 1 - October 31
	JMSMH	200	22%	500	April 1 - October 31
	JMSPH	300	22%	750	March 1 - November 30
	[WBEMH]	~~0~~ [-]	[-]	~~0~~ [-]	[-]
	[SBEMH]	~~0~~ [-]	[-]	~~0~~ [-]	[-]
	[EBEMH]	~~0~~ [-]	[-]	~~0~~ [-]	[-]
	~~LAFMH~~	~~0~~	~~-~~	~~0~~	~~-~~
	[ELIPH]	~~0~~ [-]	[-]	~~0~~ [-]	[-]
	LYNPH	107	22%	268	March 1 - November 30
	POCOH	~~0~~ -	-	~~0~~ -	-
	POCMH	4,066	22%	9,368	April 1 - October 31
	TANMH	13,579	22%	22,064	April 1 - October 31

[1]The assessment period for SAV and water clarity acres shall be the single best year in the most recent three consecutive years. When three consecutive years of data are not available, a minimum of three years within the ~~most recent five years shall be used~~ data assessment window.

[2]Percent Light through Water = $100e^{(-KdZ)}$ where K_d is water column light attenuation coefficient and can be measured directly or converted from a measured secchi depth where K_d = 1.45/secchi depth. Z = depth at location of measurement of K_d.

C. Chlorophyll a.

Designated Use	Chlorophyll a Narrative Criterion	Temporal Application
Open Water	Concentrations of chlorophyll a in free-floating microscopic aquatic plants (algae) shall not exceed levels that result in undesirable or nuisance aquatic plant life, or render tidal waters unsuitable for the propagation and growth of a balanced, indigenous population of aquatic life or otherwise result in ecologically undesirable water quality conditions such as reduced water clarity, low dissolved oxygen, food supply imbalances, proliferation of	March 1 - September 30

	species deemed potentially harmful to aquatic life or humans or aesthetically objectionable conditions.	
*See 9VAC25-260-310 special standard bb for numerical chlorophyll criteria for the tidal James River.		

D. Implementation.

1. Chesapeake Bay program segmentation scheme as described in Chesapeake Bay Program, 2004 Chesapeake Bay Program Analytical Segmentation Scheme-Revisions, Decisions and Rationales: 1983—2003, CBP/TRS 268/04, EPA 903-R-04-008, Chesapeake Bay Program, Annapolis, Maryland, and the Chesapeake Bay Program published 2005 addendum (CBP/TRS 278-06; EPA 903-R-05-004) is listed below and shall be used as the spatial assessment unit to determine attainment of the criteria in this section for each designated use.

Chesapeake Bay Segment Description	Segment Name[1]	Chesapeake Bay Segment Description	Segment Name[1]
Lower Central Chesapeake Bay	CB5MH	Mobjack Bay	MOBPH
Western Lower Chesapeake Bay	CB6PH	Upper Tidal Fresh James River	JMSTF2
Eastern Lower Chesapeake Bay	CB7PH	Lower Tidal Fresh James River	JMSTF1
Mouth of the Chesapeake Bay	CB8PH	Appomattox River	APPTF
Upper Potomac River	POTTF	Middle James River	JMSOH
Middle Potomac River	POTOH	Chickahominy River	CHKOH
Lower Potomac River	POTMH	Lower James River	JMSMH
Upper Rappahannock River	RPPTF	Mouth of the James River	JMSPH
Middle Rapphannock River	RPPOH	Western Branch Elizabeth River	WBEMH
Lower Rapphannock River	RPPMH	Southern Branch Elizabeth River	SBEMH
Corrotoman River	CRRMH	Eastern Branch Elizabeth River	EBEMH
Piankatank River	PIAMH	Lafayette River	LAFMH
Upper Mattaponi River	MPNTF	Mouth of the Elizabeth River	ELIPH
Lower Mattaponi River	MPNOH	Lynnhaven River	LYNPH
Upper Pamunkey River	PMKTF	Middle Pocomoke River	POCOH
Lower Pamunkey River	PMKOH	Lower Pocomoke River	POCMH
Middle York River	YRKMH	Tangier Sound	TANMH
Lower York River	YRKPH		

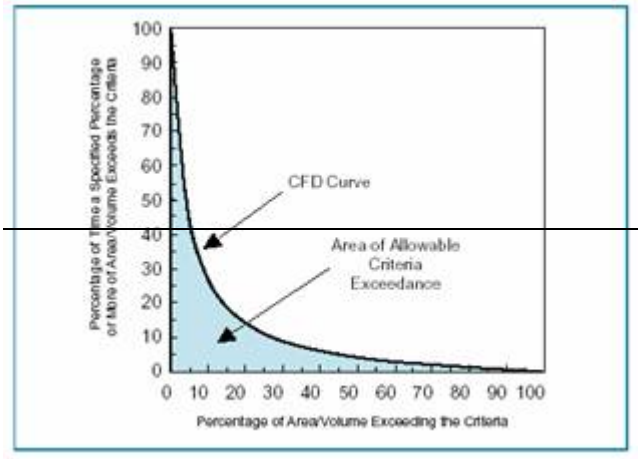
[1]First three letters of segment name represent Chesapeake Bay segment description, letters four and five represent the salinity regime of that segment (TF = Tidal Fresh, OH = Oligohaline, MH = Mesohaline and PH = Polyhaline) and a sixth space is reserved for subdivisions of that segment.

2. The assessment period shall be the most recent three consecutive years. When three consecutive years of data are not available, a minimum of three years within the ~~most recent five years shall be used~~ the data assessment window.

3. Attainment of these criteria shall be assessed through comparison of the generated cumulative frequency distribution of the monitoring data to the applicable criteria reference curve for each designated use. If the monitoring data cumulative frequency curve is completely contained inside the reference curve, then the segment is in attainment of the designated use. The reference curves and procedures to be followed are published in the USEPA, Ambient Water Quality Criteria for Dissolved Oxygen, Water Clarity and Chlorophyll a for the Chesapeake Bay and Its Tidal Tributaries, EPA 903-R-03-002, April 2003 and the 2004 (EPA 903-R-03-002 October 2004) and 2007 (CBA/TRS 285-07, EPA 903-R-07-003) addenda. ~~If no reference curve is published, the cumulative frequency distribution reference curve in Figure 1, which represents 10% allowable exceedences equally distributed between time and space, shall be the applicable reference curve.~~ An exception to this requirement is in measuring attainment of the SAV and water clarity acres, which are compared directly to the criteria.

[~~Figure 1.~~

EDITOR'S NOTE: Figure 1 is being deleted.



]

[9VAC25-260-187. Criteria for man-made lakes and reservoirs to protect aquatic life and recreational designated uses from the impacts of nutrients.

A. The criteria in subsection B of this section apply to the man-made lakes and reservoirs listed in this section. Additional man-made lakes and reservoirs may be added as new reservoirs are constructed or monitoring data become available from outside groups or future agency monitoring.

B. Whether or not algicide treatments are used, the chlorophyll a criteria apply to all waters on the list. The total phosphorus criteria apply only if a specific man-made lake or reservoir received algicide treatment during the monitoring and assessment period of April 1 through October 31.

The 90th percentile of the chlorophyll a data collected at one meter or less within the lacustrine portion of the man-made lake or reservoir between April 1 and October 31 shall not exceed the chlorophyll a criterion for that water body in each of the two most recent monitoring years that chlorophyll a data are available. For a water body that received algicide treatment, the median of the total phosphorus data collected at one meter or less within the lacustrine portion of the man-made lake or reservoir between April 1 and October 31 shall not exceed the total phosphorus criterion in each of the two most recent monitoring years that total phosphorus data are available.

Monitoring data used for assessment shall be from sampling location(s) within the lacustrine portion where observations are evenly distributed over the seven months from April 1 through October 31 and are in locations that are representative, either individually or collectively, of the condition of the man-made lake or reservoir.

Man-made Lake or Reservoir Name	Location	Chlorophyll a (µg/L)	Total Phosphorus (µg/L)
Able Lake	Stafford County	35	40
Airfield Pond	Sussex County	35	40
Amelia Lake	Amelia County	35	40
Aquia Reservoir (Smith Lake)	Stafford County	35	40
Bark Camp Lake (Corder Bottom Lake, Lee/Scott/Wise Lake)	Scott County	35	40
Beaver Creek Reservoir	Albemarle County	35	40
Beaverdam Creek Reservoir (Beaverdam Reservoir)	Bedford County	35	40
Beaverdam Reservoir	Loudoun County	35	40
Bedford Reservoir (Stony Creek Reservoir)	Bedford County	35	40
Big Cherry Lake	Wise County	35	40
Breckenridge Reservoir	Prince William County	35	40
Briery Creek Lake	Prince Edward County	35	40
Brunswick Lake (County Pond)	Brunswick County	35	40
Burke Lake	Fairfax County	60	40
Carvin Cove Reservoir	Botetourt County	35	40
Cherrystone Reservoir	Pittsylvania County	35	40
Chickahominy Lake	Charles City County	35	40
Chris Green Lake	Albemarle County	35	40
Claytor Lake	Pulaski County	25	20

Clifton Forge Reservoir (Smith Creek Reservoir)	Alleghany County	35	20
Coles Run Reservoir	Augusta County	10	10
Curtis Lake	Stafford County	60	40
Diascund Creek Reservoir	New Kent County	35	40
Douthat Lake	Bath County	25	20
Elkhorn Lake	Augusta County	10	10
Emporia Lake (Meherrin Reservoir)	Greensville County	35	40
Fairystone Lake	Henry County	35	40
Falling Creek Reservoir	Chesterfield County	35	40
Fluvanna Ruritan Lake	Fluvanna County	60	40
Fort Pickett Reservoir	Nottoway/ Brunswick County	35	40
Gatewood Reservoir	Pulaski County	35	40
Georges Creek Reservoir	Pittsylvania County	35	40
Goose Creek Reservoir	Loudoun County	35	40
Graham Creek Reservoir	Amherst County	35	40
Great Creek Reservoir	Lawrenceville	35	40
Harrison Lake	Charles City County	35	40
Harwood Mills Reservoir	York County	60	40
Hidden Valley Lake	Washington County	35	40
Hogan Lake	Pulaski County	35	40
Holiday Lake	Appomattox County	35	40
Hungry Mother Lake	Smyth County	35	40
Hunting Run Reservoir	Spotsylvania County	35	40
J. W. Flannagan Reservoir	Dickenson County	25	20
Kerr Reservoir, Virginia portion (Buggs Island Lake)	Halifax County	25	30
Keysville Reservoir	Charlotte County	35	40
Lake Albemarle	Albemarle County	35	40
Lake Anna	Louisa County	25	30
Lake Arrowhead	Page County	35	40
Lake Burnt Mills	Isle of Wight County	60	40
Lake Chesdin	Chesterfield County	35	40
Lake Cohoon	Suffolk City	60	40
Lake Conner	Halifax County	35	40
Lake Frederick	Frederick County	35	40
Lake Gaston, (Virginia portion)	Brunswick County	25	30
Lake Gordon	Mecklenburg County	35	40
Lake Keokee	Lee County	35	40
Lake Kilby	Suffolk City	60	40
Lake Lawson	Virginia Beach City	60	40
Lake Manassas	Prince William County	35	40
Lake Meade	Suffolk City	60	40
Lake Moomaw	Bath County	10	10
Lake Nelson	Nelson County	~~35~~ 60	40
Lake Nottoway (Lee Lake, Nottoway Lake)	Nottoway County	35	40
Lake Pelham	Culpeper County	35	40
Lake Prince	Suffolk City	~~35~~ 60	40
Lake Robertson	Rockbridge County	35	40
Lake Smith	Virginia Beach City	60	40
Lake Whitehurst	Norfolk City	60	40
Lake Wright	Norfolk City	60	40

Lakeview Reservoir	Chesterfield County	35	40
Laurel Bed Lake	Russell County	35	40
Lee Hall Reservoir (Newport News Reservoir)	Newport News City	60	40
Leesville Reservoir	Bedford County	25	30
Little Creek Reservoir	Virginia Beach City	60	40
Little Creek Reservoir	James City County	25	30
Little River Reservoir	Montgomery County	35	40
Lone Star Lake F (Crystal Lake)	Suffolk City	60	40
Lone Star Lake G (Crane Lake)	Suffolk City	60	40
Lone Star Lake I (Butler Lake)	Suffolk City	60	40
Lunga Reservoir	Prince William County	35	40
Lunenburg Beach Lake (Victoria Lake)	Town of Victoria	35	40
Martinsville Reservoir (Beaver Creek Reservoir)	Henry County	35	40
Mill Creek Reservoir	Amherst County	35	40
Modest Creek Reservoir	Town of Victoria	35	40
Motts Run Reservoir	Spotsylvania County	25	30
Mount Jackson Reservoir	Shenandoah County	35	40
Mountain Run Lake	Culpeper County	35	40
Ni Reservoir	Spotsylvania County	35	40
North Fork Pound Reservoir	Wise County	35	40
Northeast Creek Reservoir	Louisa County	35	40
Occoquan Reservoir	Fairfax County	35	40
Pedlar Lake	Amherst County	25	20
Philpott Reservoir	Henry County	25	30
Phelps Creek Reservoir (Brookneal Reservoir)	Campbell County	35	40
Ragged Mountain Reservoir	Albemarle County	35	40
Rivanna Reservoir (South Fork Rivanna Reservoir)	Albemarle County	35	40
Roaring Fork	Pittsylvania County	35	40
Rural Retreat Lake	Wythe County	35	40
Sandy River Reservoir	Prince Edward County	35	40
Shenandoah Lake	Rockingham County	35	40
Silver Lake	Rockingham County	35	40
Smith Mountain Lake	Bedford County	25	30
South Holston Reservoir	Washington County	25	20
Speights Run Lake	Suffolk City	60	40
Spring Hollow Reservoir	Roanoke County	25	20
Staunton Dam Lake	Augusta County	35	40
Stonehouse Creek Reservoir	Amherst County	60	40
Strasburg Reservoir	Shenandoah County	35	40
Stumpy Lake	Virginia Beach	60	40
Sugar Hollow Reservoir	Albemarle County	25	20
Swift Creek Lake	Chesterfield County	35	40
Swift Creek Reservoir	Chesterfield County	35	40
Switzer Lake	Rockingham County	10	10
Talbott	Patrick	35	40

Reservoir	County		
Thrashers Creek Reservoir	Amherst County	35	40
Totier Creek Reservoir	Albemarle County	35	40
Townes Reservoir	Patrick County	25	20
Troublesome Creek Reservoir	Bucking-ham County	35	40
Waller Mill Reservoir	York County	25	30
Western Branch Reservoir	Suffolk City	25	20
Wise Reservoir	Wise County	25	20

C. When the board determines that the applicable criteria in subsection B of this section for a specific man-made lake or reservoir are exceeded, the board shall consult with the Department of Game and Inland Fisheries regarding the status of the fishery in determining whether or not the designated use for that water body is being attained. If the designated use of the subject water body is not being attained, the board shall assess the water body as impaired in accordance with § 62.1-44.19:5 of the Code of Virginia. If the designated use is being attained, the board shall assess the water body as impaired in accordance with § 62.1-44.19:5 of the Code of Virginia until site-specific criteria are adopted and become effective for that water body.

D. If the nutrient criteria specified for a man-made lake or reservoir in subsection B of this section do not provide for the attainment and maintenance of the water quality standards of downstream waters as required in 9VAC25-260-10 C, the nutrient criteria herein may be modified on a site-specific basis to protect the water quality standards of downstream waters.]

9VAC25-260-290. ~~Tidal water sampling.~~ (Repealed.)

~~Samples for determining compliance with standards established for estuarine or open ocean waters shall be collected at slack before flood tide or slack before ebb tide.~~

Part VII
Special Standards and Scenic Rivers Listings

9VAC25-260-310. Special standards and requirements.

The special standards are shown in small letters to correspond to lettering in the basin tables. The special standards are as follows:

a. Shellfish waters. In all open ocean or estuarine waters capable of propagating shellfish or in specific areas where public or leased private shellfish beds are present, including those waters on which condemnation [~~or restriction~~] classifications are established by the State Department of Health, the following criteria for fecal coliform bacteria will apply:

The geometric mean fecal coliform value for a sampling station shall not exceed an MPN (most probable number) [or MF (membrane filtration using mTEC culture media)] of 14 per 100 [~~ml~~ milliliters (ml)] of sample and the [estimated] 90th percentile shall not exceed [an MPN of] 43 [per 100 ml] for a 5-tube [~~, 3 dilution~~ decimal dilution] test or [an MPN of] 49 [per 100 ml] for a 3-tube [~~, 3 dilution~~ decimal dilution] test [or MF test of 31 CFU (colony forming units) per 100 ml].

The shellfish area is not to be so contaminated by radionuclides, pesticides, herbicides, or fecal material that the consumption of shellfish might be hazardous.

b. Policy for the Potomac Embayments. At its meeting on September 12, 1996, the board adopted a policy (9VAC25-415. Policy for the Potomac Embayments) to control point source discharges of conventional pollutants into the Virginia embayment waters of the Potomac River, and their tributaries, from the fall line at Chain Bridge in Arlington County to the Route 301 bridge in King George County. The policy sets effluent limits for BOD_5, total suspended solids, phosphorus, and ammonia, to protect the water quality of these high profile waterbodies.

c. Cancelled.

d. Cancelled.

e. Cancelled.

f. Cancelled.

g. Occoquan watershed policy. At its meeting on July 26, 1971 (Minute 10), the board adopted a comprehensive pollution abatement and water quality management policy for the Occoquan watershed. The policy set stringent treatment and discharge requirements in order to improve and protect water quality, particularly since the waters are an important water supply for Northern Virginia. Following a public hearing on November 20, 1980, the board, at its December 10-12, 1980 meeting, adopted as of February 1, 1981, revisions to this policy (Minute 20). These revisions became effective March 4, 1981. Additional amendments were made following a public hearing on August 22, 1990, and adopted by the board at its September 24, 1990, meeting (Minute 24) and became effective on December 5, 1990. Copies are available upon request from the Department of Environmental Quality.

h. Cancelled.

i. Cancelled.

j. Cancelled.

k. Cancelled.

l. Cancelled.

m. The following effluent limitations apply to wastewater treatment facilities in the entire Chickahominy watershed above Walker's Dam (this excludes ~~effluents~~ discharges consisting solely of stormwater):

CONSTITUENT	CONCENTRATION
1. Biochemical Oxygen demand 5-day ~~at 20~~	~~6.0~~ 6 mg/l monthly average, with not more than 5% of individual samples to exceed ~~8.0~~ 8 mg/l
2. Settleable Solids	Not to exceed 0.1 ml/l monthly average
3. Suspended Solids	5.0 mg/l monthly average, with not more than 5% of individual samples to exceed 7.5 mg/l
4. Ammonia Nitrogen	Not to exceed 2.0 mg/l monthly average as N
5. Total Phosphorus	Not to exceed ~~0.1~~ 0.10 mg/l monthly average for all discharges with the exception of Tyson Foods, Inc. which shall meet ~~0.3~~ 0.30 mg/l monthly average and ~~0.5~~ 0.50 mg/l daily maximum.
6. Other Physical and Chemical Constituents	Other physical or chemical constituents not specifically mentioned will be covered by additional specifications as conditions detrimental to the stream arise. The specific mention of items 1 through 5 does not necessarily mean that the addition of other physical or chemical constituents will be condoned.

n. No sewage discharges, regardless of degree of treatment, should be allowed into the James River between Bosher and Williams Island Dams.

o. The concentration and total amount of impurities in Tuckahoe Creek and its tributaries of sewage origin shall be limited to those amounts from sewage, industrial wastes, and other wastes which are now present in the stream from natural sources and from existing discharges in the watershed.

p. Cancelled.

q. Cancelled.

r. Cancelled.

s. ~~Chlorides not to exceed 40 mg/l at any time.~~ Cancelled.

t. Cancelled.

u. Maximum temperature for the New River Basin from West Virginia state line upstream to the Giles-Montgomery County line:

The maximum temperature shall be 27°C (81°F) unless caused by natural conditions; the maximum rise above natural temperatures shall not exceed 2.8°C (5°F).

This maximum temperature limit of 81°F was established in the 1970 water quality standards amendments so that Virginia temperature criteria for the New River would be consistent with those of West Virginia, since the stream flows into that state.

v. The maximum temperature of the New River and its tributaries (except trout waters) from the Montgomery-Giles County line upstream to the Virginia-North Carolina state line shall be 29°C (84°F).

w. Cancelled.

x. Clinch River from the confluence of Dumps Creek at river mile 268 at Carbo downstream to river mile 255.4. The special water quality criteria for copper (measured as total recoverable) in this section of the Clinch River are 12.4 µg/l for protection from chronic effects and 19.5 µg/l for protection from acute effects. These site-specific criteria are needed to provide protection to several endangered species of freshwater mussels.

y. Tidal freshwater Potomac River and tidal tributaries that enter the tidal freshwater Potomac River from Cockpit Point (below Occoquan Bay) to the fall line at Chain Bridge. During November 1 through February 14 of each year the 30-day average concentration of total ammonia nitrogen (in mg N/L) shall not exceed, more than once every three years on the average, the following chronic ammonia criterion:

$$\left(\frac{0.0577}{1 + 10^{7.688\text{-pH}}} + \frac{2.487}{1 + 10^{\text{pH-}7.688}}\right) \times 1.45(10^{0.028(25\text{-MAX})})$$

MAX = temperature in °C or 7, whichever is greater.

The default design flow for calculating steady state waste load allocations for this chronic ammonia criterion is the 30Q10, unless statistically valid methods are employed which demonstrate compliance with the duration and return frequency of this water quality criterion.

z. A site specific dissolved copper aquatic life criterion of 16.3 µg/l for protection from acute effects and 10.5 µg/l for protection from chronic effects applies in the following area:

Little Creek to the Route 60 (Shore Drive) bridge including Little Channel, Desert Cove, Fishermans Cove and Little Creek Cove.

Hampton Roads Harbor including the waters within the boundary lines formed by I-664 (Monitor-Merrimac Bridge Tunnel) and I-64 (Hampton Roads Bridge Tunnel), Willoughby Bay and the Elizabeth River and its tidal tributaries.

This criterion reflects the acute and chronic copper aquatic life criterion for saltwater in 9VAC25-260-140 B X a water effect ratio. The water effect ratio was derived in accordance with 9VAC25-260-140 F.

aa. The following site-specific dissolved oxygen criteria apply to the tidal Mattaponi and Pamunkey Rivers and their tidal tributaries because of seasonal lower dissolved oxygen concentration due to the natural oxygen depleting processes present in the extensive surrounding tidal wetlands. These criteria apply June 1 through September 30 to Chesapeake Bay segments MPNTF, MPNOH, PMKTF, PMKOH and are implemented in accordance with subsection D of 9VAC25-260-185. These criteria supersede the open water criteria listed in subsection A of 9VAC25-260-185.

Designated use	Criteria Concentration/ Duration	Temporal Application
Open Water	30 day mean ≥ 4.0 mg/l	June 1 - September 30
	Instantaneous minimum ≥ 3.2 mg/l at temperatures <29°C	
	Instantaneous minimum ≥ 4.3 mg/l at temperatures ≥ 29°C	

A site-specific pH criterion of 5.0-8.0 applies to the tidal freshwater Mattaponi Chesapeake Bay segment MPNTF to reflect natural conditions.

bb. The following site specific numerical chlorophyll a criteria apply March 1 through May 31 and July 1 through September 30 as seasonal means to the tidal James River (excludes tributaries) segments JMSTF2, JMSTF1, JMSOH, JMSMH, JMSPH and are implemented in accordance with subsection D of 9VAC25-260-185.

Designated Use	Chlorophyll a µ/l	Chesapeake Bay Program Segment	Temporal Application
Open Water	10	JMSTF2	March 1 - May 31
	15	JMSTF1	
	15	JMSOH	
	12	JMSMH	
	12	JMSPH	
	15	JMSTF2	July 1 - September 30
	23	JMSTF1	
	22	JMSOH	
	10	JMSMH	
	10	JMSPH	

cc. For Mountain Lake in Giles County, chlorophyll a shall not exceed 6 µg/L at a depth of 6 meters and orthophosphate-P shall not exceed 8 µg/L at a depth of one meter or less.

dd. For Lake Drummond, located within the boundaries of Chesapeake and Suffolk in the Great Dismal Swamp, chlorophyll a shall not exceed 35 µg/L and total phosphorus shall not exceed 40 µg/L at a depth of one meter or less.

ee. Lake Curtis in Stafford County has a pH standard of 5.5-9.6, which is protective of the aquatic life in this reservoir and is a result of the fertilization techniques used to manage the fishery.

ff. John H. Kerr Reservoir at the Clarksville water supply intake has a dissolved manganese criterion of 50 µg/l to protect the acceptable taste, odor or aesthetic quality of the drinking water.

gg. Little Calfpasture River from the Goshen Dam to 0.76 miles above its confluence with the Calfpasture River has a stream condition index (A Stream Condition Index for Virginia Non-Coastal Streams, September 2003, Tetra Tech, Inc.) of at least 20.5 to protect the subcategory of aquatic life that exists here as a result of the hydrologic modification. From 0.76 miles to 0.02 miles above its confluence with the Calfpasture River, aquatic life conditions are expected to gradually recover and meet the general aquatic life uses at 0.02 miles above its confluence with the Calfpasture River.

hh. Maximum temperature for these seasonally stockable trout waters is 31°C and applies May 1 through October 31.

9VAC25-260-320. ~~Scenic rivers.~~ (Repealed.)

~~The following section recognizes waters which the General Assembly has determined to be of special ecological or recreational significance to the state. The designation of a scenic river and the significance of this designation are the subject of the Scenic Rivers Act (§ 10.1-400 et seq. of the Code of Virginia) and are listed here for informational purposes only.~~

~~POTOMAC RIVER BASIN~~

~~POTOMAC RIVER SUBBASIN~~

~~Goose Creek from its confluence with the Potomac River upstream to the Fauquier-Loudoun County line (7+ miles).~~

~~Catoctin Creek in Loudoun County from its confluence with the Potomac River upstream to the Town of Waterford (16+ miles).~~

~~SHENANDOAH RIVER SUBBASIN~~

~~The Shenandoah River in Clarke County from the Warren-Clarke County line to Lockes Landing (14+ miles).~~

~~JAMES RIVER BASIN~~

~~The Saint Marys River in Augusta County within the George Washington National Forest. (6+ miles).~~

~~Rivanna River from its confluence with the James River upstream to the base of the dam at the Woolen Mills in the City of Charlottesville to the junction of the Rivanna with the James River (37+ miles).~~

~~Appomattox River from the Route 36 bridge crossing in the City of Petersburg upstream to the abutment dam located about 1.3 miles below Lake Chesdin (5+ miles).~~

~~The James River from Orleans Street extended in the City of Richmond westward to the 1970 corporate limits of the city (8+ miles).~~

~~The Upper James River from a point two miles below Eagle Rock to the Route 630 bridge in Springwood (14+/- miles).~~

~~Chickahominy River from Route 360 to the junction of the Hanover/Henrico/New Kent County line in Hanover County (10.2+ miles).~~

~~The Moormans River in Albemarle County, from the foot of the dam of the Charlottesville water supply reservoir to the junction with the Mechums River below Route 601 (13+ miles).~~

~~Rockfish River from the Route 693 bridge in Schuyler to its confluence with the James River (9.75+ miles).~~

~~Lower James River, from an unnamed tributary to the James River approximately 1.2 miles east of Trees Point in Charles City County (northside) and Upper Chippokes Creek (southside) to Grices Run (northside) and Lawnes Creek (southside) (25+ miles).~~

~~RAPPAHANNOCK RIVER BASIN~~

~~Rappahannock River in Rappahannock, Culpeper, Fauquier, Stafford, and Spotsylvania Counties and the City of Fredericksburg from its headwaters near Chester Gap to the Ferry Farm-Mayfield Bridge (86+/- miles).~~

~~ROANOKE RIVER BASIN~~

~~ROANOKE RIVER SUBBASIN~~

~~Roanoke (Staunton) River from State Route 360 upstream to State Route 761 at the Long Island Bridge (40.5 +/- miles).~~

~~CHOWAN AND DISMAL SWAMP BASIN~~

~~CHOWAN RIVER SUBBASIN~~

~~Nottoway River in Sussex County from the Route 40 bridge at Stony Creek to the Southampton County line (33+ miles).~~

~~North Meherrin River in Lunenburg County from the Route 712 bridge to the confluence with the Meherrin River (7.5 miles).~~

~~ALBEMARLE SOUND SUBBASIN~~

~~The North Landing River from the North Carolina line to the bridge at Route 165, Pocaty River from its junction with North Landing River to the Blackwater Road Bridge, West Neck Creek from the junction with the North Landing River to Indian River Road Bridge, and Blackwater Creek from the junction with the North Landing River to its confluence, approximately 4.2 miles, of an unnamed tributary 1.75+/- miles west of Blackwater Road (26+ miles).~~

~~TENNESSEE AND BIG SANDY RIVER BASINS~~

~~CLINCH RIVER SUBBASIN~~

~~Guest River from a point 100 feet downstream of the Route 72 Bridge to the junction with the Clinch River in Scott and Wise County (6.5+ miles).~~

9VAC25-260-350. Designation of nutrient enriched waters.

A. The following state waters are hereby designated as "nutrient enriched waters":

1. Smith Mountain Lake and all tributaries* of the impoundment upstream to their headwaters;

2. ~~Lake Chesdin from its dam upstream to where the Route 360 bridge (Goodes Bridge) crosses the Appomattox River, including all tributaries to their headwaters that enter between the dam and the Route 360 bridge;~~ (Repealed.)

3. ~~South Fork Rivanna Reservoir and all tributaries of the impoundment upstream to their headwaters;~~ (Repealed.)

4. New River and its tributaries, except Peak Creek above Interstate 81, from Claytor Dam upstream to Big Reed Island Creek (Claytor Lake).

5. Peak Creek from its headwaters to its mouth (confluence with Claytor Lake), including all tributaries to their headwaters;

6. through 20. (Repealed.)

~~7. (Repealed.)~~

~~8. (Repealed.)~~

~~9. (Repealed.)~~

~~10. (Repealed.)~~

~~11. (Repealed.)~~

~~12. (Repealed.)~~

~~13. (Repealed.)~~

~~14. (Repealed.)~~

~~15. (Repealed.)~~

~~16. (Repealed.)~~

~~17. (Repealed.)~~

~~18. (Repealed.)~~

~~19. (Repealed.)~~

~~20. (Repealed.)~~

21. Tidal freshwater Blackwater River from the Norfolk and Western railway bridge at Burdette, Virginia, and tidal freshwater Nottoway River from the Norfolk and Western railway bridge at Courtland, Virginia, to the state line, including all tributaries to their headwaters that enter the tidal freshwater portions of the Blackwater River and the Nottoway River; and

22. ~~Stony Creek from its confluence with the North Fork Shenandoah River to its headwaters including all named and unnamed tributaries to their headwaters.~~ (Repealed.)

B. Whenever any water body is designated as "nutrient enriched waters," the board shall modify the VPDES permits of point source dischargers into the "nutrient enriched waters" as provided in the board's Policy for Nutrient Enriched Waters (9VAC25-40).

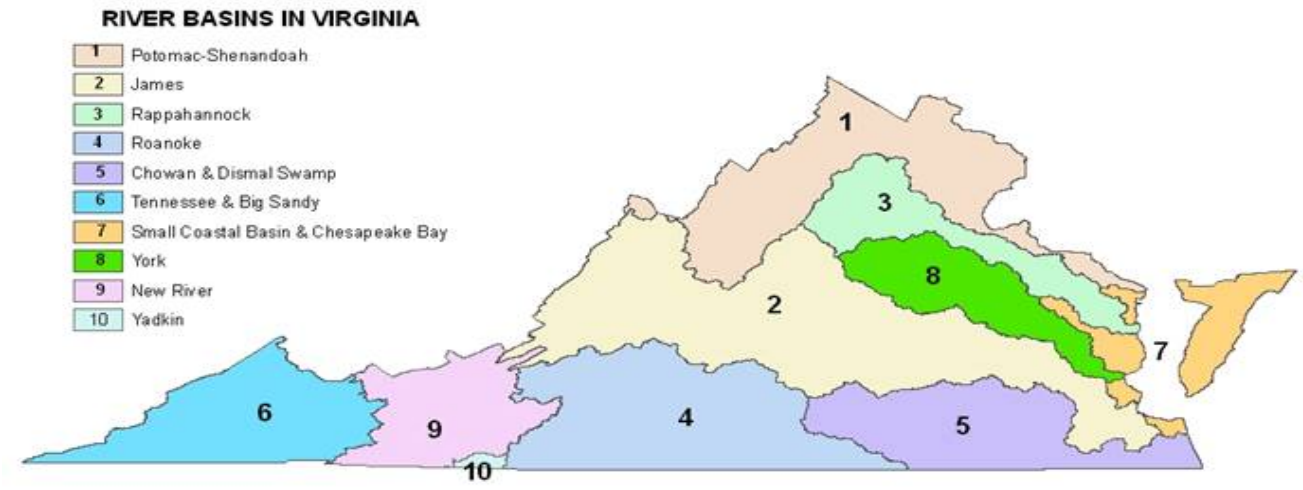
*When the word "tributaries" is used in this standard, it does not refer to the mainstem of the water body that has been named.

Part IX
River Basin Section Tables

9VAC25-260-360. Section number and description columns.

A. Basin descriptions. The tables that follow divide the state's surface waters into [~~nine~~ 10] river basins, some with subbasins: Potomac River Basin (Potomac and Shenandoah Subbasins), James River Basin (Appomattox River Subbasin), Rappahannock River Basin, Roanoke River Basin ~~(Roanoke and Yadkin Subbasins)~~, Yadkin River Basin, Chowan and Dismal Swamp Basin (Chowan and Albemarle Sound Subbasins), Tennessee and Big Sandy Basins (Big Sandy, Clinch and Holston Subbasins), Chesapeake Bay, Atlantic Ocean and Small Coastal Basin, York River Basin and New River Basin. (See Figure 2.)

Figure 2.



Each basin is further divided into sections. Each section is assigned a class, represented by Roman Numerals I through VII, based on its geographic location or, in the case of trout waters, on its use. Descriptions of these classes are found in 9VAC25-260-50.

B. Potomac water supplies (raw water intakes). The Leesburg and County of Fairfax intakes in the Potomac are in Maryland waters and the board cannot adopt the public water supply criteria in 9VAC25-260-140 B to apply at the raw water intake points. However, applications to discharge into, or otherwise alter the physical, chemical, or biological properties of Virginia waters within an area five miles upstream of the intake will be reviewed on a case-by-case basis to ensure that they will protect the water supply. Basin sections where this would be applicable are shown with an asterisk (*) in the basin and section description columns.

9VAC25-260-380. Special standards column.

A. Bacteria criteria. All surface waters have criteria for fecal coliform bacteria. The bacteria criteria for shellfish waters are set forth in 9VAC25-260-160; the criteria applying to ~~all other surface~~ recreational waters are found in 9VAC25-260-170. The letter "a" in the special standards column next to a river basin section indicates that there are shellfish waters somewhere within that section and the bacteria criteria for shellfish waters applies to those shellfish waters. (It should be noted that even though the column contains the letter "a" the entire section may not be shellfish waters.)

B. Natural variation. In some cases natural water quality does not fall within the criteria set by these standards. (For example streams in some areas of the state may naturally exceed the usual pH range of 6.0 to 9.0.) In these instances the board may have set more appropriate criteria that reflect natural quality, and this special limit is shown in the special standards column.

C. Additional requirements. In other cases the basic water quality parameters of DO, pH, temperature, and bacteria have not been sufficient to protect water quality in certain areas, and effluent limits or treatment requirements have been established for these areas. This fact is also indicated in the special standards column. If the applicable standard was too long to print in its entirety in that column, the column contains only a lower case letter, and the standard itself will be found in the special standards 9VAC25-260-310 under that letter.

D. Other special standards or designations.

1. Public water supplies (PWS). Sections that are public water supplies are indicated in the special standards column with a PWS. This designation indicates that additional criteria are applicable in this section. See 9VAC25-260-140 B for applicable criteria. Taste and odor criteria to maintain acceptable taste, odor or aesthetic quality of drinking water apply at the drinking water intake.

2. Nutrient enriched waters (NEW). If a section contains a waterbody that has been designated as nutrient enriched in 9VAC25-260-350, the special standards column indicates this with the letters "NEW-" followed by a number. The appropriate waterway can be found listed in 9VAC25-260-350. The entire section is not necessarily nutrient enriched, only that portion specifically listed in 9VAC25-260-350.

3. Exceptional state waters (ESW). If a section contains a waterbody that has been designated as exceptional state waters in 9VAC25-260-30 A 3 the special standard column indicates this with ESW followed by a number. The appropriate waterway can be found listed in 9VAC25-260-30 A 3 c. The entire section within the basin table is not necessarily designated as exceptional state waters, only that portion specifically listed in 9VAC25-260-30 A 3 c.

4. If a section contains a waterbody that has been assigned a special standard (indicated by lower case letters in the special standards column), the appropriate waterway can be found listed in 9VAC25-260-310. The special standard does not necessarily apply to the entire section, only that portion specifically listed in 9VAC25-260-310.

9VAC25-260-390. Potomac River Basin (Potomac River Subbasin).

Potomac River Subbasin

SEC.	CLASS	SP. STDS.	SECTION DESCRIPTION
1	II	a	Tidal tributaries of the Potomac River from Smith Point to Upper Machodoc Creek (Baber Point).
1a	III	[ee]	All free flowing portions of tributaries to the Potomac River from Smith Point to the Route 301 Bridge in King George County unless otherwise designated in this chapter.
	VII		Swamp waters in Section 1a

			Pine Hill Creek and its tributaries from the confluence with Rosier Creek to their headwaters.
1b	III	b~~,NEW-12~~	All free flowing portions of tributaries to the Potomac River from the Route 301 Bridge in King George County to, and including, Potomac Creek, unless otherwise designated in this chapter.
1c	III	PWS,b~~, NEW-12~~	Potomac Creek and its tributaries from the Stafford County water supply dam (Able Lake Reservoir) to their headwaters.
2	II	a~~,NEW-14~~	Tidal Upper Machodoc Creek and the tidal portions of its tributaries.
2a	III	~~NEW-14~~	Free flowing portions of Upper Machodoc Creek and its tributaries.
3	II	b~~,NEW-12~~	Tidal portions of the tributaries to the Potomac River from the Route 301 Bridge in King George County to Marlboro Point.
4	II	b,d~~,NEW-6~~	Tidal portions of the tributaries to the Potomac River from Marlboro Point to Brent Point (to include Aquia Creek and its tributaries).
4a	III	b,d~~,NEW-6~~	Free flowing portions of tributaries to the Potomac River in Section 4 up to the Aquia Sanitary District Water Impoundment.
4b	III	PWS,b,d~~,NEW-6~~	Aquia Creek from the Aquia Sanitary District Water Impoundment, and other tributaries into the impoundment, including Beaverdam Run and the Lunga Reservoir upstream to their headwaters.
5	II	b	Tidal portions of tributaries to the Potomac River from Brent Point to Shipping Point, including tidal portions of Chopawamsic Creek and its tidal tributaries.
5a	III	b	Free flowing portions of Chopawamsic Creek and its tributaries to Quantico Marine Base water supply dam.
5b	III	PWS,b	Chopawamsic Creek and its tributaries above the Quantico Marine Base water supply intakes at the Gray and Breckenridge Reservoirs to their headwaters.
6	II	b, y~~, NEW-7,8,9,10,11,13~~	Tidal portions of tributaries to the Potomac River from Shipping Point to Chain Bridge.
7	III	b~~,NEW-7,8,9,10,11,13~~	Free flowing portions of tributaries to the Potomac River from Shipping Point to Chain Bridge, unless otherwise designated in this chapter.
7a	III	g	Occoquan River and its tributaries to their headwaters above Fairfax County Water Authority's water supply impoundment, unless otherwise designated in this chapter.
7b	III	PWS,g	The impounded waters of Occoquan River above the water supply dam of the Fairfax County Water Authority to backwater of the impoundment on Bull Run and Occoquan River, and the tributaries of Occoquan above the dam to points 5 miles above the dam.
7c	III	PWS,g	Broad Run and its tributaries above the water supply dam of the City of Manassas upstream to points 5 miles above the dam.
7d			(Deleted)
7e	III	PWS,g	Cedar Run and its tributaries from the Town of Warrenton's raw water intake to points 5 miles upstream (Fauquier County).
7f	III	PWS,g	The Quantico Marine Base Camp Upshur and its tributaries' raw water intake on Cedar Run (located approximately 0.2 mile above its confluence with Lucky Run) to points 5 miles upstream.

7g	III	PWS,g	The proposed impounded waters of Licking Run above the multiple purpose impoundment structure in Licking Run near Midland (Fauquier County) upstream to points 5 miles above the proposed impoundment.
7h	III	PWS,g	The proposed impounded waters of Cedar Run above the proposed multiple purpose impoundment structure on the main stem of Cedar Run near Auburn (Fauquier County), to points 5 miles above the impoundment.
8	III	PWS	Tributaries to the Potomac River in Virginia between Chain Bridge and the Monacacy River from their confluence with the Potomac upstream 5 miles, to include Goose Creek to the City of Fairfax's raw water intake, unless otherwise designated in this chapter.
8a	VI	PWS	Big Spring Creek and its tributaries in Loudoun County, from its confluence with the Potomac River upstream to their headwaters. (The temperature standard for natural trout water may be exceeded in the area above Big Spring and Little Spring at Routes 15 and 740 due to natural conditions). This section was given a PWS designation due to the Town of Leesburg's intake on the Potomac as referenced in Section 8b below.
	iii		Big Spring Creek from its confluence with the Potomac River upstream to Big Spring.
8b	III	PWS	Those portions of Virginia tributaries into the Potomac River that are within a 5 mile distance upstream of the Town of Leesburg's intake on the Potomac River, unless otherwise designated in this chapter.*
8c	III	PWS	Those portions of Virginia tributaries into the Potomac River that are within a 5 mile distance upstream of the County of Fairfax's intake on the Potomac River.*
9	III		Broad Run, Sugarland Run, Difficult Run, Tuscarora Creek, Sycoline Creek, and other streams tributary to streams in Section 8 from a point 5 miles above their confluence with the Potomac River to their headwaters, unless otherwise designated in this chapter.
9a	III	PWS	All the impounded water of Goose Creek from the City of Fairfax's water supply dam upstream to backwater, and its tributaries above the dam to points 5 miles above the dam.
9b	III	PWS	The Town of Round Hill's (inactive-early 1980's) raw water intake at the Round Hill Reservoir, and including the two spring impoundments located northwest of the town on the eastern slope of the Blue Ridge Mountains.
9c	III	PWS	Unnamed tributary to Goose Creek, from Camp Highroad's (inactive-late 1980's) raw water intake (Loudoun County) located in an old quarry [~~(at latitude 39°02'02"; longitude 77°40'49")~~] to its headwaters.
9d	III	PWS	Sleeter Lake (Loudoun County).
10	III		Tributaries of the Potomac River from the Monacacy River to the West Virginia-Virginia state line in Loudoun County, from their confluence with the Potomac River upstream to their headwaters, unless otherwise designated in this chapter.
10a	III	PWS	North Fork Catoctin Creek [and its tributaries] from Purcellville's raw water intake to [~~its~~ their] headwaters.
10b	III		South Fork Catoctin Creek and its tributaries from its confluence with the North Fork Catoctin Creek to its headwaters.
11	IV	pH-6.5-9.5	Tributaries of the Potomac River in Frederick and Clarke Counties, Virginia, unless otherwise designated in this chapter.
	V	~~pH-6.5-9.5~~	Stockable Trout Waters in Section 11

	***	pH-6.5-9.5	Back Creek (upper) from Rock Enon 4 miles upstream.
	***	pH-6.5-9.5	Back Creek (lower) from Route 600 to the mouth of Hogue Creek - 2 miles.
	***	hh	Hogue Creek from Route 679 upstream 6 miles to the Forks below Route 612.
	vi	pH-6.5-9.5	Opequon Creek (in Frederick County) from its confluence with Hoge Run upstream to the point at which Route 620 first crosses the stream.
	vi	pH-6.5-9.6	Turkey Run (Frederick County) from its confluence with Opequon Creek 3.6 miles upstream.
	VI	~~pH-6.5-9.5~~	Natural Trout Waters in Section 11
	ii	pH-6.5-9.5	Bear Garden Run from its confluence with Sleepy Creek 3.1 miles upstream.
	iii	pH-6.5-9.5	Redbud Run from its confluence with Opequon Creek 4.4 miles upstream.
11a	IV	pH-6.5-9.5	Hot Run and its tributaries from its confluence with Opequon Creek to its headwaters.
	V	~~pH-6.5-9.5~~	Stockable Trout Waters in Section 11a
	vi	pH-6.5-9.5	Clearbrook Run from its confluence with Hot Run 2.1 miles upstream.
12	IV	~~pH-6.5-9.5~~ ESW-6	South Branch Potomac River and its tributaries, such as Strait Creek, and the North Fork River and its tributaries from the Virginia-West Virginia state line to their headwaters.
	V		Stockable Trout Waters in Section 12
	vi		Frank Run from its confluence with the South Branch Potomac River 0.8 mile upstream.
	vii	pH-6.5-9.5	South Branch Potomac River (in Highland County) from 69.2 miles above its confluence with the Potomac River 4.9 miles upstream.
	VI		Natural Trout Waters in Section 12
	ii		Blights Run from its confluence with Laurel Fork (Highland County) upstream including all named and unnamed tributaries.
	ii		Buck Run (Highland County) from its confluence with Laurel Fork upstream including all named and unnamed tributaries.
	ii		Collins Run from its confluence with Laurel Fork upstream including all named and unnamed tributaries.
	ii		Laurel Fork (Highland County) from 1.9 miles above its confluence with the North Fork South Branch Potomac River upstream including all named and unnamed tributaries.
	iii	pH-6.5-9.5	Laurel Run (Highland County) from its confluence with Strait Creek upstream including all named and unnamed tributaries.
	ii		Locust Spring Run from its confluence with Laurel Fork upstream including all named and unnamed tributaries.
	ii		Lost Run from its confluence with Laurel Fork upstream including all named and unnamed tributaries.
	ii		Mullenax Run from its confluence with Laurel Fork upstream including all named and unnamed tributaries.
	ii		Newman Run from its confluence with Laurel Fork upstream including all named and unnamed tributaries.

	ii		Slabcamp Run from its confluence with Laurel Fork upstream including all named and unnamed tributaries.
	iii	pH-6.5-9.5	Strait Creek (Highland County) from its confluence with the South Branch Potomac River upstream to the confluence of West Strait Creek.

9VAC25-260-400. Potomac River Basin (Shenandoah River Subbasin).

Shenandoah River Subbasin

SEC.	CLASS	SP. STDS.	SECTION DESCRIPTION
1	IV	pH-6.5-9.5	Shenandoah River and its tributaries in Clarke County, Virginia, from the Virginia-West Virginia state line to Lockes Landing, unless otherwise designated in this chapter.
1a	IV	PWS pH-6.5-9.5	Shenandoah River and its tributaries from river mile 24.66 (latitude 39°16'19"; longitude 77°54'33") approximately 0.7 mile downstream of the confluence of the Shenandoah River and Dog Run to 5 miles above Berryville's raw water intake [~~(latitude 39°05'56"; longitude 77°58'31")~~], unless otherwise designated in this chapter.
	V	~~pH-6.5-9.5~~	Stockable Trout Waters in Section 1a
	vi	pH-6.5-9.5	Chapel Run (Clarke County) from its confluence with the Shenandoah River 5.7 miles upstream.
	vi	pH-6.5-9.5	Spout Run (Clarke County) from its confluence with the Shenandoah River (in the vicinity of the Ebenezer Church at Route 604) to its headwaters.
1b			(Deleted)
1c	IV	pH-6.5-9.5	Shenandoah River and its tributaries from a point 5 miles above Berryville's raw water intake to the confluence of the North and South Forks of the Shenandoah River.
	VI	~~pH-6.5-9.5~~	Natural Trout Waters in Section 1c
	iii	pH-6.5-9.5	Page Brook from its confluence with Spout Run, 1 mile upstream.
	***	pH-6.5-9.5	Roseville Run (Clarke County) from its confluence with Spout Run upstream including all named and unnamed tributaries.
	iii	pH-6.5-9.5	Spout Run (Clarke County) from its confluence with the Shenandoah River (in the vicinity of Calmes Neck at Rts 651 and 621), 3.9 miles upstream.
	***	pH-6.5-9.5	Westbrook Run (Clarke County) from its confluence with Spout Run upstream including all named and unnamed tributaries.
1d			(Note: Moved to section 2 b).
2	IV	~~pH-6.5-9.5~~ EWS-12.14.15	South Fork Shenandoah River from its confluence with the North Fork Shenandoah River, upstream to a point 5 miles above the Town of Shenandoah's raw water intake and its tributaries to their headwaters in this section, unless otherwise designated in this chapter.
	V	~~pH-6.5-9.5~~	Stockable Trout Waters in Section 2
	vii	pH-6.5-9.5	Bear Lithia Spring from its confluence with the South Fork Shenandoah River 0.8 miles upstream.
	vi	pH-6.5-9.5	Flint Run from its confluence with the South Fork Shenandoah River 4 miles upstream.
	***	pH-6.5-9.5	Gooney Run from the mouth to its confluence with Broad Run above Browntown (in the vicinity of Route 632).

***	pH-6.5-9.5, hh	Hawksbill Creek from Route 675 in Luray to 1 mile above Route 631.
VI	~~pH-6.5-9.5~~	Natural Trout Waters in Section 2
ii	pH-6.5-9.5	Big Creek (Page County) from its confluence with the East Branch Naked Creek upstream including all named and unnamed tributaries.
ii	pH-6.5-9.5	Big Ugly Run from its confluence with the South Branch Naked Creek upstream including all named and unnamed tributaries.
ii		Boone Run from 4.6 miles above its confluence with the South Fork Shenandoah River (in the vicinity) of Route 637 upstream including all named and unnamed tributaries.
iii	pH-6.5-9.5	Browns Run from its confluence with Big Run upstream including all named and unnamed tributaries.
ii		Cub Run (Page County) from Pitt Spring Run upstream including all named and unnamed tributaries.
***	pH-6.5-9.5	Cub Run from its mouth to Pitt Spring Run.
i	pH-6.5-9.5	East Branch Naked Creek from its confluence with Naked Creek at Route 759 upstream including all named and unnamed tributaries.
ii	pH-6.5-9.5	Fultz Run from the Park boundary (river mile 1.8) upstream including all named and unnamed tributaries.
ii	pH-6.5-9.5	Gooney Run (in Warren County) from 6.6 miles above its confluence with the South Fork Shenandoah River 3.9 miles upstream.
ii	pH-6.5-9.5	Hawksbill Creek in the vicinity of Pine Grove at Route 624 (river mile 17.7) 1.5 miles upstream.
ii	pH-6.5-9.5	Jeremys Run from the National Park boundary upstream including all named and unnamed tributaries.
ii	pH-6.5-9.5	Lands Run from its confluence with Gooney Run upstream including all named and unnamed tributaries.
ii	pH-6.5-9.5	Little Creek (Page County) from its confluence with Big Creek upstream including all named and unnamed tributaries.
i	pH-6.5-9.5	Little Hawksbill Creek from Route 626 upstream including all named and unnamed tributaries.
ii		Morgan Run (Page County) from its confluence with Cub Run upstream including all named and unnamed tributaries.
ii	pH-6.5-9.5	Overall Run from its confluence with the South Fork Shenandoah River 4.8 miles upstream including all named and unnamed tributaries.
ii	pH-6.5-9.5	Pass Run (Page County) from its confluence with Hawksbill Creek upstream including all named and unnamed tributaries.
ii		Pitt Spring Run from its confluence with Cub Run upstream including all named and unnamed tributaries.
ii		Roaring Run from its confluence with Cub Run upstream including all named and unnamed tributaries.
ii	pH-6.5-9.5	South Branch Naked Creek from 1.7 miles above its confluence with Naked Creek in the vicinity of Route 607 upstream including all named and unnamed tributaries.

	iv	pH-6.5-9.5	Stony Run (Page County) from 1.6 miles above its confluence with Naked Creek upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	West Branch Naked Creek from 2.1 miles above its confluence with Naked Creek upstream including all named and unnamed tributaries.
2a	IV	PWS, pH-6.5-9.5	Happy Creek and Sloan Creek from Front Royal's raw water intake to its headwaters.
2b	IV	PWS	The South Fork Shenandoah River and its tributaries from the Town of Front Royal's raw water intake (at the State Route 619 bridge at Front Royal) to points 5 miles upstream.
2c			(Deleted)
2d			(Deleted)
	V	~~pH-6.5-9.5~~	Stockable Trout Waters in Section 2d
	~~vii~~		~~Bear Lithia Spring from its confluence with the South Fork Shenandoah River 0.8 mile upstream.~~
	VI	~~pH-6.5-9.5~~	Natural Trout Waters in Section 2d
	~~ii~~		~~Big Creek (Page County) from its confluence with the East Branch Naked Creek upstream including all named and unnamed tributaries.~~
	~~ii~~		~~Big Ugly Run from its confluence with the South Branch Naked Creek upstream including all named and unnamed tributaries.~~
	~~ii~~		~~Boone Run from 4.6 miles above its confluence with the South Fork Shenandoah River (in the vicinity of Route 637) upstream including all named and unnamed tributaries.~~
	~~i~~		~~East Branch Naked Creek from its confluence with Naked Creek at Route 759 upstream including all named and unnamed tributaries.~~
	~~ii~~		~~Little Creek (Page County) from its confluence with Big Creek upstream including all named and unnamed tributaries.~~
	~~ii~~		~~South Branch Naked Creek from 1.7 miles above its confluence with Naked Creek (in the vicinity of Route 607) upstream including all named and unnamed tributaries.~~
	~~iv~~		~~Stony Run (Page County) from 1.6 miles above its confluence with Naked Creek upstream including all named and unnamed tributaries.~~
	~~ii~~		~~West Branch Naked Creek from 2.1 miles above its confluence with Naked Creek upstream including all named and unnamed tributaries.~~
3	IV	pH-6.5-9.5, ESW-16	South Fork Shenandoah River from 5 miles above the Town of Shenandoah's raw water intake to its confluence with the North and South Rivers and its tributaries to their headwaters in this section, and the South River and its tributaries from its confluence with the South Fork Shenandoah River to their headwaters, unless otherwise designated in this chapter.
	V	~~pH-6.5-9.5~~	Stockable Trout Waters in Section 3
	vi	pH-6.5-9.5	Hawksbill Creek (Rockingham County) from 0.8 mile above its confluence with the South Fork Shenandoah River 6.6 miles upstream.
	vi	pH-6.5-9.5	Mills Creek (Augusta County) from 1.8 miles above its confluence with Back Creek 2 miles upstream.

vi	pH-6.5-9.5	North Fork Back Creek (Augusta County) from its confluence with Back Creek 2.6 miles upstream, unless otherwise designated in this chapter.
VI	~~pH-6.5-9.5~~	Natural Trout Waters in Section 3
i	pH-6.5-9.5	Bearwallow Run from its confluence with Onemile Run upstream including all named and unnamed tributaries.
ii	pH-6.5-9.5	Big Run (Rockingham County) from 3.3 miles above its confluence with the South Fork Shenandoah River upstream including all named and unnamed tributaries.
iii	pH-6.5-9.5	Cold Spring Branch (Augusta County) from Sengers Mountain Lake (Rhema Lake) upstream including all named and unnamed tributaries.
iv	pH-6.5-9.5	Cool Springs Hollow (Augusta County) from Route 612 upstream including all named and unnamed tributaries.
ii	pH-6.5-9.5	Deep Run (Rockingham County) from 1.8 miles above its confluence with the South Fork Shenandoah River upstream including all named and unnamed tributaries.
ii	pH-6.5-9.5	East Fork Back Creek from its confluence with the South Fork Back Creek upstream including all named and unnamed tributaries.
ii	pH-6.5-9.5	Gap Run from 1.7 miles above its confluence with the South Fork Shenandoah River upstream including all named and unnamed tributaries.
iii		Inch Branch (Augusta County) from the dam upstream including all named and unnamed tributaries.
ii		Johns Run (Augusta County) from its confluence with the South River upstream including all named and unnamed tributaries.
iv		Jones Hollow (Augusta County) from 1.1 miles above its confluence with the South River upstream including all named and unnamed tributaries.
ii		Kennedy Creek from its confluence with the South River upstream including all named and unnamed tributaries.
iv	pH-6.5-9.5	Lee Run from 0.6 mile above its confluence with Elk Run 3.3 miles upstream.
iii	pH-6.5-9.5	Loves Run (Augusta County) from 2.7 miles above its confluence with the South River upstream including all named and unnamed tributaries.
ii	pH-6.5-9.5	Lower Lewis Run (Rockingham County) from 1.7 miles above its confluence with the South Fork Shenandoah River upstream including all named and unnamed tributaries.
ii	pH-6.5-9.5	Madison Run (Rockingham County) from 2.9 miles above its confluence with the South Fork Shenandoah River upstream including all named and unnamed tributaries.
ii	pH-6.5-9.5	Meadow Run (Augusta County) from its confluence with the South River upstream including all named and unnamed tributaries.
ii	pH-6.5-9.5	North Fork Back Creek (Augusta County) from river mile 2.6 (in the vicinity of its confluence with Williams Creek) upstream including all named and unnamed tributaries.
i	pH-6.5-9.5	Onemile Run (Rockingham County) from 1.5 miles above its confluence with the South Fork Shenandoah River upstream including all named and unnamed tributaries.

	iv		Orebank Creek from its confluence with Back Creek upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	Paine Run (Augusta County) from 1.7 miles above its confluence with the South River upstream including all named and unnamed tributaries.
	ii		Robinson Hollow (Augusta County) from the dam upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	Rocky Mountain Run from its confluence with Big Run upstream including all named and unnamed tributaries.
	iv	pH-6.5-9.5	Sawmill Run from 2.5 miles above its confluence with the South River upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	South Fork Back Creek from its confluence with Back Creek at Route 814 (river mile 2.1) upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	Stony Run (Augusta County) from 3.5 miles above its confluence with the South River upstream including all named and unnamed tributaries.
	iii	pH-6.5-9.5	Stony Run (Rockingham County) from 4.1 miles above its confluence with the South Fork Shenandoah River upstream including all named and unnamed tributaries.
	iii		Toms Branch (Augusta County) from 1.1 miles above its confluence with Back Creek upstream including all named and unnamed tributaries.
	i	pH-6.5-9.5	Twomile Run from 1.4 miles above its confluence with the South Fork Shenandoah River upstream including all named and unnamed tributaries.
	iv	pH-6.5-9.5	Upper Lewis Run from 0.5 mile above its confluence with Lower Lewis Run upstream including all named and unnamed tributaries.
	iv	pH-6.5-9.5	West Swift Run (Rockingham County) from the Route 33 crossing upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	Whiteoak Run from its confluence with Madison Run upstream including all named and unnamed tributaries.
3a	IV	pH-6.5-9.5	South River from the dam above Waynesboro (all waters of the impoundment).
3b	IV	PWS ~~pH 6.5-9.5~~	Coles Run and Mills Creek from South River Sanitary District's raw water intake to their headwaters.
	VI	PWS	Natural Trout Waters in Section 3b
	ii	~~pH 6.5-9.5~~	Coles Run (Augusta County) from 3.9 miles above its confluence with the South River Sanitary District's raw water intake (Coles Run Dam) upstream including all named and unnamed tributaries.
	ii		Mills Creek (Augusta County) from the South River Sanitary District's raw water intake (river mile 3.8) upstream including all named and unnamed tributaries.
3c	IV	PWS pH-6.5-9.5	A tributary to Coles Run from Stuarts Draft raw water intake approximately one-half mile south of Stuarts Draft and just off Route 610, to its headwaters.
4	IV	pH-6.5-9.5	Middle River and its tributaries from the confluence with the North River upstream to its headwaters, unless otherwise designated in this chapter.
	V	~~pH 6.5-9.5~~	Stockable Trout Waters in Section 4
	v	pH-6.5-9.5	Barterbrook Branch from its confluence with Christians Creek 2.8 miles upstream.

	***	pH-6.5-9.5	East Dry Branch from its confluence with the Buffalo Branch to its confluence with Mountain Run.
	vi	pH-6.5-9.5	Folly Mills Creek from 2.4 miles above its confluence with Christians Creek (in the vicinity of Route 81) 4.5 miles upstream.
	VI		Natural Trout Waters in Section 4
	iv		Buffalo Branch from Route 703 upstream including all named and unnamed tributaries.
	ii		Cabin Mill Run (Augusta County) from the Camp Shenandoah Boy Scout Lake upstream including all named and unnamed tributaries.
	iv		East Dry Branch (Augusta County) from the confluence of Mountain Run upstream including all named and unnamed tributaries.
	iv		Jennings Branch (Augusta County) from the confluence of White Oak Draft upstream including all named and unnamed tributaries.
4a	IV	PWS pH-6.5-9.5	Middle River and its tributaries from Staunton's raw water intake at Gardner Spring to points 5 miles upstream.
5	IV	pH-6.5-9.5	North River and its tributaries from its confluence with the South River upstream to its headwaters, unless otherwise designated in this chapter.
	V	~~pH-6.5-9.5~~	Stockable Trout Waters in Section 5
	v	pH-6.5-9.5	Beaver Creek (Rockingham County) from its confluence with Briery Branch to ~~its headwaters~~ [~~to~~] the spring at a point 2.75 miles upstream.
	v	pH-6.5-9.5	Naked Creek (Augusta County) from 3.7 miles above its confluence with the North River at Route 696, 2 miles upstream.
	VI	~~pH-6.5-9.5~~	Natural Trout Waters in Section 5
	iv		Big Run (Augusta County) from 0.9 mile above its confluence with Little River upstream including all named and unnamed tributaries.
	ii		Black Run (Rockingham County) from its mouth upstream including all named and unnamed tributaries.
	iii		Briery Branch (Rockingham County) from river mile 6.9 upstream including all named and unnamed tributaries.
	iv		Gum Run from its mouth upstream including all named and unnamed tributaries.
	iii		Hone Quarry Run from its confluence with Briery Branch upstream including all named and unnamed tributaries.
	iv		Little River from its confluence with the North River at Route 718 upstream including all named and unnamed tributaries.
	iv		Maple Spring Run from its mouth upstream including all named and unnamed tributaries.
	iv		Mines Run from its confluence with Briery Branch upstream including all named and unnamed tributaries.
	iv		Rocky Run (which is tributary to Briery Branch in Rockingham County) from its mouth upstream including all named and unnamed tributaries.
	iii		Rocky Run (which is tributary to Dry River in Rockingham County) from its mouth upstream including all named and unnamed tributaries.

	ii		Union Springs Run from 3 miles above its confluence with Beaver Creek upstream including all named and unnamed tributaries.
	iv		Wolf Run (Augusta County) from its confluence with Briery Branch upstream including all named and unnamed tributaries.
5a	IV	PWS pH-6.5-9.5	Silver Lake
5b	IV	PWS pH-6.5-9.5	North River and its tributaries from Harrisonburg's raw water intake at Bridgewater to points 5 miles above Bridgewater's raw water intake to include Dry River and Muddy Creek.
	V	PWS ~~pH-6.5-9.5~~	Stockable Trout Waters in Section 5b
	v	pH-6.5-9.5	Mossy Creek from its confluence with the North River 7.1 miles upstream.
	v	pH-6.5-9.5	Spring Creek (Rockingham County) from its confluence with the North River 2 miles upstream.
5c	IV	PWS ~~pH-6.5-9.5~~	Dry River in Rockingham County from Harrisonburg's raw water intake (approximately 11.7 miles above its confluence with the North River) to a point 5 miles upstream, unless otherwise designated in this chapter.
	V	PWS	Stockable Trout Waters in Section 5c
	viii	~~pH-6.5-9.5~~	Raccoon Run (Rockingham County) from its confluence with Dry River to its headwaters.
	VI	PWS	Natural Trout Waters in Section 5c
	iv	~~pH-6.5-9.5~~	Dry River (Rockingham County) from Harrisonburg's raw water intake (approximately 11.7 miles above its confluence with the North River) to a point 5 miles upstream.
	iv		Dry Run (Rockingham County) from its confluence with Dry River upstream including all named and unnamed tributaries.
	iv		Hopkins Hollow from its confluence with Peach Run upstream including all named and unnamed tributaries.
	iv		Kephart Run from its confluence with Dry River upstream including all named and unnamed tributaries.
5d	VI	~~pH-6.5-9.5~~	Dry River and its tributaries from 5 miles above Harrisonburg's raw water intake to its headwaters.
	VI	~~pH-6.5-9.5~~	Natural Trout Waters in Section 5d
	iv		Dry River (Rockingham County) from 5 miles above Harrisonburg's raw water intake upstream including all named and unnamed tributaries.
	ii		Laurel Run (Rockingham County) from its confluence with Dry River upstream including all named and unnamed tributaries.
	ii		Little Laurel Run from its confluence with Dry River upstream including all named and unnamed tributaries.
	ii		Low Place Run from its confluence with Dry River upstream including all named and unnamed tributaries.
	iv		Miller Spring Run from its confluence with Dry River upstream including all named and unnamed tributaries.

	iii		Sand Run from its confluence with Dry River upstream including all named and unnamed tributaries.
	iv		Skidmore Fork from its confluence with Dry River upstream including all named and unnamed tributaries.
5e	VI	PWS ~~pH-6.5-9.5~~	North River [and its tributaries] from Staunton Dam to [~~its~~ their] headwaters.
	VI		Natural Trout Waters in Section 5e
	iv		North River from Elkhorn Dam upstream including all named and unnamed tributaries.
6	IV	pH-6.5-9.5 ~~NEW 22~~	North Fork Shenandoah River from its confluence with the Shenandoah River to its headwaters, unless otherwise designated in this chapter.
	V	~~pH-6.5-9.5~~	Stockable Trout Waters in Section 6
	vi	pH-6.5-9.5	Bear Run from its confluence with Foltz Creek to its headwaters.
	~~***~~		~~Stony Creek from Route 685 above Edinburg upstream to Basye.~~
	vi	pH-6.5-9.5	Bull Run (Shenandoah County) from its confluence with Foltz Creek to its headwaters.
	vi	pH-6.5-9.5	Falls Run from its confluence with Stony Creek to its headwaters.
	vi	pH-6.5-9.5	Foltz Creek from its confluence with Stony Creek to its headwaters.
	vi	pH-6.5-9.5	Little Passage Creek from its confluence with Passage Creek to the Strasburg Reservoir Dam.
	***	pH-6.5-9.5, hh	Mill Creek from Mount Jackson to Route 720 - 3.5 miles.
	vi	pH-6.5-9.5	Mountain Run from its mouth at Passage Creek to its headwaters.
	***	pH-6.5-9.5	Passage Creek from the U.S. Forest Service line (in the vicinity of Blue Hole and Buzzard Rock) 4 miles upstream.
	vi	pH-6.5-9.5	Passage Creek from 29.6 miles above its confluence with the North Fork Shenandoah River to its headwaters.
	vi	pH-6.5-9.5	Peters Mill Run from the mouth to its headwaters.
	***	pH-6.5-9.5	Shoemaker River from 612 at Hebron Church to its junction with Route 817 at the Shoemaker's confluence with Slate Lick Branch.
	v	pH-6.5-9.5	Stony Creek from its confluence with the North Fork Shenandoah River to Route 682.
***	***	pH-6.5-9.5	Stony Creek from Route 682 above Edinburg upstream to Basye.
	VI	~~pH-6.5-9.5~~	Natural Trout Waters in Section 6
	ii	pH-6.5-9.5	Anderson Run (Shenandoah County) from 1.1 miles above its confluence with Stony Creek upstream including all named and unnamed tributaries.
	iv		Beech Lick Run from its confluence with the German River upstream including all named and unnamed tributaries.
	iii		Bible Run from its confluence with Little Dry River upstream including all named and unnamed tributaries.
	ii		Camp Rader Run from its confluence with the German River upstream including all named and unnamed tributaries.

	iv		Carr Run from its confluence with Little Dry River upstream including all named and unnamed tributaries.
	iv		Clay Lick Hollow from its confluence with Carr Run upstream including all named and unnamed tributaries.
	iv		Gate Run from its confluence with Little Dry River upstream including all named and unnamed tributaries.
	iv		German River (Rockingham County) from its confluence with the North Fork Shenandoah River (at Route 820) upstream including all named and unnamed tributaries.
	ii		Laurel Run (Shenandoah County) from its confluence with Stony Creek upstream including all named and unnamed tributaries.
	ii		Little Stony Creek from its confluence with Stony Creek upstream including all named and unnamed tributaries.
	iv		Marshall Run (Rockingham County) from 1.2 miles above its confluence with the North Fork Shenandoah River upstream including all named and unnamed tributaries.
	iii	pH-6.5-9.5	Mine Run (Shenandoah County) from its confluence with Passage Creek upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	Poplar Run (Shenandoah County) from its confluence with Little Stony Creek upstream including all named and unnamed tributaries.
	iv	pH-6.5-9.5	Rattlesnake Run (Rockingham County) from its confluence with Spruce Run upstream including all named and unnamed tributaries.
	iv		Root Run from its confluence with Marshall Run upstream including all named and unnamed tributaries.
	iv		Seventy Buck Lick Run from its confluence with Carr Run upstream including all named and unnamed tributaries.
	iv		Sirks Run (Spring Run) from 1.3 miles above its confluence with Crab Run upstream including all named and unnamed tributaries.
	iv	pH-6.5-9.5	Spruce Run (Rockingham County) from its confluence with Capon Run upstream including all named and unnamed tributaries.
	iv	pH-6.5-9.5	Sumac Run from its confluence with the German River upstream including all named and unnamed tributaries.
6a	IV	PWS pH-6.5-9.5	Little Passage Creek from the Strasburg Reservoir Dam upstream to its headwaters, unless otherwise designated in this chapter.
	V	PWS ~~pH 6.5-9.5~~	Stockable Trout Waters in Section 6a
	vi	pH-6.5-9.5	Little Passage Creek from the Strasburg Reservoir Dam upstream to its headwaters.
6b	IV	PWS pH-6.5-9.5	North Fork Shenandoah River and its tributaries from the Winchester raw water intake to points 5 miles upstream (to include Cedar Creek and its tributaries to their headwaters).
	V	PWS ~~pH 6.5-9.5~~	Stockable Trout Waters in Section 6b
	***	pH-6.5-9.5	Cedar Creek (Shenandoah County) from Route 55 (river mile 23.56) to the U.S. Forest Service Boundary (river mile 32.0) - approximately 7 miles.

	v	PWS pH-6.5-9.5	Meadow Brook (Frederick County) from its confluence with Cedar Creek 5 miles upstream.
	VI	PWS ~~pH 6.5-9.5~~	Natural Trout Waters in Section 6b
	iii	pH-6.5-9.5	Cedar Creek (Shenandoah County) from the U.S. Forest Service boundary (river mile 32.0) near Route 600 upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	Duck Run from its confluence with Cedar Creek upstream including all named and unnamed tributaries.
			Paddy Run (Frederick County) from the mouth upstream including all named and unnamed tributaries.
	***		(Paddy Run (Frederick County) from its mouth (0.0) to river mile 1.8.)
	vi**		(Paddy Run (Frederick County) from river mile 1.8 to 8.1-6.3 miles.)
	iii	pH-6.5-9.5	Sulphur Springs Gap (Shenandoah County) from its confluence with Cedar Creek 1.9 miles upstream.
6c	IV	PWS pH-6.5-9.5	North Fork Shenandoah River and its tributaries from Strasburg's raw water intake to points 5 miles upstream.
6d	IV	PWS pH-6.5-9.5	North Fork Shenandoah River and its tributaries from Woodstock's raw water intake (approximately 1/4 mile upstream of State Route 609 bridge near Woodstock) to points 5 miles upstream.
6e	IV	PWS pH-6.5-9.5	Smith Creek and its tributaries from New Market's raw water intake to [~~its~~ their] headwaters.
			Natural Trout Waters in Section 6e
	iv	pH-6.5-9.5	Mountain Run (Fridley Branch, Rockingham County) from Route 722 upstream including all named and unnamed tributaries.
6f	IV	PWS pH-6.5-9.5	North Fork Shenandoah River and its tributaries from the Food Processors Water Coop, Inc. dam at Timberville and the Town of Broadway's intakes on Linville Creek and the North Fork Shenandoah to points 5 miles upstream.
6g	IV	~~pH 6.5-9.5~~	Shoemaker River and its tributaries from Slate Lick Run, and including Slate Lick Run, to its headwaters.
	V	~~pH 6.5-9.5~~	Stockable Trout Waters in Section 6g
	***		Slate Lick Run from its confluence with the Shoemaker River upstream to the 1500 foot elevation.
	VI	~~pH 6.5-9.5~~	Natural Trout Waters in Section 6g
	iv		Long Run (Rockingham County) from its confluence with the Shoemaker River upstream including all named and unnamed tributaries.
	iv		Slate Lick Run from the 1500 foot elevation upstream including all named and unnamed tributaries.
6h	IV	PWS pH-6.5-9.5	Unnamed tributary of North Fork Shenandoah River (on the western slope of Short Mountain opposite Mt. Jackson) from the Town of Mt. Jackson's (inactive mid-1992) raw water intake (north and east dams) to its headwaters.

6i	IV	PWS pH-6.5-9.5	Little Sulfur Creek, Dan's Hollow and Horns Gully (tributaries of the North Fork Shenandoah River on the western slope of Short Mountain opposite Mt. Jackson) which served as a water supply for the Town of Edinburg until March 31, 1992, from the Edinburg intakes upstream to their headwaters.

9VAC25-260-410. James River Basin (Lower).

SEC.	CLASS	SP. STDS.	SECTION DESCRIPTION
1	II	a,z, bb ~~NEW-19~~, ESW-11	James River and its tidal tributaries from Old Point Comfort - Fort Wool to the end of tidal waters (fall line, Mayo's Bridge, 14th Street, Richmond), except prohibited or spoil areas, unless otherwise designated in this chapter.
1a	III	~~NEW-19~~	Free flowing or nontidal portions of streams in Section 1, unless otherwise designated in this chapter.
	VII		Swamp waters in Section 1a
			Gunns Run and its tributaries from the head of tide at river mile 2.64 to its headwaters.
1b	II	a,z~~, NEW-19~~	Eastern and Western Branches of the Elizabeth River and tidal portions of their tributaries from their confluence with the Elizabeth River to the end of tidal waters.
1c	III	~~NEW-19~~	Free flowing portions of the Eastern Branch of the Elizabeth River and its tributaries. Includes Salem Canal up to its intersection with Timberlake Road at N36°48'35.67"/W76°08'31.70".
1d	II	a,z~~, NEW-19~~	Southern Branch of the Elizabeth River from its confluence with the Elizabeth River to the lock at Great Bridge.
1e	III	~~NEW-19~~	Free flowing portions of the Western Branch of the Elizabeth River and of the Southern Branch of the Elizabeth River from their confluence with the Elizabeth River to the lock at Great Bridge.
1f	II	a~~,NEW-19~~	Nansemond River and its tributaries from its confluence with the James River to Suffolk (dam at Lake Meade), unless otherwise designated in this chapter.
1g	III	~~NEW-19~~	Shingle Creek from its confluence with the Nansemond River to its headwaters in the Dismal Swamp.
1h	III	PWS~~,NEW-19~~	Lake Prince, Lake Burnt Mills and Western Branch impoundments for Norfolk raw water supply and Lake Kilby - Cahoon Pond, Lake Meade and Lake Speight impoundments for Portsmouth raw water supply and including all tributaries to these impoundments.
	VII		Swamp waters in Section 1h
			Eley Swamp and its tributaries from Route 736 upstream to their headwaters.
1i	III	~~NEW-19~~	Free flowing portions of the Pagan River and its free flowing tributaries.
1j			(Deleted)
1k	III	PWS~~,NEW-19~~	Skiffes Creek Reservoir (Newport News water impoundment).
1l	III	PWS~~,NEW-19~~	The Lone Star lakes and impoundments in the City of Suffolk, Chuckatuck Creek watershed which serve as a water source for the City of Suffolk.
1m	III	PWS~~,NEW-19~~	The Lee Hall Reservoir system, near Skiffes Creek and the Warwick River, in the City of Newport News.
1n	III	PWS~~,NEW-19~~	Chuckatuck Creek and its tributaries from Suffolk's raw water intake (at Godwin's Millpond) to a point 5 miles upstream.

1o	II	PWS~~,NEW-18~~, bb	James River from City Point (Hopewell) to a point 5 miles above American Tobacco Company's raw water intake.
1p	III	PWS~~,NEW-18~~ [~~bb .~~]	Free flowing tributaries to section 1o.
2	III	~~NEW-18, 19~~	Free flowing tributaries of the James River from Buoy 64 to Brandon and free flowing tributaries of the Chickahominy River to Walkers Dam, unless otherwise designated in this chapter.
	VII		Swamp waters in Section 2
			Morris Creek and its tributaries from the head of tide at river mile 5.97 upstream to its headwaters.
2a	III	PWS~~,NEW-18~~	Diascund Creek and its tributaries from Newport News' raw water intake dam to its headwaters.
2b	III	PWS~~,NEW-18~~	Little Creek Reservoir and its tributaries from the City of Newport News impoundment dam to 5 miles upstream of the raw water intake.
3	III	m~~,NEW-18~~	Chickahominy River and its tributaries from Walkers Dam to Bottoms Bridge (Route 60 bridge), unless otherwise designated in this chapter.
	VII		Swamp waters in Section 3
		m	Chickahominy River from its confluence with Toe Ink Swamp at river mile 43.07 upstream to Bottoms Bridge (Route 60).
		m	White Oak Swamp and its tributaries from its confluence with the Chickahominy River to their headwaters.
3a	III	PWS,m~~, NEW-18~~	Chickahominy River [and its tributaries] from Walkers Dam to [~~a point~~ points] 5 miles upstream.
4	III	m	Chickahominy River and its tributaries, unless otherwise designated in this chapter, from Bottoms Bridge (Route 60 bridge) to its headwaters.
	VII		Swamp waters in Section 4
		m	Chickahominy River from Bottoms Bridge (Route 60) upstream to its confluence with Stony Run at rivermile 71.03.
[~~5~~ 4a]	III		Free flowing tributaries to the James River from Brandon to the fall line at Richmond, unless otherwise designated in this chapter.
	VII		Swamp waters in Section [~~5~~ 4a]
			Fourmile Creek and its tributaries to their headwaters.

9VAC25-260-415. James River Basin (Lower) (Appomattox River ~~Basin~~ Subbasin).

SEC.	CLASS	SP. STDS.	SECTION DESCRIPTION
5	II	~~NEW-18~~	Appomattox River and its tidal tributaries from its confluence with the James River to the end of tidal waters.
5a	II	PWS~~, NEW-18~~	Appomattox River and its tidal tributaries from its mouth to 5 miles upstream of the Virginia-American Water Company's raw water intake.
5b	III	PWS~~, NEW-18~~	Free flowing tributaries to section ~~2a~~ 5a.
5c	III	~~NEW-2~~	Appomattox River from the head of tidal waters, and free flowing tributaries to the Appomattox River, to their headwaters, unless otherwise designated in this chapter.

	VII		Swamp waters in Section 5c
			Skinquarter Creek from its confluence with the Appomattox River upstream to river mile 5.27.
			Deep Creek from the confluence with Winningham Creek downstream to the confluence of Little Creek, a distance of .54 river miles.
5d	III		Swift Creek and its tributaries from the dam at Pocahontas State Park upstream to Chesterfield County's raw water impoundment dam.
5e	III	PWS	Swift Creek and its tributaries from Chesterfield County's raw water impoundment dam to points 5 miles upstream.
5f	III	PWS~~,NEW 2~~	Appomattox River and its tributaries from Appomattox River Water Authority's raw water intake located at the dam at Lake Chesdin to the headwaters of the lake.
	VII		Swamp waters in Section 5f
			Winticomack Creek from its confluence with the Appomattox River to its headwaters including unnamed tributaries at river miles 1.92, 3.15, 8.77, and 11.16.
			Winterpock Creek and its tributaries (excluding Surline Branch) from its confluence with Lake Chesdin upstream to river mile 8.47.
5g	III	PWS	The Appomattox River and its tributaries from Farmville's raw water intake (approximately 2.5 miles above the Route 15/45 bridge) to points 5 miles upstream.

9VAC25-260-420. James River Basin (Middle).

SEC.	CLASS	SP. STDS.	SECTION DESCRIPTION
6	III		James River and its tributaries from the fall line at Richmond (Mayo's Bridge, 14th Street) to the Rockfish River unless otherwise designated in this chapter.
7	~~III~~	~~NEW 18~~	~~Free flowing tributaries to the James River from Brandon to the fall line at Richmond, unless otherwise designated in this chapter.~~ (Deleted)
7a			(Deleted)
8	III		James River and its tributaries from the low water dam above 14th Street Bridge to Richmond's raw water intake at Williams Island Dam.
9	III	PWS,n	James River and its tributaries, unless otherwise designated in this chapter, from Richmond's raw water intake at Douglasdale Road, inclusive of the Williams Island Dam intake, the Henrico County raw water intake [~~(at latitude 37°33'32"; longitude 77°37'16")~~] and the Benedictine Society's raw water intake [~~(latitude 37°34'33"; longitude 77°40'39")~~] to river mile 127.26 (at latitude 37°35'24"; longitude 77°42'33") near public landing site.
9a	III	PWS,o	Tuckahoe Creek and its tributaries from its confluence with the James River to its headwaters.
	VII		Swamp waters in Section 9a
			Tuckahoe Creek from its confluence with Little Tuckahoe Creek to the confluence with the James River.
10	III	~~NEW 3~~	James River and its tributaries from a point at latitude 37°40'32"; longitude 77°54'08" to, and including the Rockfish River, unless otherwise designated in this chapter.
	V		Stockable Trout Waters in Section 10

	vii		Lynch River from the upper Route 810 crossing near the intersection of Route 628 2.9 miles upstream (to Ivy Creek).
	***		Rockfish Creek from its confluence with the South Fork Rockfish River to its headwaters.
	VI		Natural Trout Waters in Section 10
	ii		Doyles River from 6.4 miles above its confluence with Moormans River above Browns Cove at Route 629 including all named and unnamed tributaries.
	iii		Fork Hollow from its confluence with Ivy Creek upstream including all named and unnamed tributaries.
	iii		Ivy Creek (Greene County) from its confluence with the Lynch River upstream including all named and unnamed tributaries.
	ii		Jones Falls Run from its confluence with Doyles River upstream including all named and unnamed tributaries.
	ii		Little Stony Creek (Nelson County) from its confluence with Stony Creek upstream including all named and unnamed tributaries.
	iv		Mill Creek (Nelson County) from its confluence with Goodwin Creek upstream including all named and unnamed tributaries.
	ii		Mutton Hollow from its confluence with Swift Run upstream including all named and unnamed tributaries.
	iv		Pauls Creek (Nelson County) from 1.3 miles above its confluence with the North Fork Rockfish River upstream including all named and unnamed tributaries.
	iv		Rodes Creek from its confluence with Goodwin Creek upstream including all named and unnamed tributaries.
	ii		South Fork Rockfish River from 8 miles above its confluence with the Rockfish River upstream including all named and unnamed tributaries.
	ii		Spruce Creek (Nelson County) from 1.5 miles above its confluence with the South Fork Rockfish River upstream including all named and unnamed tributaries.
	ii		Stony Creek (Nelson County) from 1 mile above its confluence with the South Fork Rockfish River upstream including all named and unnamed tributaries.
	ii		Swift Run from 14.5 miles above its confluence with the North Fork Rivanna River upstream including all named and unnamed tributaries.
10a	III	PWS	James River at river mile 127.26 near the public landing site and its tributaries from, and including, Little River to 5 miles above State Farm's raw water intake [~~(N37°40'32"/W77°54'09")~~], including Beaverdam and Courthouse Creeks, to their headwaters.
10b			(Deleted.)
10c	III		Willis River and its tributaries within Cumberland State Forest.
10d	III	PWS	Johnson Creek above the Schuyler (Nelson County Service Authority) raw water intake to its headwaters.
10e	III	PWS	Totier Creek and its tributaries from the Scottsville (Rivanna Water and Sewer Authority) raw water intake to their headwaters (including the Reservoir).
10f	III		Powell Creek and its tributaries from its confluence with the Rivanna River upstream to their headwaters.

10g	III	PWS~~,NEW 3~~	Beaver Creek and its tributaries from the Crozet (Rivanna Water and Sewer Authority) raw water intake upstream to their headwaters (including the reservoir).
10h	III	PWS~~,NEW 3~~	Mechums River and its tributaries from the Rivanna Water and Sewer Authority's raw water intake to points 5 miles upstream.
10i	III	PWS~~,NEW 3~~	Moormans River and its tributaries from the Rivanna Water and Sewer Authority's raw water intake to points 5 miles upstream (including Sugar Hollow Reservoir).
	VI		Natural Trout Waters in Section 10i
	ii		North Fork Moormans River from its confluence with Moormans River upstream including all named and unnamed tributaries.
	ii		Pond Ridge Branch from its confluence with the North Fork Moormans River upstream including all named and unnamed tributaries.
	iii		South Fork Moormans River from its confluence with Moormans River upstream including all named and unnamed tributaries.
10j	III	PWS~~,NEW 3~~	South Fork Rivanna River and its tributaries to their headwaters; except Ivy Creek, from the Rivanna Water and Sewer Authority's South Fork Rivanna River Dam to its confluence with the Moormans River, and Ivy Creek to a point 5 miles above the dam.
10k	III	PWS	James River and its tributaries from Fork Union Sanitary District's raw water intake (just below the Route 15 bridge) to points 5 miles upstream, including the Slate River to a point 5 miles above the intake.
10l	III		Lake Monticello in Fluvanna County.
10m	III	PWS	Rivanna River and its tributaries from the raw water intake for Lake Monticello (about 2.76 miles above the Route 600 bridge in Fluvanna County) to points 5 miles upstream.
10n	III	PWS	Ragged Mountain Reservoir (intake for the Rivanna Water and Sewer Authority) including its tributaries to their headwaters.
10o	III	PWS	The North Fork Rivanna River and its tributaries from the Rivanna Water and Sewer Authority's raw water intake (approximately 1/4 mile upstream of the U. S. Route 29 bridge north of Charlottesville) to points 5 miles upstream.
10p	III	PWS	Troublesome Creek in Buckingham County from Buckingham County's raw water intake point at a flood control dam south of the Route 631 bridge to a point 5 miles upstream.
10q	III	PWS	Allen Creek and its tributaries from the Wintergreen Mountain Village's primary raw water intake at Lake Monocan [~~at latitude 37°54'15"; longitude 78°52'10"~~] to a point upstream at latitude 37°53'59"; longitude 78°53'14".
10r	III	PWS	Stony Creek from the diversion structure at latitude 37°54'00"; longitude 78°53'47" to its headwaters inclusive of the Stony Creek raw water intake just upstream of the Peggy's Pinch booster pump station.
10s	III	PWS	Mechunk Creek and its tributaries from the Department of Corrections raw water intake (at the US Route 250 bridge [~~37°58'57.6", 78°18'48.1"~~]) to points 5 miles upstream.
11	III	ESW-7, 8, 22, 23, 24, 25, 26, 27	James River and its tributaries from, but not including, the Rockfish River to Balcony Falls, unless otherwise designated in this chapter.

V	Stockable Trout Waters in Section 11
vi	Dancing Creek from the junction of Routes 610 and 641 to its headwaters.
vi	North Fork Buffalo River from its confluence with the Buffalo River 1.8 miles upstream.
vi	Pedlar River from the confluence of Enchanted Creek to Lynchburg's raw water intake.
vi	Terrapin Creek from its confluence with Otter Creek to its headwaters.
***	Tye River from Tyro upstream to its confluence with the South and North Fork Tye Rivers.
VI	Natural Trout Waters in Section 11
ii	Big Branch from its confluence with the Pedlar River upstream including all named and unnamed tributaries.
ii	Bluff Creek from its confluence with Enchanted Creek upstream including all named and unnamed tributaries.
ii	Browns Creek from its confluence with the Pedlar River upstream including all named and unnamed tributaries.
ii	Campbell Creek (Nelson County) from its confluence with the Tye River upstream including all named and unnamed tributaries.
ii	Cove Creek from its confluence with the North Fork Buffalo River upstream including all named and unnamed tributaries.
ii	Coxs Creek from its confluence with the Tye River upstream including all named and unnamed tributaries.
ii	Crabtree Creek (Nelson County) from its confluence with the South Fork Tye River upstream including all named and unnamed tributaries.
ii	Crawleys Creek from its confluence with the Piney River upstream including all named and unnamed tributaries.
ii	Cub Creek (Nelson County) from 1.4 miles above its confluence with the Tye River (in the vicinity of Route 699), upstream including all named and unnamed tributaries.
ii	Davis Mill Creek from its confluence with the Pedlar River upstream including all named and unnamed tributaries.
ii	Durham Run from its confluence with the North Fork Tye River upstream including all named and unnamed tributaries.
ii	Elk Pond Branch from its confluence with the North Fork Piney River upstream including all named and unnamed tributaries.
ii	Enchanted Creek from its confluence with the Pedlar River upstream including all named and unnamed tributaries.
ii	Georges Creek from its confluence with the Little Piney River upstream including all named and unnamed tributaries.
ii	Greasy Spring Branch from its confluence with the South Fork Piney River upstream including all named and unnamed tributaries.
ii	Harpers Creek from its confluence with the Tye River upstream including all named and unnamed tributaries.

ii	King Creek from its confluence with the Little Piney River upstream including all named and unnamed tributaries.
ii	Lady Slipper Run from its confluence with the Pedlar River upstream including all named and unnamed tributaries.
ii	Little Cove Creek from its confluence with the North Fork Buffalo River upstream including all named and unnamed tributaries.
iii	Little Irish Creek from its confluence with the Pedlar River upstream including all named and unnamed tributaries.
ii	Little Piney River from its confluence with the Piney River upstream including all named and unnamed tributaries.
i	Louisa Spring Branch from its confluence with the North Fork Piney River 1.6 miles upstream.
ii	Maidenhead Branch from its confluence with the South Fork Tye River upstream including all named and unnamed tributaries.
ii	Meadow Creek (Nelson County) from its confluence with the South Fork Tye River upstream including all named and unnamed tributaries.
ii	Mill Creek (Nelson County) from its confluence with the North Fork Tye River upstream including all named and unnamed tributaries.
ii	Mill Creek (Nelson County) from its confluence with the South Fork Tye River upstream including all named and unnamed tributaries.
ii	Nicholson Run from its confluence with Lady Slipper Run upstream including all named and unnamed tributaries.
ii	North Fork Buffalo River from 1.8 miles above its confluence with the Buffalo River upstream including all named and unnamed tributaries.
i	North Fork Piney River from its confluence with the Piney River upstream including all named and unnamed tributaries.
iii	North Fork Thrashers Creek from its confluence with Thrashers Creek upstream including all named and unnamed tributaries.
	North Fork Tye River from its confluence with the Tye River upstream including all named and unnamed tributaries.
iii	(North Fork Tye River from its confluence with the Tye River 1.6 miles upstream.)
ii	(North Fork Tye River from 1.6 miles above its confluence with the Tye River 8.3 miles upstream.)
iii	Pedlar River from 5 miles above Lynchburg's raw water intake upstream including all named and unnamed tributaries.
ii	Piney River from river mile 13.3 upstream including all named and unnamed tributaries.
ii	Pompey Creek from its confluence with the Little Piney River upstream including all named and unnamed tributaries.
ii	Reed Creek from the junction of Routes 764 and 638 upstream including all named and unnamed tributaries.
ii	Rocky Branch from its confluence with the North Fork Buffalo River upstream including all named and unnamed tributaries.

	ii		Rocky Run (Nelson County) from 1.6 miles above its confluence with the Tye River upstream including all named and unnamed tributaries.
	i		Shoe Creek (Nelson County) from its confluence with Piney River upstream including all named and unnamed tributaries.
	iii		Silver Creek from its confluence with the Tye River upstream including all named and unnamed tributaries.
	ii		South Fork Piney River from its confluence with the Piney River upstream including all named and unnamed tributaries.
	ii		South Fork Tye River from its confluence with the Tye River upstream including all named and unnamed tributaries.
	ii		Statons Creek from its confluence with the Pedlar River upstream including all named and unnamed tributaries.
	iii		Wheelers Run from its confluence with the Pedlar River upstream including all named and unnamed tributaries.
	ii		White Rock Creek (Nelson County) from its confluence with the North Fork Tye River upstream including all named and unnamed tributaries.
	ii		Wiggins Branch from its confluence with Statons Creek upstream including all named and unnamed tributaries.
11a	III	PWS	Unnamed tributary to Williams Creek from Sweet Briar College's (inactive) raw water intake to its headwaters.
11b	III	PWS	Buffalo River and its tributaries from Amherst's raw water intake to points 5 miles upstream.
11c	III	PWS	Black Creek and its tributaries from the Nelson County Service Authority intake [~~at latitude N37°42'41.64"; longitude W78°57'10.09"~~] (approximately 1000 feet downstream of the Route 56 bridge) upstream to their headwaters (including the reservoir).
11d	III		James River and its tributaries from a point 0.25 mile above the confluence of the Tye River to Six Mile Bridge.
11e	III		James River and its tributaries, excluding Blackwater Creek, from Six Mile Bridge to the Business Route 29 bridge in Lynchburg.
11f			(Deleted)
11g	III	PWS	James River and its tributaries from the Business Route 29 bridge in Lynchburg to Reusens Dam to include the City of Lynchburg's alternate raw water intake at the Route 29 bridge and the Amherst County Service Authority's intake on Harris and Graham Creeks.
11h	III	PWS	James River and its tributaries, excluding the Pedlar River, from Reusens Dam to Coleman Dam, including the Eagle Eyrie raw water intake on an unnamed tributary to Judith Creek 1.0 mile from the confluence with Judith Creek, to its headwaters, and also the City of Lynchburg's raw water intake on the James River at Abert.
11i	III	PWS,ESW-5, 8, 2, 23	Pedlar River and its tributaries from Lynchburg's raw water intake to points 5 miles upstream.
	V		Stockable Trout Waters in Section 11i
	vi		Pedlar River from Lynchburg's raw water intake to a point 5 miles upstream.
	VI		Natural Trout Waters in Section 11i

	ii		Brown Mountain Creek from its confluence with the Pedlar River upstream including all named and unnamed tributaries.
	iii		Roberts Creek from its confluence with the Pedlar River upstream including all named and unnamed tributaries.
11j	III		James River and its tributaries from the Owens-Illinois raw water intake near Big Island to Balcony Falls.
	V		Stockable Trout Waters in Section 11j
	vi		Battery Creek from its confluence with the James River to its headwaters.
	vi		Cashaw Creek from its confluence with the James River to its headwaters.
	vi		Otter Creek from its confluence with the James River to a point 4.9 miles upstream.
	vi		Rocky Row Run from its confluence with the James River to its headwaters.
	VI		Natural Trout Waters in Section 11j
	iii		Falling Rock Creek from its confluence with Peters Creek upstream including all named and unnamed tributaries.
	ii		Hunting Creek from a point 3.7 miles from its confluence with the James River upstream including all named and unnamed tributaries.
	iii		Otter Creek from 4.9 miles above its confluence with the James River upstream including all named and unnamed tributaries.
	ii		Peters Creek from a point 0.2 mile above its confluence with the James River upstream including all named and unnamed tributaries.
11k			(Deleted)

9VAC25-260-430. James River Basin (Upper).

SEC.	CLASS	SP. STDS.	SECTION DESCRIPTION
~~11~~	~~III~~		~~James River and its tributaries from, but not including, the Rockfish River to Balcony Falls, unless otherwise designated in this chapter.~~
	~~V~~		~~Stockable Trout Waters in Section 11~~
	~~vi~~		~~Dancing Creek from the junction of Routes 610 and 641 to its headwaters.~~
	~~vi~~		~~North Fork Buffalo River from its confluence with the Buffalo River 1.8 miles upstream.~~
	~~vi~~		~~Pedlar River from the confluence of Enchanted Creek to Lynchburg's raw water intake.~~
	~~vi~~		~~Terrapin Creek from its confluence with Otter Creek to its headwaters.~~
	~~***~~		~~Tye River from Tyro upstream to its confluence with the South and North Fork Tye Rivers.~~
	~~VI~~		~~Natural Trout Waters in Section 11~~
	~~ii~~		~~Big Branch from its confluence with the Pedlar River upstream including all named and unnamed tributaries.~~
	~~ii~~		~~Bluff Creek from its confluence with Enchanted Creek upstream including all named and unnamed tributaries.~~

ii	Browns Creek from its confluence with the Pedlar River upstream including all named and unnamed tributaries.
ii	Campbell Creek (Nelson County) from its confluence with the Tye River upstream including all named and unnamed tributaries.
ii	Cove Creek from its confluence with the North Fork Buffalo River upstream including all named and unnamed tributaries.
ii	Coxs Creek from its confluence with the Tye River upstream including all named and unnamed tributaries.
ii	Crabtree Creek (Nelson County) from its confluence with the South Fork Tye River upstream including all named and unnamed tributaries.
ii	Crawleys Creek from its confluence with the Piney River upstream including all named and unnamed tributaries.
ii	Cub Creek (Nelson County) from 1.4 miles above its confluence with the Tye River (in the vicinity of Route 699), upstream including all named and unnamed tributaries.
ii	Davis Mill Creek from its confluence with the Pedlar River upstream including all named and unnamed tributaries.
ii	Durham Run from its confluence with the North Fork Tye River upstream including all named and unnamed tributaries.
ii	Elk Pond Branch from its confluence with the North Fork Piney River upstream including all named and unnamed tributaries.
ii	Enchanted Creek from its confluence with the Pedlar River upstream upstream including all named and unnamed tributaries.
ii	Georges Creek from its confluence with the Little Piney River upstream including all named and unnamed tributaries.
ii	Greasy Spring Branch from its confluence with the South Fork Piney River upstream including all named and unnamed tributaries.
ii	Harpers Creek from its confluence with the Tye River upstream including all named and unnamed tributaries.
ii	King Creek from its confluence with the Little Piney River upstream including all named and unnamed tributaries.
ii	Lady Slipper Run from its confluence with the Pedlar River upstream including all named and unnamed tributaries.
ii	Little Cove Creek from its confluence with the North Fork Buffalo River upstream including all named and unnamed tributaries.
iii	Little Irish Creek from its confluence with the Pedlar River upstream including all named and unnamed tributaries.
ii	Little Piney River from its confluence with the Piney River upstream including all named and unnamed tributaries.
i	Louisa Spring Branch from its confluence with the North Fork Piney River 1.6 miles upstream.
ii	Maidenhead Branch from its confluence with the South Fork Tye River upstream including all named and unnamed tributaries.

ii	Meadow Creek (Nelson County) from its confluence with the South Fork Tye River upstream including all named and unnamed tributaries.
ii	Mill Creek (Nelson County) from its confluence with the North Fork Tye River upstream including all named and unnamed tributaries.
ii	Mill Creek (Nelson County) from its confluence with the South Fork Tye River upstream including all named and unnamed tributaries.
ii	Nicholson Run from its confluence with Lady Slipper Run upstream including all named and unnamed tributaries.
ii	North Fork Buffalo River from 1.8 miles above its confluence with the Buffalo River upstream including all named and unnamed tributaries.
i	North Fork Piney River from its confluence with the Piney River upstream including all named and unnamed tributaries.
iii	North Fork Thrashers Creek from its confluence with Thrashers Creek upstream including all named and unnamed tributaries.
-	North Fork Tye River from its confluence with the Tye River upstream including all named and unnamed tributaries.
iii	(North Fork Tye River from its confluence with the Tye River 1.6 miles upstream.)
ii	(North Fork Tye River from 1.6 miles above its confluence with the Tye River 8.3 miles upstream.)
iii	Pedlar River from 5 miles above Lynchburg's raw water intake upstream including all named and unnamed tributaries.
ii	Piney River from river mile 13.3 upstream including all named and unnamed tributaries.
ii	Pompey Creek from its confluence with the Little Piney River upstream including all named and unnamed tributaries.
ii	Reed Creek from the junction of Routes 764 and 638 upstream including all named and unnamed tributaries.
ii	Rocky Branch from its confluence with the North Fork Buffalo River upstream including all named and unnamed tributaries.
ii	Rocky Run (Nelson County) from 1.6 miles above its confluence with the Tye River upstream including all named and unnamed tributaries.
i	Shoe Creek (Nelson County) from its confluence with Piney River upstream including all named and unnamed tributaries.
iii	Silver Creek from its confluence with the Tye River upstream including all named and unnamed tributaries.
ii	South Fork Piney River from its confluence with the Piney River upstream including all named and unnamed tributaries.
ii	South Fork Tye River from its confluence with the Tye River upstream including all named and unnamed tributaries.
ii	Statons Creek from its confluence with the Pedlar River upstream including all named and unnamed tributaries.
iii	Wheelers Run from its confluence with the Pedlar River upstream including all named and unnamed tributaries.

	ii		White Rock Creek (Nelson County) from its confluence with the North Fork Tye River upstream including all named and unnamed tributaries.
	ii		Wiggins Branch from its confluence with Statons Creek upstream including all named and unnamed tributaries.
11a	III	PWS	Unnamed tributary to Williams Creek from Sweet Briar College's (inactive) raw water intake to its headwaters.
11b	III	PWS	Buffalo River and its tributaries from Amherst's raw water intake to points 5 miles upstream.
11c	III	PWS	Black Creek and its tributaries from the Nelson County Service Authority intake at latitude 37°42'41.64"; longitude 78°57'10.09" (approximately 1000 feet downstream of the Route 56 bridge) upstream to their headwaters (including the reservoir).
11d	III		James River and its tributaries from a point 0.25 mile above the confluence of the Tye River to Six Mile Bridge.
11e	III		James River and its tributaries, excluding Blackwater Creek, from Six Mile Bridge to the Business Route 29 bridge in Lynchburg.
11f			(Deleted)
11g	III	PWS	James River and its tributaries from the Business Route 29 bridge in Lynchburg to Reusens Dam to include the City of Lynchburg's alternate raw water intake at the Route 29 bridge and the Amherst County Service Authority's intake on Harris and Graham Creeks.
11h	III	PWS	James River and its tributaries, excluding the Pedlar River, from Reusens Dam to Coleman Dam, including the Eagle Eyrie raw water intake on an unnamed tributary to Judith Creek 1.0 mile from the confluence with Judith Creek, to its headwaters, and also the City of Lynchburg's raw water intake on the James River at Abert.
11i	III	PWS	Pedlar River and its tributaries from Lynchburg's raw water intake to points 5 miles upstream.
	V		Stockable Trout Waters in Section 11i
	vi		Pedlar River from Lynchburg's raw water intake to a point 5 miles upstream.
	VI		Natural Trout Waters in Section 11i
	ii		Brown Mountain Creek from its confluence with the Pedlar River upstream including all named and unnamed tributaries.
	iii		Roberts Creek from its confluence with the Pedlar River upstream including all named and unnamed tributaries.
11j	III		James River and its tributaries from the Owens-Illinois raw water intake near Big Island to Balcony Falls.
	V		Stockable Trout Waters in Section 11j
	vi		Battery Creek from its confluence with the James River to its headwaters.
	vi		Cashaw Creek from its confluence with the James River to its headwaters.
	vi		Otter Creek from its confluence with the James River to a point 4.9 miles upstream.
	vi		Rocky Row Run from its confluence with the James River to its headwaters.
	VI		Natural Trout Waters in Section 11j

	~~iii~~		~~Falling Rock Creek from its confluence with Peters Creek upstream including all named and unnamed tributaries.~~
	~~ii~~		~~Hunting Creek from a point 3.7 miles from its confluence with the James River upstream including all named and unnamed tributaries.~~
	~~iii~~		~~Otter Creek from 4.9 miles above its confluence with the James River upstream including all named and unnamed tributaries.~~
	~~ii~~		~~Peters Creek from a point 0.2 mile above its confluence with the James River upstream including all named and unnamed tributaries.~~
~~11k~~			~~(Deleted)~~
12	IV	ESW-4,9,19,20, 21 [,gg]	James River and its tributaries from Balcony Falls to their headwaters, unless otherwise designated in this chapter. (The Maury River ~~and its tributaries~~ between its confluence with the James River upstream to its headwaters (the confluence of the Calfpasture and Little Calfpasture Rivers) and the tributaries within this section to their headwaters have a special pH standard of 6.5-9.5 due to natural conditions.)
	V		Stockable Trout Waters in Section 12
	vi		Alum Creek from its confluence with Brattons Creek 1.7 miles upstream.
	vi		Back Creek (Highland County) from 37.1 miles above its confluence with the Jackson River 3.2 miles upstream.
	vi		Back Run from its confluence with the James River 2.1 miles upstream.
	vi		Borden Creek from its confluence with Catawba Creek to a point 1.7 miles upstream.
	v	pH-6.5-9.5	Buffalo Creek (Rockbridge County) from the confluence with Colliers Creek 3 miles upstream.
	v		Bullpasture River from the junction of the Cowpasture River and Route 678 to its headwaters.
	vi		Cowpasture River (Highland County) from 75.4 miles above its confluence with the James River 2.7 miles upstream.
	vi		Craig Creek from the confluence of Muddy Branch to its headwaters.
	vi		Crush Run from its confluence with Catawba Creek to a point 2.8 miles upstream.
	vi		Elk Creek from its mouth to 0.6 mile upstream.
	vi		Elk Creek from 1.9 miles above its confluence with the James River 1.2 miles upstream.
	vi		Ellis Run from its confluence with Back Creek in Botetourt County to a point 1.6 miles upstream.
	v		Falling Spring Creek from its confluence with the Jackson River to its headwaters.
	v		Jackson River from 1.8 miles above Route 39 (river mile 65.4) 12.2 miles upstream.
	vi		Jackson River from 77.6 miles above its confluence with the James River to river mile 85.4.
	***		Jackson River from river mile 89.2 to headwaters.

vi		Jennings Creek from the Norfolk and Western Railroad to the confluence of Yellowstone Branch.
viii		Jerrys Run from its confluence with Dunlap Creek to the C&O Railroad crossing.
***		Johns Creek (Craig County) from the junction of Routes 632 and 658 to Eliber Springs Branch.
vi		Lees Creek from its confluence with Catawba Creek to a point 2 miles upstream.
vi		McFalls Creek from its confluence with Jennings Creek to its headwaters.
vi		Mill Creek (Bath County) from 2.2 miles above its confluence with the Calfpasture River to its headwaters.
vi		Mill Creek from its confluence with Craig Creek to a point 2.1 miles upstream (Craig County).
vi		Miller Branch from its confluence with Tygers Creek to its headwaters.
vi	pH-6.5-9.5	North Buffalo Creek from its confluence with Buffalo Creek 2.8 miles upstream.
viii		Pads Creek from river mile 2.2 - 8.2 (6 miles), unless otherwise designated in this chapter.
vi		Pheasanty Run (Spring Run) from its confluence with the Cowpasture River 0.7 mile upstream.
v		Potts Creek from the junction of Route 614 upstream to Boiling Spring.
***		Potts Creek from the Craig County line to its headwaters.
v		Roaring Run from Route 615 to its headwaters.
vi		South Fork Pads Creek from its confluence with Pads Creek approximately to its headwaters.
vi		Spreading Spring Branch from its confluence with the James River to the intersection of Routes 635 and 630.
v		Sweet Springs Creek from its confluence with Dunlap Creek to the West Virginia state line.
vi		Trout Creek and all of its tributaries (except Pickles Branch) from its confluence with Craig Creek to their headwaters (including the tributaries' headwaters).
vii		Tygers Creek from its confluence with Dunlap Creek to its headwaters.
VI		Natural Trout Waters in Section 12
iv		Als Run from its confluence with Jerrys Run upstream including all named and unnamed tributaries.
ii		Back Creek from its confluence with the James River near Buchanan upstream including all named and unnamed tributaries.
ii		Barbours Creek from its confluence with Craig Creek upstream including all named and unnamed tributaries.
ii		Barney Run from its confluence with Mare Run upstream including all named and unnamed tributaries.
ii		Bear Hole Run from its confluence with Dry Run upstream including all named and unnamed tributaries.
ii		Bear Loop Branch from its confluence with Wilson Creek upstream including all named and unnamed tributaries.

ii		Beaver Run (Bath County) from its confluence with Back Creek upstream including all named and unnamed tributaries.
ii	~~pH 6.5-9.5~~	Bennetts Run (Rockbridge County) from its confluence with the Maury River upstream including all named and unnamed tributaries.
iv		Benson Run from its confluence with the Cowpasture River upstream including all named and unnamed tributaries.
iii		Biggs Run from its confluence with Craig Creek upstream including all named and unnamed tributaries.
ii		Big Laurel Branch from its confluence with Johns Creek upstream including all named and unnamed tributaries.
ii		Big Lick Run from its confluence with Little Back Creek upstream including all named and unnamed tributaries.
iii		Big Run from its confluence with Little Back Creek upstream including all named and unnamed tributaries.
iv		Black Run (Augusta County) from its confluence with Smith Creek upstream including all named and unnamed tributaries.
ii		Blue Spring Run from its confluence with Potts Creek upstream including all named and unnamed tributaries.
iii		Blue Suck Branch from its confluence with Simpson Creek upstream including all named and unnamed tributaries.
iii		Bolar Run from its confluence with the Jackson River to Bolar Spring.
ii		Brattons Run from the confluence of Alum Creek upstream including all named and unnamed tributaries.
***		Broad Run from its junction with Routes 311 and 618 upstream including all named and unnamed tributaries.
ii		Cascades Creek from its confluence with Cedar Creek (Bath County) upstream including all named and unnamed tributaries.
ii		Castle Run from its confluence with the Jackson River upstream including all named and unnamed tributaries.
ii		Cast Steel Run from its confluence with Potts Creek upstream including all named and unnamed tributaries.
***		Cedar Creek from its confluence with the Jackson River ~~to its confluence with Hot Springs Run~~ [~~from~~ upstream to] a spring on the west bank located downstream of Route 605.
ii		Cedar Creek (Rockbridge County) from 6.4 miles above its confluence with the James River upstream including all named and unnamed tributaries.
ii		Chestnut Run from its confluence with Jennings Creek upstream including all named and unnamed tributaries.
iii		Christleys Run from its confluence with Kempers Run upstream including all named and unnamed tributaries.
ii		Clayton Mill Creek from its confluence with the Calfpasture River upstream including all named and unnamed tributaries.
ii		Cornelius Creek from its confluence with North Creek upstream including all named and unnamed tributaries.

ii	Cove Branch from its confluence with Barbours Creek upstream including all named and unnamed tributaries.
ii	Cowardin Run from its confluence with Rowan Run upstream including all named and unnamed tributaries.
ii	Crab Run from its confluence with the Bullpasture River upstream including all named and unnamed tributaries.
ii	Crow Run from its confluence with Dunlap Creek upstream including all named and unnamed tributaries.
ii	Cub Run (Bath County) from its confluence with Dry Run upstream including all named and unnamed tributaries.
iv	Davidson Run (Rockbridge County) from Route 501 upstream including all named and unnamed tributaries.
ii	Davis Run from Route 678 upstream including all named and unnamed tributaries.
iii	Downey Branch from its confluence with Blue Suck Branch upstream including all named and unnamed tributaries.
iv	Dry Run (Allegheny County) from the Covington City limits upstream including all named and unnamed tributaries.
ii	Dry Run (Bath County) from 1.5 miles above its confluence with the Cowpasture River upstream including all named and unnamed tributaries.
ii	Duffs Run from its confluence with the Bullpasture River upstream 1.0 miles.
ii	East Fork Elk Creek from 0.8 mile above its confluence with Elk Creek upstream including all named and unnamed tributaries.
ii	Eliber Springs Branch from its confluence with Johns Creek upstream including all named and unnamed tributaries.
ii	Ewin Run from its confluence with Potts Creek to the West Virginia state line.
ii	Falling Springs Creek from its confluence with the Jackson River to Route 220.
ii	Fallingwater Creek from its confluence with Jennings Creek upstream including all named and unnamed tributaries.
iv	Ferrol Creek from its confluence with the Little Calfpasture River upstream including all named and unnamed tributaries.
ii	Ford Run (Bath County) from its confluence with Back Creek upstream including all named and unnamed tributaries.
***	Fridleys Branch from its confluence with the Calfpasture River upstream including all named and unnamed tributaries.
iii	Furnace Branch from its confluence with Craig Creek upstream including all named and unnamed tributaries.
ii	Glover Run from its confluence with Allen Run upstream including all named and unnamed tributaries.
ii	Gochenour Branch from its confluence with Brattons Run upstream including all named and unnamed tributaries.
ii	Grannys Creek from its confluence with Johns Creek upstream including all named and unnamed tributaries.

***	Guys Run (Bath County) from its confluence with the Cowpasture River upstream including all named and unnamed tributaries.
ii	Guys Run (Rockbridge County) from its confluence with the Calfpasture River (at Camp Virginia, Route 39) upstream including all named and unnamed tributaries.
iii	Hays Creek from its confluence with Potts Creek upstream including all named and unnamed tributaries.
ii	Hidden Valley Spring from its confluence with the Jackson River 1.1 miles upstream.
ii	Hipes Branch from its confluence with Craig Creek upstream including all named and unnamed tributaries.
iv	Hite Hollow (Augusta County) from 0.8 miles above its mouth upstream including all named and unnamed tributaries.
***	Hypes Creek from Route 696 upstream including all named and unnamed tributaries.
iii	Indian Draft from its confluence with the Jackson River upstream including all named and unnamed tributaries.
ii	Jackson River from 5 miles above the City of Covington's raw water intake to the Gathright Dam.
ii	Jackson River from river mile 85.4 to river mile 89.2.
ii	Jennings Creek from the confluence of Yellowstone Branch upstream including all named and unnamed tributaries.
iv	Jerkemtight Branch from its confluence with the Calfpasture River upstream including all named and unnamed tributaries.
iv	Jerrys Run (Allegheny County) from the C&O railroad upstream including all named and unnamed tributaries.
iv	Jerrys Run (Augusta County) from its confluence with Ramseys Draft upstream including all named and unnamed tributaries.
ii	Johns Creek from the confluence of Eliber Springs Branch upstream including all named and unnamed tributaries.
ii	Jordan Run (Bath County) from its confluence with Thompson Creek upstream including all named and unnamed tributaries.
ii	Karnes Creek from a point 1.4 miles upstream of its confluence with the Jackson River upstream including all named and unnamed tributaries.
ii	Kelly Run (Bath County) from its confluence with the Jackson River upstream including all named and unnamed tributaries.
ii	Kelso Spring Branch from its confluence with the Little Calfpasture River 1.3 miles upstream.
ii	Laurel Run (Bath County) from its confluence with Dry Run upstream including all named and unnamed tributaries.
iv	Left Prong Ramseys Draft from its confluence with Ramseys Draft upstream including all named and unnamed tributaries.
ii	Left Prong Wilson Creek from its confluence with Wilson Creek upstream including all named and unnamed tributaries.

ii		Lick Block Run from its confluence with the Left Prong Wilson Creek upstream including all named and unnamed tributaries.
***		Lick Branch from its confluence with Craig Creek upstream including all named and unnamed tributaries.
ii		Lick Run (Bath County) from 3.3 miles above its confluence with Stuart Run 3.3 miles upstream.
ii		Little Back Creek (Bath County) from Route 600 upstream including all named and unnamed tributaries.
iv		Little Calfpasture River from 17.2 miles above its confluence with the Maury River upstream including all named and unnamed tributaries.
ii		Little Crow Run from its confluence with Crow Run upstream including all named and unnamed tributaries.
ii		Little Mill Creek (Bath County) from its confluence with Mill Creek upstream including all named and unnamed tributaries.
ii		Little Wilson Creek (from 1 mile above its confluence with Mill Creek) upstream including all named and unnamed tributaries.
ii		Long Spring Run from its confluence with Little Back Creek upstream including all named and unnamed tributaries.
iii	pH-6.5-9.5	Lowry Run from 0.2 mile above its confluence with the Maury River upstream including all named and unnamed tributaries.
ii		Madison Creek from Route 682 upstream including all named and unnamed tributaries.
ii		Mare Run from its junction with Route 39 at Bath Alum upstream including all named and unnamed tributaries.
ii		Meadow Creek from its confluence with Craig Creek upstream including all named and unnamed tributaries.
iii		Middle Creek from its confluence with Jennings Creek upstream including all named and unnamed tributaries.
ii		Mill Branch from its confluence with Potts Creek upstream including all named and unnamed tributaries.
i		Mill Creek (Bath County) from its confluence with the Cowpasture River 3.2 miles upstream.
iii		Mill Creek from Rebecca Furnace upstream including all named and unnamed tributaries.
ii		Mill Creek from its confluence with Craig Creek near Webbs Mill in Craig County upstream including all named and unnamed tributaries.
ii		Mill Creek (Bath County) from its confluence with the Jackson River (Lake Moomaw) upstream including all named and unnamed tributaries.
ii		Mill Run (Highland County) from its confluence with the Bullpasture River 0.5 mile upstream.
ii		Muddy Run (Bath County) from its confluence with the Jackson River upstream including all named and unnamed tributaries.
ii		Nelse Branch from its confluence with Mill Branch upstream including all named and unnamed tributaries.

ii		North Branch Simpson Creek from its confluence with Simpson Creek upstream including all named and unnamed tributaries.
ii		North Creek from its confluence with Jennings Creek upstream including all named and unnamed tributaries.
ii		Paint Bank Branch from its confluence with Potts Creek upstream including all named and unnamed tributaries.
ii		Panther Run from its confluence with Mare Run upstream including all named and unnamed tributaries.
ii		Paxton Branch from its confluence with Johns Creek upstream including all named and unnamed tributaries.
iii	pH-6.5-9.5	Pedlar Gap Run from 1 mile above its confluence with the Maury River upstream including all named and unnamed tributaries.
ii		Pickles Branch (a tributary to Trout Creek) from its mouth upstream including all named and unnamed tributaries.
ii		Piney Branch (Rockbridge County) from its confluence with Guys Run upstream including all named and unnamed tributaries.
iii	pH-6.5-9.5	Poplar Cove Run from its confluence with Lowry Run upstream including all named and unnamed tributaries.
iii		Porters Mill Creek from its confluence with Mill Creek upstream including all named and unnamed tributaries.
ii		Pounding Mill Creek from its confluence with the Jackson River upstream including all named and unnamed tributaries.
ii		Purgatory Creek from its confluence with the James River upstream including all named and unnamed tributaries.
iv		Ramseys Draft from its confluence with the Calfpasture River upstream including all named and unnamed tributaries.
ii	~~pH-6.5-9.5~~	Reservoir Hollow from 0.7 mile above its confluence with Indian Gap Run upstream including all named and unnamed tributaries.
iv		Right Prong Ramseys Draft from its confluence with Ramseys Draft upstream including all named and unnamed tributaries.
ii		Rocky Creek from its confluence with Ramseys Draft upstream including all named and unnamed tributaries.
ii		Rocky Run (Bath County) from its confluence with the Jackson River upstream including all named and unnamed tributaries.
ii		Rowan Run from its confluence with the Jackson River to the confluence with Cowardin Run.
ii		Sawmill Run (Bath County) from its confluence with Back Creek upstream including all named and unnamed tributaries.
ii		Shawvers Run from its confluence with Potts Creek upstream including all named and unnamed tributaries.
ii		Simpson Creek from the junction of Route 776 and U. S. Route 60 upstream including all named and unnamed tributaries.
ii		Sinking Creek from Route 697 upstream including all named and unnamed tributaries.

	iii		Smith Branch from its confluence with Mill Creek upstream including all named and unnamed tributaries.
	iii		Smith Creek (Alleghany-Clifton Forge City) from Interstate 64, 2.4 miles upstream.
	ii		Snake Run from its confluence with Dunlap Creek upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	South Buffalo Creek from its confluence with Buffalo Creek upstream including all named and unnamed tributaries.
	ii		Spring Branch (Bath County) from its confluence with Mill Creek 0.8 mile upstream.
	ii		Spring Run (Bath County) from its confluence with Back Creek upstream including all named and unnamed tributaries.
	iv		Still Run from its confluence with the Calfpasture River upstream including all named and unnamed tributaries.
	iii		Stony Run from its confluence with Craig Creek upstream including all named and unnamed tributaries.
	ii		Stony Run (Highland County) from its confluence with the Jackson River upstream including all named and unnamed tributaries.
	ii		Sugar Run (Allegheny County) from its confluence with Potts Creek upstream 0.75 miles.
	iii		Thompson Creek from the Route 39 crossing upstream to the confluence of Mares and Jordan Runs.
	ii		Trout Run from its confluence with Sinking Creek upstream including all named and unnamed tributaries.
	ii		Unnamed tributary to Brattons Run 0.7 mile above the confluence of Gochenour Branch from its mouth upstream including all named and unnamed tributaries.
	ii		Valley Branch from its confluence with Potts Creek upstream including all named and unnamed tributaries.
	ii		Vinegar Run from its confluence with the Jackson River upstream 0.4 miles.
	iii		Wildcat Hollow from its confluence with Little Back Creek upstream including all named and unnamed tributaries.
	ii		Wilson Creek (Bath County) within Douthat State Park Lake upstream including all named and unnamed tributaries.
12a	IV	pH-6.5-9.5	Maury River and its tributaries, unless otherwise designated in this chapter, from U.S. Route 60 upstream bridge to its headwaters (the confluence of the Calfpasture and Little Calfpasture Rivers).
	V	~~pH-6.5-9.5~~	Stockable Trout Waters in Section 12a
	[~~***~~]	[hh]	[~~Hays Creek from its confluence with the Maury River to Brownsburg (9.5 miles).~~]
	***		Irish Creek from its confluence with the South River to river mile 8.9.
	v	pH-6.5-9.5	Marlbrook Creek from its confluence with the South River 2.2 miles upstream.
	VI	~~pH-6.5-9.5~~	Natural Trout Waters in Section 12a

	iv		Big Bend Creek from its confluence with Irish Creek upstream including all named and unnamed tributaries.
	ii		Big Marys Creek from its confluence with the South River upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	Chimney Branch from its confluence with Saint Marys River upstream including all named and unnamed tributaries.
	ii		Hogback Creek from its confluence with Saint Marys River upstream including all named and unnamed tributaries.
	iii	pH-6.5-9.5	Irish Creek from river mile 8.9 upstream including all named and unnamed tributaries.
	i	pH-6.5-9.5	Laurel Run from its confluence with the Maury River upstream including all named and unnamed tributaries.
	ii		Little Marys Creek from its confluence with the South River upstream including all named and unnamed tributaries.
	***		~~Mill Creek from its confluence with the Maury River at Lexington upstream including all named and unnamed tributaries.~~
	ii		Mine Bank Creek from its confluence with Saint Marys River upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	Nettle Creek from its confluence with Irish Creek upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	Nettle Spring Branch from its confluence with Nettle Creek upstream including all named and unnamed tributaries.
	iii	pH-6.5-9.5	Otts Creek from its confluence with Hayes Creek upstream to Route 726.
	iv		Rock Branch from its confluence with Irish Creek upstream including all named and unnamed tributaries.
			Saint Marys River from its confluence with the South River upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	Saint Marys River from its confluence with the South River 3.6 miles upstream.
	i		Saint Marys River from 3.6 miles above its confluence with the South River upstream including all named and unnamed tributaries.
	ii		Spy Run from its confluence with the South River upstream including all named and unnamed tributaries.
	ii		Sugartree Branch from its confluence with Saint Marys River upstream including all named and unnamed tributaries.
	ii		Wigwam Creek from its confluence with Nettle Creek upstream including all named and unnamed tributaries.
12b	IV	PWS pH-6.5-9.5	Maury River and its tributaries from Lexington's raw water intake to a point 5 miles upstream.
12c	IV	PWS	Black Run from Craigsville's raw water intake to its headwaters.
12d	IV	PWS	Moores Creek located on Brushy Mountain.
12e	IV		Cowpasture River from the Alleghany-Botetourt County line upstream to U.S. Route 60 bridge.

12f	IV	PWS	Smith Creek and Clifton Forge Reservoir from Clifton Forge's raw water intake to their headwaters.
	VI	PWS	Natural Trout Waters in Section 12f
	ii		Piney Branch from its confluence with Smith Creek upstream including all named and unnamed tributaries.
	ii		Smith Creek (Alleghany County) from 4 miles north of Clifton Forge near Route 606 (at the stream gage upstream of the filtration plant) upstream including all named and unnamed tributaries.
12g	IV	PWS	Mill Branch and its tributaries located on Horse Mountain.
12h	IV	PWS	Potts Creek and its tributaries from Hercules, Inc.'s raw water intake to points 5 miles upstream.
12i	IV	PWS	Dunlap Creek and its tributaries from the Covington Boys Home raw water intake to points 5 miles upstream.
12j	IV	PWS	Jackson River and its tributaries from Covington's raw water intake to points 5 miles upstream.
	VI		Natural Trout Waters in Section 12j
	ii		Jackson River from Covington's raw water intake to a point 5 miles upstream.
12k	IV	PWS	Roaring Run above Clearwater Park's raw water intake to its headwaters.
12l	IV	PWS	Catawba Creek and its tributaries from the City of Roanoke's raw water intake 0.1 mile upstream from its confluence with Buchanan Branch to points 5 miles upstream.
12m	IV	PWS	Unnamed tributary to Catawba Creek from the Catawba State Hospital's raw water intake (approximately 1,000 feet north of the Hospital's main building), upstream to its headwaters.

9VAC25-260-440. Rappahannock River Basin.

SEC.	CLASS	SP. STDS.	SECTION DESCRIPTION
1	II	a~~,NEW-15,16~~	Rappahannock River and the tidal portions of its tributaries from Stingray and Windmill Points to Route 1 Alternate Bridge at Fredericksburg.
1a	II	~~NEW-16~~	Hoskins Creek from the confluence with the Rappahannock River to its tidal headwaters.
2	III	~~NEW-15,16~~	Free flowing tributaries of the Rappahannock from Stingray and Windmill Points upstream to Blandfield Point, unless otherwise designated in this chapter.
	VII		Swamp waters in Section 2
			Cat Point Creek and its tributaries, from their headwaters to the head of tide at river mile 10.54.
			Mount Landing Creek and its tributaries from the end of tidal waters at river mile 4.4 to their headwaters.
			Piscataway Creek and its tributaries from the confluence of Sturgeon Swamp to their headwaters.
3	III		The Rappahannock River from the Route 1 Alternate Bridge at Fredericksburg upstream to the low dam water intake at Waterloo (Fauquier County).
3a	III	PWS	The Rappahannock River and its tributaries from Spotsylvania County's raw water intake near Golin Run [~~at 38°18'35.4638" latitude and 77°32'03.448" longitude~~]

			to points 5 miles upstream (excluding Motts Run and tributaries, which is in section 4c).
3b	III	PWS	The Rappahannock River and its tributaries from the low dam water intake at Waterloo, Fauquier County, to points 5 miles upstream.
4	III	~~NEW-15~~ ESW 17,18	Free flowing tributaries of the Rappahannock from Blandfield Point to its headwaters, unless otherwise designated in this chapter.
	VII		Swamp waters in Section 4
			Occupacia Creek and its tributaries from the end of tidal waters at river mile 8.89 on Occupacia Creek to their headwaters.
	V		Stockable Trout Waters in Section 4
	***		Hughes River (Madison County) from Route 231 upstream to the upper crossing of Route 707 near the confluence of Rocky Run.
	***		Robinson River from Route 231 to river mile 26.7.
	***		Rose River from its confluence with the Robinson River 2.6 miles upstream.
	***		South River from 5 miles above its confluence with the Rapidan River 3.9 miles upstream.
	VI		Natural Trout Waters in Section 4
	ii		Berry Hollow from its confluence with the Robinson River upstream including all named and unnamed tributaries.
	Ii		Bolton Branch from 1.7 miles above its confluence with Hittles Mill Stream upstream including all named and unnamed tributaries.
	Ii		Broad Hollow Run from its confluence with Hazel River upstream including all named and unnamed tributaries.
	I		Brokenback Run from its confluence with the Hughes River upstream including all named and unnamed tributaries.
	I		Bush Mountain Stream from its confluence with the Conway River upstream including all named and unnamed tributaries.
	I		Cedar Run (Madison County) from 0.8 mile above its confluence with the Robinson River upstream including all named and unnamed tributaries.
	I		Conway River (Greene County) from the Town of Fletcher upstream including all named and unnamed tributaries.
	Ii		Dark Hollow from its confluence with the Rose River upstream including all named and unnamed tributaries.
	I		Devils Ditch from its confluence with the Conway River upstream including all named and unnamed tributaries.
	iii		Entry Run from its confluence with the South River upstream including all named and unnamed tributaries.
	iii		Garth Run from 1.9 miles above its confluence with the Rapidan River at the Route 665 crossing upstream including all named and unnamed tributaries.
	ii		Hannah Run from its confluence with the Hughes River upstream including all named and unnamed tributaries.
	ii		Hazel River (Rappahannock County) from the Route 707 bridge upstream including all named and unnamed tributaries.

ii	Hogcamp Branch from its confluence with the Rose River upstream including all named and unnamed tributaries.
i	Hughes River (Madison County) from the upper crossing of Route 707 near the confluence of Rocky Run upstream including all named and unnamed tributaries.
iii	Indian Run (Rappahannock County) from 3.4 miles above its confluence with the Hittles Mill Stream upstream including all named and unnamed tributaries.
ii	Jordan River (Rappahannock County) from 10.9 miles above its confluence with the Rappahannock River upstream including all named and unnamed tributaries.
iii	Kinsey Run from its confluence with the Rapidan River upstream including all named and unnamed tributaries.
ii	Laurel Prong from its confluence with the Rapidan River upstream including all named and unnamed tributaries.
ii	Mill Prong from its confluence with the Rapidan River upstream including all named and unnamed tributaries.
ii	Negro Run (Madison County) from its confluence with the Robinson River upstream including all named and unnamed tributaries.
ii	North Fork Thornton River from 3.2 miles above its confluence with the Thornton River upstream including all named and unnamed tributaries.
ii	Piney River (Rappahannock County) from 0.8 mile above its confluence with the North Fork Thornton River upstream including all named and unnamed tributaries.
ii	Pocosin Hollow from its confluence with the Conway River upstream including all named and unnamed tributaries.
ii	Ragged Run from 0.6 mile above its confluence with Popham Run upstream including all named and unnamed tributaries.
i	Rapidan River from Graves Mill (Route 615) upstream including all named and unnamed tributaries.
ii	Robinson River (Madison County) from river mile 26.7 to river mile 29.7.
i	Robinson River (Madison County) from river mile 29.7 upstream including all named and unnamed tributaries.
i	Rose River from river mile 2.6 upstream including all named and unnamed tributaries.
iv	Rush River (Rappahannock County) from the confluence of Big Devil Stairs (approximate river mile 10.2) upstream including all named and unnamed tributaries.
ii	Sams Run from its confluence with the Hazel River upstream including all named and unnamed tributaries.
ii	South River from 8.9 miles above its confluence with the Rapidan River upstream including all named and unnamed tributaries.
ii	Sprucepine Branch from its confluence with Bearwallow Creek upstream including all named and unnamed tributaries.
i	Staunton River (Madison County) from its confluence with the Rapidan River upstream including all named and unnamed tributaries.
ii	Strother Run from its confluence with the Rose River upstream including all

			named and unnamed tributaries.
	iii		Thornton River (Rappahannock County) from 25.7 miles above its confluence with the Hazel River upstream including all named and unnamed tributaries.
	ii		Wilson Run from its confluence with the Staunton River upstream including all named and unnamed tributaries.
4a			(Deleted)
4b	III	PWS	The Rappahannock River and its tributaries, to include the VEPCO Canal, from Fredericksburg's (inactive May 2000) raw water intake to points 5 miles upstream.
4c	III	PWS	Motts Run and its tributaries.
4d	III		Horsepen Run and its tributaries.
4e	III	PWS	Hunting Run and its tributaries.
4f	III		Wilderness Run and its tributaries.
4g	III		Deep Run and its tributaries.
4h			(Deleted)
4i	III	PWS	Mountain Run and its tributaries from Culpeper's raw water intake to points 5 miles upstream.
4j	III	PWS	White Oak Run and its tributaries from the Town of Madison's raw water intake to points 5 miles upstream.
4k	III	PWS	Rapidan River and its tributaries from Orange's raw water intake near Poplar Run to points 5 miles upstream.
4l	III	PWS	Rapidan River and its tributaries from the Rapidan Service Authority's raw water intake (just upstream of the Route 29 bridge) upstream to points 5 miles above the intake.
4m	III	PWS	Rapidan River and its tributaries from the Wilderness Shores raw water intake [~~(38°22'30", 77°44'50", Orange~~ (Orange] County - Rapidan Service Authority) to points 5 miles upstream.

9VAC25-260-450. Roanoke River Basin ~~(Roanoke River Subbasin)~~.

~~Roanoke River Subbasin~~

SEC.	CLASS	SP. STDS.	SECTION DESCRIPTION
1	III	PWS, ff	Lake Gaston and the John Kerr Reservoir in Virginia and their tributaries in Virginia, unless otherwise designated in this chapter (not including the Roanoke or the Dan Rivers). The Roanoke River Service Authority's water supply intake is in this section.
1a	III	~~s~~	Dockery Creek and its tributaries to their headwaters.
2	III		Dan River and its tributaries from the John Kerr Reservoir to the Virginia-North Carolina state line just east of the Pittsylvania-Halifax County line, unless otherwise designated in this chapter.
2a	III	PWS	Dan River [and its tributaries] from South Boston's raw water intake [~~upstream~~] to [~~Paces (below Route 658 bridge)~~ points 5 miles upstream].
2b	III	PWS	Banister River and its tributaries from Burlington Industries' inactive raw water intake (about 2000 feet downstream of Route 360) inclusive of the Town of Halifax intake at the Banister Lake dam upstream to the Pittsylvania/Halifax County Line (designation for main stem and tributaries ends at the county line).

2c			(Deleted)
2d	III	PWS	Cherrystone Creek [and its tributaries] from Chatham's raw water intake upstream to [~~its~~ their] headwaters.
2e	III	PWS	Georges Creek from Gretna's raw water intake upstream to its headwaters.
2f	III	PWS	Banister River and its tributaries from point below its confluence with Bearskin Creek (at latitude 36°46'15"; longitude 79°27'08") just east of Route 703, upstream to their headwaters.
2g	III	PWS	Whitethorn Creek and its tributaries from its confluence with Georges Creek upstream to their headwaters.
3	III		Dan River and its tributaries from the Virginia-North Carolina state line just east of the Pittsylvania-Halifax County line upstream to the state line just east of Draper, N. C., unless otherwise designated in this chapter.
3a	III	PWS	Dan River [and its tributaries] from the Schoolfield Dam including the City of Danville's main water intake located just upstream of the Schoolfield Dam, upstream to the Virginia-North Carolina state line.
3b	IV	PWS	Cascade Creek and its tributaries.
3c	IV	PWS	Smith River and its tributaries from the Virginia-North Carolina state line to, but not including, Home Creek.
3d	VI	PWS	Smith River from DuPont's (inactive) raw water intake upstream to the Philpott Dam, unless otherwise designated in this chapter.
	VI	PWS	Natural Trout Waters in Section 3d
	ii		Smith River from DuPont's (inactive) raw water intake upstream to the Philpott Dam, unless otherwise designated in this chapter.
3e	IV		Philpott Reservoir, Fairystone Lake and their tributaries.
	V		Stockable Trout Waters in Section 3e
	v		Otter Creek from its confluence with Rennet Bag Creek (Philpott Reservoir) to its headwaters.
	v		Smith River (Philpott Reservoir portion) from the Philpott Dam (river mile 46.80) to river mile 61.14, just above the confluence with Small Creek.
	v		Rennet Bag Creek from its confluence with the Smith River to the confluence of Long Branch Creek.
	VI		Natural Trout Waters in Section 3e
	ii		Brogan Branch from its confluence with Rennet Bag Creek upstream including all named and unnamed tributaries.
	ii		Rennet Bag Creek from the confluence of Long Branch Creek upstream including all named and unnamed tributaries.
	ii		Roaring Run from its confluence with Rennet Bag Creek upstream including all named and unnamed tributaries.
3f	IV	PWS	North Mayo River and South Mayo River and their tributaries from the Virginia-North Carolina state line to points 5 miles upstream.
3g	IV		Interstate streams in the Dan River watershed above the point where the Dan crosses the Virginia-North Carolina state line just east of Draper, N. C., (including the Mayo and the Smith watersheds), unless otherwise designated in this chapter.

	V		Stockable Trout Waters in Section 3g
	vi		Dan River from the Virginia-North Carolina state line upstream to the Pinnacles Power House.
	***		Little Dan River from its confluence with the Dan River 7.8 miles upstream.
	v		Smith River from river mile 61.14 (just below the confluence of Small Creek), to Route 704 (river mile 69.20).
	VI		Natural Trout Waters in Section 3g
	ii		Dan River from Pinnacles Power House to Townes Dam.
	ii		Dan River from headwaters of Townes Reservoir to Talbott Dam.
	iii		Little Dan River from 7.8 miles above its confluence with the Dan River upstream including all named and unnamed tributaries.
	i		North Prong of the North Fork Smith River from its confluence with the North Fork Smith River upstream including all named and unnamed tributaries.
	ii		North Fork Smith River from its confluence with the Smith River upstream including all named and unnamed tributaries.
	iii		Smith River from Route 704 (river mile 69.20) to Route 8 (river mile 77.55).
	ii		Smith River from Route 8 (approximate river mile 77.55) upstream including all named and unnamed tributaries.
	ii		South Mayo River from river mile 38.8 upstream including all named and unnamed tributaries.
3h	IV	PWS	South Mayo River and its tributaries from the Town of Stuart's raw water intake 0.4 mile upstream of its confluence with the North Fork Mayo River to points 5 miles upstream.
	VI		Natural Trout Waters in Section 3h
	iii		Brushy Fork from its confluence with the South Mayo River upstream including all named and unnamed tributaries.
	iii		Lily Cove Branch from its confluence with Rye Cove Creek upstream including all named and unnamed tributaries.
	iii		Rye Cove Creek from its confluence with the South Mayo River upstream including all named and unnamed tributaries.
	iii		South Mayo River from river mile 33.8 upstream including all named and unnamed tributaries.
3i	IV	PWS	Hale Creek and its tributaries from the Fairy Stone State Park's raw water intake 1.7 miles from its confluence with Fairy Stone Lake upstream to its headwaters.
3j	VI	PWS	Smith River and its tributaries from the Henry County Public Service Authority's raw water intake about 0.2 mile upstream of its confluence with Town Creek to points 5 miles upstream.
4	III		Intrastate tributaries to the Dan River above the Virginia-North Carolina state line just east of Draper, North Carolina, to their headwaters, unless otherwise designated in this chapter.
	V		Stockable Trout Waters in Section 4
	vi		Browns Dan River from the intersection of Routes 647 and 646 to its headwaters.

vi	Little Spencer Creek from its confluence with Spencer Creek to its headwaters.
vi	Poorhouse Creek from its confluence with North Fork South Mayo River upstream to Route 817.
***	Rock Castle Creek from its confluence with the Smith River upstream to Route 40.
VI	Natural Trout Waters in Section 4
ii	Barnard Creek from its confluence with the Dan River upstream including all named and unnamed tributaries.
ii	Big Cherry Creek from its confluence with Ivy Creek upstream including all named and unnamed tributaries.
iii	Ivy Creek from its confluence with the Dan River upstream including all named and unnamed tributaries.
iii	Camp Branch from its confluence with Ivy Creek upstream including all named and unnamed tributaries.
iii	Haunted Branch from its confluence with Barnard Creek upstream including all named and unnamed tributaries.
ii	Hookers Creek from its confluence with the Little Dan River upstream including all named and unnamed tributaries.
iii	Ivy Creek from Coleman's Mill Pond upstream to Route 58 (approximately 2.5 miles).
iii	Little Ivy Creek from its confluence with Ivy Creek upstream including all named and unnamed tributaries.
iii	Little Rock Castle Creek from its confluence with Rock Castle Creek upstream including all named and unnamed tributaries.
ii	Maple Swamp Branch from its confluence with Round Meadow Creek upstream including all named and unnamed tributaries.
iii	Mayberry Creek from its confluence with Round Meadow Creek upstream including all named and unnamed tributaries.
ii	Mill Creek from its confluence with the Dan River upstream including all named and unnamed tributaries.
iii	North Fork South Mayo River from its confluence with the South Mayo River upstream including all named and unnamed tributaries.
vi**	Patrick Springs Branch from its confluence with Laurel Branch upstream including all named and unnamed tributaries.
iii	Polebridge Creek from Route 692 upstream including all named and unnamed tributaries.
ii	Poorhouse Creek from Route 817 upstream including all named and unnamed tributaries.
ii	Rhody Creek from its confluence with the South Mayo River upstream including all named and unnamed tributaries.
iii	Rich Creek from Route 58 upstream including all named and unnamed tributaries.
ii	Roaring Creek from its confluence with the Dan River upstream including all named and unnamed tributaries.

	i		Rock Castle Creek from Route 40 upstream including all named and unnamed tributaries.
	iii		Round Meadow Creek from its confluence with the Dan River upstream including all named and unnamed tributaries.
	ii		Sawpit Branch from its confluence with Round Meadow Creek upstream including all named and unnamed tributaries.
	ii		Shooting Creek from its confluence with the Smith River upstream including all named and unnamed tributaries.
	vi**		Spencer Creek from Route 692 upstream including all named and unnamed tributaries.
	iii		Squall Creek from its confluence with the Dan River upstream including all named and unnamed tributaries.
	ii		Tuggle Creek from its confluence with the Dan River upstream including all named and unnamed tributaries.
	ii		Widgeon Creek from its confluence with the Smith River upstream including all named and unnamed tributaries.
4a	III	PWS	Intrastate tributaries (includes Beaver Creek, Little Beaver Creek, and Jones Creek, for the City of Martinsville) to the Smith River from DuPont's (inactive) raw water intake to points 5 miles upstream from Fieldcrest Cannon's raw water intake.
4b	III	PWS	Marrowbone Creek and its tributaries from the Henry County Public Service Authority's raw water intake (about 1/4 mile upstream from Route 220) to their headwaters.
4c	III	PWS	Leatherwood Creek and its tributaries from the Henry County Public Service Authority's raw water intake 8 miles upstream of its confluence with the Smith River to points 5 miles upstream.
5	IV	PWS	Roanoke Staunton River from the headwaters of the John Kerr Reservoir to Leesville Dam unless otherwise designated in this chapter.
5a	III		Tributaries to the Roanoke Staunton River from the headwaters of the John Kerr Reservoir to Leesville Dam, unless otherwise designated in this chapter.
	V		Stockable Trout Waters in Section 5a
	vi		Day Creek from Route 741 to its headwaters.
	VI		Natural Trout Waters in Section 5a
	iii		Gunstock Creek from its confluence with Overstreet Creek upstream including all named and unnamed tributaries.
	ii		Overstreet Creek from its confluence with North Otter Creek upstream including all named and unnamed tributaries.
5b	III	PWS	Spring Creek from Keysville's raw water intake upstream to its headwaters.
5c	III	PWS	Falling River and its tributaries from a point just upstream from State Route 40 (the raw water source for Dan River, Inc.) to points 5 miles upstream and including the entire Phelps Creek watershed which contains the Brookneal Reservoir.
5d	III		Falling River and its tributaries from 5 miles above Dan River, Inc. raw water intake to its headwaters.

5e	III	PWS	Reed Creek [and its tributaries] from Altavista's raw water intake upstream to [~~its~~ their] headwaters.
5f	III	PWS	Big Otter River and its tributaries from Bedford's raw water intake to points 5 miles upstream, and Stony Creek and Little Stony Creek upstream to their headwaters.
	VI	PWS	Natural Trout Waters in Section 5f
	ii		Little Stony Creek from 1 mile above its confluence with Stony Creek upstream including all named and unnamed tributaries.
	ii		Stony Creek from the Bedford Reservoir upstream including all named and unnamed tributaries.
5g	III		Big Otter River and its tributaries from 5 miles above Bedford's raw water intake upstream to their headwaters.
5h	III		Ash Camp Creek and that portion of Little Roanoke Creek from its confluence with Ash Camp Creek to the Route 47 bridge.
5i	III	PWS	The Roanoke River and its tributaries from the Town of Altavista's raw water intake, 0.1 mile upstream from the confluence of Sycamore Creek, to points 5 miles upstream.
5j	III	PWS	Big Otter River and its tributaries from the Campbell County Utilities and Service Authority's raw water intake to points 5 miles upstream.
6	IV	pH-6.5-9.5	Roanoke River from a point (at latitude 37°15'53"; longitude 79°54'00") 5 miles above the headwaters of Smith Mountain Lake upstream to Salem's #1 raw water intake.
	V	~~pH-6.5-9.5~~	Stockable Trout Waters in Section 6
	***	pH-6.5-9.5	Roanoke River from its junction from Routes 11 and 419 to Salem's #1 raw water intake.
6a	III	NEW-1	Tributaries of the Roanoke River from Leesville Dam to Niagra Reservoir, unless otherwise designated in this chapter.
	V		Stockable Trout Waters in Section 6a
	vi		Gourd Creek from 1.3 miles above its confluence with Snow Creek to its headwaters.
	vi		Maggodee Creek from Boones Mill upstream to Route 862 (approximately 3.8 miles).
	vii		South Fork Blackwater River form its confluence with the Blackwater River upstream to Roaring Run.
	vi		South Prong Pigg River from its confluence with the Pigg River to its headwaters.
	VI		Natural Trout Waters in Section 6a
	iii		Daniels Branch from its confluence with the South Fork Blackwater River upstream including all named and unnamed tributaries.
	ii		Green Creek from Roaring Run upstream including all named and unnamed tributaries.
	ii		Pigg River from 1 mile above the confluence of the South Prong Pigg River upstream including all named and unnamed tributaries.
	ii		Roaring Run from its confluence with the South Fork Blackwater River upstream including all named and unnamed tributaries.

6b			(Deleted)
6c	III	PWS	Falling Creek Reservoir and Beaverdam Reservoir.
6d	IV		Tributaries of the Roanoke River from Niagra Reservoir to Salem's #1 raw water intake, unless otherwise designated in this chapter.
	V		Stockable Trout Waters in Section 6d
	vii	hh	Tinker Creek from its confluence with the Roanoke River north to Routes 11 and 220.
	VI		Natural Trout Waters in Section 6d
	iii		Glade Creek from its junction with ~~Route 633~~ Berkley Road NE to the ~~Bedford County line~~ confluence of Coyner Branch.
6e	IV	PWS	Carvin Cove Reservoir and its tributaries to their headwaters.
6f	IV	PWS, NEW-1	Blackwater River and its tributaries from the Town of Rocky Mount's raw water intake (just upstream of State Route 220) to points 5 miles upstream.
6g	IV	PWS	Tinker Creek [and its tributaries] from the City of Roanoke's raw water intake (about 0.4 mile downstream from Glebe Mills) [to points 5 miles] upstream [~~5 miles~~].
6h	IV	PWS	Roanoke River from Leesville Dam to Smith Mountain Dam (Gap of Smith Mountain), excluding all tributaries to Leesville Lake.
6i	IV	PWS	Roanoke River from Smith Mountain Dam (Gap of Smith Mountain) upstream to a point (at latitude 37°15'53"; longitude 79°54'00" and its tributaries to points 5 miles above the 795.0 foot contour (normal pool elevation) of Smith Mountain Lake.
7	IV	pH-6.5-9.5,ESW-2	Roanoke River and its tributaries, unless otherwise designated in this chapter, from Salem's #1 raw water intake to their headwaters.
	V	~~pH-6.5-9.5~~	Stockable Trout Waters in Section 7
	vi	pH-6.5-9.5	Elliott Creek from the confluence of Rocky Branch to its headwaters.
	vi	pH-6.5-9.5	Goose Creek from its confluence with the South Fork Roanoke River to its headwaters.
	vi	pH-6.5-9.5	Mill Creek from its confluence with Bottom Creek to its headwaters.
	***	pH-6.5-9.5,hh	Roanoke River from 5 miles above Salem's #2 raw water intake to the Spring Hollow Reservoir intake (see section 7b).
	vi	pH-6.5-9.5	Smith Creek from its confluence with Elliott Creek to its headwaters.
	vi	pH-6.5-9.5	South Fork Roanoke River from 5 miles above the Spring Hollow Reservoir intake (see section 7b) to the mouth of Bottom Creek (river mile 17.1).
	VI	~~pH-6.5-9.5~~	Natural Trout Waters in Section 7
	ii	pH-6.5-9.5	Big Laurel Creek from its confluence with Bottom Creek upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	Bottom Creek from its confluence with the South Fork Roanoke River upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	Lick Fork (Floyd County) from its confluence with Goose Creek upstream including all named and unnamed tributaries.

	ii	pH-6.5-9.5	Mill Creek from its confluence with the North Fork Roanoke River upstream including all named and unnamed tributaries.
	iii	pH-6.5-9.5	Purgatory Creek from Camp Alta Mons upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	Spring Branch from its confluence with the South Fork Roanoke River upstream including all named and unnamed tributaries.
7a	IV	PWS pH-6.5-9.5	Roanoke River and its tributaries from Salem's #1 raw water intake to points 5 miles upstream from Salem's #2 raw water intake.
	V	PWS ~~pH 6.5-9.5~~	Stockable Trout Waters in Section 7a
	***	pH-6.5-9.5, hh	Roanoke River from Salem's #1 raw water intake to a point 5 miles upstream from Salem's #2 raw water intake.
7b	IV	PWS pH-6.5-9.5	Roanoke River and its tributaries from the Spring Hollow Reservoir intake [~~(N 37°14'2.59"/W 80-10'39.61")~~] upstream to points 5 miles upstream.
	V	PWS~~, pH 6.5-9.5~~	Stockable Trout Waters in Section 7b
	***	pH-6.5-9.5, hh	Roanoke River from the Spring Hollow Reservoir intake to the Montgomery County line.
	vi	pH-6.5-9.5	South Fork Roanoke River from its confluence with the Roanoke River to 5 miles above the Spring Hollow Reservoir intake.

9VAC25-260-460. ~~Roanoke~~ Yadkin River Basin ~~(Yadkin River Subbasin)~~.

~~Yadkin River Subbasin~~

SEC.	CLASS	SP. STDS.	SECTION DESCRIPTION
1	IV	PWS	Yadkin River Basin in Virginia including Ararat River, Johnson Creek, Little Fisher River, Lovills Creek, Pauls Creek and Stewarts Creek - the entire reach of these streams from the Virginia-North Carolina state line to their headwaters.
	V	PWS	Stockable Trout Waters in Section 1
	***		Ararat River from Route 823 upstream to Route 671.
	vi		Halls Branch from its confluence with Lovills Creek 4.5 miles upstream.
	vi		Johnson Creek from the Virginia-North Carolina state line to its headwaters.
	vii		Lovills Creek from the Virginia-North Carolina state line 1.8 miles upstream (to the Natural Resource Conservation Service dam).
	vii		Pauls Creek (at the Carroll County line at Route 690) from 6.7 miles above its confluence with Stewarts Creek 4.2 miles upstream.
	VI	PWS	Natural Trout Waters in Section 1
	iii		Ararat River from Route 671 upstream including all named and unnamed tributaries.
	iii		East Fork Johnson Creek from its confluence with Johnson Creek upstream including all named and unnamed tributaries.
	iii		Elk Spur Branch from its confluence with Lovills Creek upstream including all named and unnamed tributaries.

i	Little Fisher Creek from the Virginia-North Carolina state line upstream including all named and unnamed tributaries.
ii	Little Pauls Creek in the vicinity of Route 692 (4 miles above its confluence with Pauls Creek) upstream including all named and unnamed tributaries.
iii	Lovills Creek from the Natural Resource Conservation Service dam (1.8 miles above the Virginia-North Carolina state line) to river mile 7.8 (at the confluence of Elk Spur and Waterfall Branch).
ii	North Fork Stewarts Creek from its confluence with Stewarts Creek upstream including all named and unnamed tributaries.
ii	Pauls Creek (Carroll County) from 10.9 miles above its confluence with Stewarts Creek upstream including all named and unnamed tributaries.
i	South Fork Stewarts Creek from its confluence with Stewarts Creek upstream including all named and unnamed tributaries.
iii	Stewarts Creek below Lambsburg in the vicinity of Route 696 (10.4 miles above its confluence with the Ararat River) to the confluence of the North and South Forks of Stewarts Creek.
iii	Sun Run from its confluence with the Ararat River upstream including all named and unnamed tributaries.
iii	Thompson Creek from its confluence with the Ararat River upstream including all named and unnamed tributaries.
ii	Turkey Creek from its confluence with Stewarts Creek upstream including all named and unnamed tributaries.
ii	Waterfall Branch from its confluence with Lovills Creek upstream including all named and unnamed tributaries.

9VAC25-260-470. Chowan and Dismal Swamp (Chowan River Subbasin).

~~Chowan River Subbasin~~

SEC.	CLASS	SP. STDS.	SECTION DESCRIPTION
1	II	NEW-21	Blackwater River and its tidal tributaries from the Virginia-North Carolina state line to the end of tidal waters at approximately State Route 611 at river mile 20.90; Nottoway River and its tidal tributaries from the Virginia-North Carolina state line to the end of tidal waters at approximately Route 674.
2	VII	NEW-21	Blackwater River from the end of tidal waters to its headwaters and its free-flowing tributaries in Virginia, unless otherwise designated in this chapter.
2a	VII	PWS	Blackwater River and its tributaries from Norfolk's auxiliary raw water intake near Burdette, Virginia, to points 5 miles above the raw water intake, to include Corrowaugh Swamp to a point 5 miles above the raw water intake.
2b	III		Nottoway River from the end of tidal waters to its headwaters and its free-flowing tributaries in Virginia, unless otherwise designated in this chapter.
	VII		Swamp waters in Section 2b
			Assamoosick Swamp and its tributaries from [~~its confluence with the Nottoway River~~ river mile 2.50] to its headwaters.
			Black Branch Swamp from its confluence with the Nottoway River to its headwaters.

			Butterwood Creek from river mile 4.65 (near Route 622) upstream to river mile 14.59 (near Route 643).
			Cabin Point Swamp from its confluence with the Nottoway River to its headwaters.
			Cooks Branch from its confluence with Butterwood Creek to river mile 1.08
			Gosee Swamp and its tributaries from its confluence with the Nottoway River to river mile 6.88.
			Gravelly Run and its tributaries from [~~river mile 0.22 upstream~~ its confluence with Rowanty Creek] to river mile 8.56.
			Harris Swamp and its tributaries from its confluence with the Nottoway River to river mile 8.72.
			Hatcher Run and its tributaries from its confluence with Rowanty Creek to river mile 19.27 excluding Picture Branch [~~and Hatcher Run from an unnamed tributary below Route 675 upstream to Steers Millpond~~].
			Hunting Quarter Swamp and its tributaries from its confluence with the Nottoway River to its headwaters.
			Moores and Jones Holes Swamp and tributaries from their confluence with the Nottoway River to its headwaters.
			Nebletts Mill Run and its tributaries from its confluence with the Nottoway River to its headwaters.
			Raccoon Creek and its tributaries from its confluence with the Nottoway River to its headwaters.
			Rowanty Creek and its tributaries from its confluence with the Nottoway River to Gravelly Run.
			Southwest Swamp and its tributaries from its confluence with Stony Creek to river mile 8.55.
			Three Creek and its tributaries from its confluence with the Nottoway River [upstream to its headwaters Slagles Lake].
			[~~White Oak Creek from its headwaters to its confluence with Butterwood Creek.~~]
2c	III	PWS	Nottoway River and its tributaries from Norfolk's auxiliary raw water intake near Courtland, Virginia, to points 5 miles upstream [unless otherwise designated in this chapter] .
	[VII]		[Swamp waters in Section 2c]
			[Assamoosick Swamp from its confluence with the Nottoway River to river mile 2.50.]
2d			(Deleted)
2e	III	PWS	Nottoway River [and its tributaries] from the Georgia-Pacific and the Town of Jarratt's raw water intakes near Jarratt, Virginia, to [~~a point~~ points] 5 miles above the intakes.
2f	III	PWS	Nottoway River and its tributaries from the Town of Blackstone's raw water intake to points 5 miles above the raw water intake.
2g	III	PWS	Lazaretto Creek and its tributaries from Crewe's raw water intake to points 5 miles upstream.

2h	III	PWS	Modest Creek and its tributaries from Victoria's raw water intake to their headwaters.
2i	III	PWS	Nottoway River and its tributaries from the Town of Victoria's raw water intake at the Falls (about 200 feet upstream from State Route 49) to points 5 miles upstream.
2j	III	PWS	Big Hounds Creek from the Town of Victoria's auxiliary raw water intake (on Lunenburg Lake) to its headwaters.
~~2k~~	~~VII~~		~~Assamoosick Swamp and its tributaries from its confluence with the Nottoway River to its headwaters.~~
~~2l~~	~~VII~~		~~Three Creek and its tributaries from its confluence with the Nottoway River to its headwaters.~~
~~2m~~	~~VII~~		~~Raccoon Creek and its tributaries from its confluence with the Nottoway River to its headwaters.~~
~~2n~~	~~VII~~		~~Nebletts Mill Run and its tributaries from its confluence with the Nottoway River to its headwaters.~~
~~2o~~	~~VII~~		~~Rowanty Creek and its tributaries from its confluence with the Nottoway River to Gravelly Run and Hatcher Run.~~
3	III		Meherrin River and its tributaries in Virginia from the Virginia-North Carolina state line to its headwaters, unless otherwise designated in this chapter.
	VII		Swamp waters in Section 3
			Tarrara Creek and its tributaries from its confluence with the Meherrin River to its headwaters.
			Fountains Creek and its tributaries from its confluence with the Meherrin River to Route 301.
3a	III	PWS	Meherrin River and its tributaries from Emporia's water supply dam to points 5 miles upstream.
3b	III	PWS	Great Creek from Lawrenceville's raw water intake to a point 7.6 miles upstream.
3c	III	PWS	Meherrin River [and its tributaries] from Lawrenceville's raw water intake to [~~a point~~ points] 5 miles upstream.
3d	III	PWS	Flat Rock Creek from Kenbridge's raw water intake upstream to its headwaters.
3e	III	PWS	Meherrin River and its tributaries from South Hill's raw water intake to points 5 miles upstream.
3f	III		Couches Creek from a point 1.6 miles downstream from the Industrial Development Authority discharge to its headwaters.
~~3g~~	~~VII~~		~~Tarrara Creek and its tributaries from its confluence with the Meherrin River to its headwaters.~~
~~3h~~	~~VII~~		~~Fountains Creek and its tributaries from its confluence with the Meherrin River to Route 301.~~
4	III		Free flowing tributaries to the Chowan River in Virginia unless otherwise designated in this section.
	VII		Swamp waters in Section 4
			Unnamed tributary to Buckhorn Creek from its headwaters to the Virginia/North Carolina state line.

			Somerton Creek and its tributaries from the Virginia/North Carolina state line at river mile 0.00 upstream to river mile 13.78.

9VAC25-260-480. Chowan and Dismal Swamp (Albemarle Sound Subbasin).

~~Albemarle Sound Subbasin~~

SEC.	CLASS	SP. STDS.	SECTION DESCRIPTION
1	II		Back Bay and its tributaries in the City of Virginia Beach to the Virginia-North Carolina state line and the Northwest River and its tidal tributaries from the Virginia-North Carolina state line to the free flowing portion, unless otherwise designated in this chapter and North Landing River and its tidal tributaries from the Virginia-North Carolina state line to the Great Bridge Lock of the Intracoastal Waterway and Salem Canal up to its intersection with Timberlake Road at N36°48'35.67"/W76°08'31.70". Includes West Neck Creek to the Dam Neck Road bridge at N36°47'20.00"/W76°04'12.10".
1a	III		The free flowing portions of streams in Section 1 and tributaries of Stumpy Lake.
1b	III	PWS	Stumpy Lake (raw water supply for the City of Norfolk) and feeder streams to points 5 miles upstream.
1c	II	PWS	Northwest River and its tributaries from the City of Chesapeake's raw water intake to points 5 miles upstream and points 5 miles downstream.
2	III		Intracoastal Waterway (portions not described in Section 1).
	VII		Swamp Waters in Section 2
			Dismal Swamp Canal and tributaries from the Deep Creek Locks downstream to the Virginia/North Carolina state line.
3	III	dd, ESW-3	Lake Drummond, including feeder ditches, and all interstate tributaries of the Dismal Swamp between Virginia and North Carolina.
	VII		Swamp Waters in Section 3
			Feeder Ditch to Lake Drummond and tributaries.

9VAC25-260-490. Tennessee and Big Sandy River Basins (Big Sandy River Subbasin).

~~Big Sandy River Subbasin~~

SEC.	CLASS	SP. STDS.	SECTION DESCRIPTION
1	IV		All tributaries of Tug Fork in Virginia.
2	IV		All tributaries of Jacobs Fork and Dry Fork in Virginia.
2a	IV	PWS	Crockett Cove, a tributary to Jacobs Fork, from Bishop's raw water intake to its headwaters.
3	IV		Levisa Fork and its tributaries and Knox Creek and its tributaries, unless otherwise designated in this chapter, from the Virginia-Kentucky state line upstream to their headwaters.
	V		Stockable Trout Waters in Section 3
	vi		Dismal Creek from its mouth to its headwaters.
4	IV		Russell Fork and its tributaries, unless otherwise designated in this chapter, from the Virginia-Kentucky state line upstream to their headwaters.
	V		Stockable Trout Waters in Section 4
	***		Caney Creek from Long Branch Creek upstream 5.5 miles.

	vi		~~Fryingpan~~ Frying Pan Creek from 1.3 miles above its confluence with Russell Fork 8.6 miles upstream (in vicinity of Bucu).
	vi		North Fork Pound River from the town limits of Pound upstream to the water supply dam.
	***		Russell Fork from the confluence of Pound River to the Virginia-Kentucky state line.
	VI		Natural Trout Waters in Section 4
	iii		Pound River from its confluence with Russell Fork upstream to the John W. Flannagan Dam.
4a	IV	PWS	Pound River and its tributaries from the John W. Flannagan Dam, including the Cranes Nest River and its tributaries to points 5 miles above the John W. Flannagan Water Authority's raw water intake.
4b	IV	PWS	North Fork Pound River and its tributaries from North Fork Pound River Dam and the Town of Pound's raw water intake upstream to their headwaters, unless otherwise designated in this chapter.
4c			(Deleted)
4d	IV		Phillips Creek from its mouth to its headwaters and the North Fork Pound River from Wise County's swimming area around the mouth of Phillips Creek to a point 1/2 mile upstream.
4e	IV	PWS	Russell Fork River and its tributaries from the Kentucky state line 2.2 miles upstream (Elkhorn City, Kentucky raw water intake including Grassy Creek from its confluence with Russell Fork northeast to the Kentucky state line, Hunts Creek from its confluence with Grassy Creek to 1 mile upstream, Laurel Branch to its headwaters including Laurel Lake (Breaks Interstate Park raw water intake).
	V		Stockable Trout Waters in Section 4e
	***	PWS	Russell Fork from the Kentucky state line 2.2 miles upstream.

9VAC25-260-500. Tennessee and Big Sandy River Basins (Clinch River Subbasin).

~~Clinch River Subbasin~~

SEC.	CLASS	SP. STDS.	SECTION DESCRIPTION
1	IV		Powell River and its tributaries from the Virginia-Tennessee state line to their headwaters; Indian Creek and Martin Creek in Virginia, unless otherwise designated in this chapter.
	V		Stockable Trout Waters in Section 1
	vi		Batie Creek from its confluence with the Powell River 0.8 mile upstream.
	vi		Dry Creek from its confluence with Hardy Creek to its headwaters.
	vi		Hardy Creek and its tributaries to their headwaters.
	vi		Lick Branch from its confluence with Indian Creek 1.4 miles upstream.
	vi		Martin Creek (Lee County) from the Virginia-Tennessee state line to its headwaters.
	vii		North Fork Powell River from the confluence of Straight Creek to its headwaters.
	vi		Poor Valley Branch from its confluence with Martin Creek 1.4 miles upstream.

	vi		Sims Creek from its confluence with the Powell River 1.1 miles upstream to Sims Spring.
	vi		Station Creek at the boundary of the Cumberland Gap National Historical Park (river mile 2.2) 2.6 miles upstream.
	vi		Wallen Creek above its confluence with the Powell River (at Rasnic Hollow) to its headwaters.
	vi		White Branch from its confluence with Poor Valley Branch 0.7 mile upstream (to the Falls at Falling Water Gap).
1a	IV	PWS	Powell River [and its tributaries] from Pennington Gap's raw water intake to 5 miles upstream.
1b	IV	PWS	Bens Branch from Appalachia's raw water intake to its headwaters.
1c	IV	PWS	South Fork Powell River from Big Stone Gap's raw water intake to its headwaters.
1d	IV	PWS	Benges Branch from Norton's raw water intake to its headwaters.
1e	IV	PWS	Robinette Branch from Norton's raw water intake to its headwaters.
1f	IV	PWS	Fleenortown Creek and its tributaries from the Winn #1 and Barker Springs intakes (which provide raw water to the Town of Jonesville WTP) to points 5 miles upstream.
2	IV		Clinch River and its tributaries from the Virginia-Tennessee state line to their headwaters; North Fork Clinch River and its tributaries, Blackwater Creek and its tributaries, and Little Creek in Virginia, unless otherwise designated in this chapter.
	V		Stockable Trout Waters in Section 2
	vi		Amos Branch from its confluence with Copper Creek 3.3 miles upstream.
	***		Big Cedar Creek from its confluence with Little Cedar Creek to the mouths of Elk Garden Creek and Loop Creek.
	viii		Burns Creek from its confluence with the Guest River to its headwaters.
	viii		Clear Creek (Wise County) from 1/2 mile above its confluence with the Guest River to its headwaters.
	vi		Copper Creek (Russell County) from Route 678 below Parsonage - river mile 52.5 - 4.3 miles upstream.
	vi		Cove Creek from river mile 6.5 (above Stanleytown) 5.5 miles upstream.
	vi		Cowan Creek from its confluence with Sinking Creek 2.7 miles upstream.
	vi		Devil Fork from its confluence with Straight Fork 3.2 miles upstream.
	vi		Fall Creek from its confluence with the Clinch River 4.6 miles upstream.
	vi		Gillinswater Branch from its confluence with Obeys Creek 2.8 miles upstream.
	vi		Gray Branch from its confluence with Mill Creek (Scott County) 1.6 miles upstream.
	vi		Jessee Branch from its confluence with Copper Creek at Thompson Ford 2 miles upstream.
	vi		Lark Creek from its confluence with Copper Creek 3 miles upstream.
	viii		Laurel Fork (Scott County) from its confluence with Stock Creek 4 miles upstream.

	vi		Liberty Creek from its confluence with Little River 1.6 miles upstream.
	vi		Little Stony Creek from the intersection of the stream and Route 72 upstream to its headwaters.
	vi		Mill Creek (Scott County) from its confluence with the Clinch River at Grays Ford 1.6 miles upstream.
	vi		Obeys Creek from 2.5 miles above its confluence with Copper Creek 6 miles upstream.
	vi		Palmer Branch from its confluence with the Clinch River 1.8 miles upstream.
	vi		Powers Branch from its confluence with the Clinch River 2.4 miles upstream.
	vi		Stock Creek from 0.25 mile north of Sunbright to 1.5 miles north of Mabe.
			Stony Creek from Fort Blackmore upstream to its headwaters.
	***		(Stony Creek from Fort Blackmore (river mile 0.56) 5.5 miles upstream.)
	vi		(Stony Creek from 5.5 miles above its confluence with the Clinch River (in the vicinity of Greens Chapel) 7.2 miles upstream.)
	vi		Straight Fork (Scott County) from its confluence with Stony Creek 5.1 miles upstream.
	vi		Valley Creek from 1.1 miles above its confluence with Copper Creek 6.8 miles upstream.
	viii		Wolf Creek (Scott County) from its confluence with Laurel Fork 1.8 miles upstream.
	VI		Natural Trout Waters in Section 2
	iii		Maiden Spring Creek from 15 miles above its confluence with Little River at Route 602 above Benbow 5.3 miles upstream.
	iii		Mill Creek (Russell County) from its confluence with the Clinch River 2.7 miles upstream.
2a	IV	PWS, x	Clinch River and its tributaries to their headwaters from the Wise County Public Service Authority's raw water intakes to 5 miles upstream from St. Paul's raw water intake.
2b	IV	PWS	Clinch River and its tributaries to their headwaters from Raven-Doran's raw water intake to a point 5 miles upstream of the Richland's raw water intake.
2c	IV	PWS	Clinch River and its tributaries from Tazewell's raw water intake to their headwaters.
2d	IV	PWS	North Fork Clinch River and its tributaries, including Spurlock Branch, from Duffield Development Authority's raw water intake at the confluence with Spurlock Branch and the intake on Spurlock Branch to 5 miles upstream.
2e	IV	PWS	Bear Creek from Wise's raw water intake to its headwaters.
2f	IV	PWS	Toms Creek from Coeburn's raw water intake to its headwaters.
2g	IV	PWS	Little River and its tributaries from the Tazewell County Water and Sewer Authority's (Claypool Hill Water Treatment Plant) raw water intake to points 5 miles upstream.
2h	IV	PWS	Unnamed tributary to the North Fork Clinch River from the Divides raw water intake upstream to its headwaters.

2i	IV	PWS	Big Cedar Creek and its tributaries from Lebanon's raw water intake to points 5 miles upstream.
2j	IV	PWS	Cavitts Creek from the proposed Baptist Valley raw water intake to its headwaters.
2k	IV	PWS	Unnamed tributary to Big Creek (Tazewell County) from the Tazewell County Water and Sewer Authority's Jewell Ridge raw water intake upstream to its headwaters.
2l			(moved to 1f)

9VAC25-260-510. Tennessee and Big Sandy River Basins (Holston River Subbasin).

~~Holston River Subbasin~~

SEC.	CLASS	SP. STDS.	SECTION DESCRIPTION
1	IV		North Fork Holston River and its tributaries, unless otherwise designated in this chapter, from the Virginia-Tennessee state line to their headwaters, and those sections of Timbertree Branch and Boozy Creek in Virginia.
	V		Stockable Trout Waters in Section 1
	vi		Greendale Creek from its confluence with the North Fork Holston River 4.1 miles upstream.
	v		Laurel Bed Creek from its confluence with Tumbling Creek 1.8 miles upstream.
	vi		Laurel Creek within the Thomas Jefferson National Forest boundaries.
	***		Laurel Creek from Route 16 to its confluence with Roaring Fork.
	vi		Lick Creek (Bland County) from 5.5 miles above its confluence with the North Fork Holston River 10.9 miles upstream.
	vi		Little Tumbling Creek from Tannersville upstream to where the powerline crosses the stream.
	vi		Lynn Camp Creek from its confluence with Lick Creek 3.9 miles upstream.
	vi		Punch and Judy Creek from its confluence with Laurel Creek 3.2 miles upstream.
	v		Tumbling Creek from its confluence with the North Fork Holston River 7.1 miles upstream.
	VI		Natural Trout Waters in Section 1
	ii		Barkcamp Branch from its confluence with Roaring Fork upstream including all named and unnamed tributaries.
	ii		Beartown Branch from its confluence with Sprouts Creek upstream including all named and unnamed tributaries.
	ii		Beaver Creek (Smyth County) from its confluence with the North Fork Holston River 2.8 miles upstream.
	***		Big Tumbling Creek from its confluence with the North Fork Holston River upstream including all named and unnamed tributaries.
	ii		Brier Cove from its confluence with Tumbling Creek upstream including all named and unnamed tributaries.
			Brumley Creek from its confluence with the North Fork Holston River upstream including all named and unnamed tributaries.
	***		Brumley Creek from its confluence with the North Fork Holston River (at

			Duncanville) 4 miles upstream.
	iii		Brumley Creek from 4 miles above its confluence with the North Fork Holston River (at Duncanville) 6.9 miles upstream.
	iii		Campbell Creek (Smyth County) from its confluence with the North Fork Holston River at Ellendale Ford 1 mile upstream.
	ii		Coon Branch from its confluence with Barkcamp upstream including all named and unnamed tributaries.
	ii		Cove Branch from its confluence with Roaring Fork upstream including all named and unnamed tributaries.
	ii		Henshaw Branch from its confluence with Lick Creek upstream including all named and unnamed tributaries.
	ii		Little Sprouts Creek from its confluence with Sprouts Creek upstream including all named and unnamed tributaries.
	ii		Little Tumbling Creek from the powerline crossing upstream including all named and unnamed tributaries.
	v**		Red Creek from its confluence with Tumbling Creek upstream including all named and unnamed tributaries.
	ii		Roaring Fork (Tazewell County) from its confluence with Laurel Creek upstream including all named and unnamed tributaries.
	ii		Sprouts Creek from its confluence with the North Fork Holston River upstream including all named and unnamed tributaries.
	ii		Toole Creek from its confluence with the North Fork Holston River 5.9 miles upstream.
1a	IV		North Fork Holston River from the Olin Corporation downstream to the Virginia-Tennessee state line.
1b	IV	PWS	Big Moccasin Creek and its tributaries from Weber City's raw water intake to points 5 miles upstream from Gate City's raw water intake.
1c			(Deleted)
1d	IV	PWS	Unnamed tributary to the North Fork Holston River from Hilton's Community No. 2 public water supply raw water intake to its headwaters. [~~(Latitude~~ N36°39'32" ~~and Longitude~~ W82°27'30"~~).~~]
2	IV	PWS	South Holston Lake in Virginia and South Holston Lake and its tributaries from the Bristol Virginia Utilities Board's raw water intake [~~at~~ N36°38'06"/W81°57'36"] to points 5 miles upstream.
3	IV		Tributaries of the South Holston Lake, and Sinking Creek and Nicely Branch in Virginia, unless otherwise designated in this chapter.
	V		Stockable Trout Waters in Section 3
	vi		Berry Creek from its confluence with Fifteenmile Creek (Washington County) 2 miles upstream.
	vi		Spring Creek from its confluence with the South Holston Lake to its headwaters.
	VI		Natural Trout Waters in Section 3
	ii		Cox Mill Creek from its confluence with the South Fork Holston River upstream including all named and unnamed tributaries.

3a	~~IV~~		~~Wolf Creek and its tributaries from the northern corporate limits of Abingdon to their headwaters.~~ (Deleted)
4	IV		Steel Creek and Beaver Creek and their tributaries in Virginia.
	V		Stockable Trout Waters in Section 4
	vi		Beaver Creek (Washington County) and its tributaries from the flood control dam (near Route 11) to their headwaters.
	vi		Sinking Creek (tributary to Paperville Creek-Washington County) from the Virginia-Tennessee state line at Bristol 3.4 miles upstream.
5	IV		Middle Fork Holston River and its tributaries, unless otherwise designated in this chapter.
	V		Stockable Trout Waters in Section 5
	vi		Dry Run from its confluence with the Middle Fork Holston River 1.6 miles upstream.
	vi		Dutton Branch from its confluence with the Middle Fork Holston River 2 miles upstream.
	vi		Laurel Springs Creek from its confluence with the Middle Fork Holston River 2 miles upstream.
	vi		Middle Fork Holston River from 5 miles above Marion's raw water intake (river mile 45.83) to the headwaters.
	vi		Preston Hollow from 0.5 mile above its confluence with the Middle Fork Holston River 1.5 miles upstream.
	vi		Staley Creek from its confluence with the Middle Fork Holston River 1 mile upstream.
	VI		Natural Trout Waters in Section 5
	iii		East Fork Nicks Creek from its confluence with Nicks Creek upstream including all named and unnamed tributaries.
	iii		Nicks Creek within the National Forest boundary (river mile 1.6) upstream including all named and unnamed tributaries.
	iii		Staley Creek from 1 mile above its confluence with the Middle Fork Holston River upstream including all named and unnamed tributaries.
5a	IV		Middle Fork Holston River and its tributaries from Edmondson Dam upstream to the Route 91 bridge.
5b	IV		Hungry Mother Creek from the dam upstream including all named and unnamed tributaries.
5c	IV	PWS	Middle Fork Holston River and its tributaries from Marion's raw water intake to points 5 miles upstream, unless otherwise designated in this chapter.
	V		Stockable Trout Waters in Section 5c
	vi		Middle Fork Holston River from Marion's raw water intake at Mt. Carmel at river mile 45.83 to a point 5 miles upstream (river mile 50.83).
5d	IV	PWS	Middle Fork Holston River and its tributaries from Washington County Service Authority's raw water intake to points 5 miles upstream.
6	IV	ESW-10	South Fork Holston River and its tributaries in Virginia, unless otherwise designated in this chapter.

V	Stockable Trout Waters in Section 6
vi	Grosses Creek from its confluence with the South Fork Holston River 3.4 miles upstream.
vi	Rush Creek (Washington County) from its confluence with the South Fork Holston River 2.2 miles upstream.
vi	Straight Branch from its confluence with Whitetop Laurel Creek 2.5 miles upstream.
VI	Natural Trout Waters in Section 6
iii	Barkcamp Branch from its confluence with Rowland Creek upstream including all named and unnamed tributaries.
iii	Beaverdam Creek (Washington County) from its confluence with Laurel Creek to the Virginia-Tennessee state line 2 miles upstream.
iii	Bell Hollow from its confluence with Dickey Creek upstream including all named and unnamed tributaries.
iii	Big Branch from its confluence with Big Laurel Creek upstream including all named and unnamed tributaries.
	Big Laurel Creek (Smyth County) from its confluence with Whitetop Laurel Creek upstream including all named and unnamed tributaries.
iii	Big Laurel Creek (Smyth County) from its confluence with Whitetop Laurel Creek 2.6 miles upstream.
ii	Big Laurel Creek (Smyth County) from 2.6 miles above its confluence with Whitetop Laurel Creek (at Laurel Valley Church) upstream including all named and unnamed tributaries.
iii	Brush Creek from its confluence with Rush Creek upstream including all named and unnamed tributaries.
iii	Buckeye Branch from its confluence with Green Cove Creek upstream including all named and unnamed tributaries.
ii	Charlies Branch from its confluence with Big Laurel Creek upstream including all named and unnamed tributaries.
iii	Cold Branch from its confluence with Jerrys Creek upstream including all named and unnamed tributaries.
iv	Comers Creek from its confluence with the South Fork Holston River upstream including all named and unnamed tributaries.
ii	Cressy Creek from 1.7 miles above its confluence with the South Fork Holston River at Route 16 upstream including all named and unnamed tributaries.
ii	Daves Branch from its confluence with Big Laurel Creek upstream including all named and unnamed tributaries.
iii	Dickey Creek from 0.6 mile above its confluence with the South Fork Holston River upstream including all named and unnamed tributaries.
ii	Dry Fork from 1.2 miles above its confluence with St. Clair Creek upstream including all named and unnamed tributaries.
ii	Feathercamp Branch from its confluence with Straight Branch upstream including all named and unnamed tributaries.

ii	Grassy Branch from its confluence with Big Laurel Creek upstream including all named and unnamed tributaries.
ii	Green Cove Creek from its confluence with Whitetop Laurel Creek upstream including all named and unnamed tributaries.
ii	Grindstone Branch from its confluence with Big Laurel Creek upstream including all named and unnamed tributaries.
iii	High Trestle Branch from its confluence with Buckeye Branch upstream including all named and unnamed tributaries.
iii	Hopkins Branch from its confluence with the South Fork Holston River upstream including all named and unnamed tributaries.
iii	Houndshell Branch from its confluence with Cressy Creek upstream including all named and unnamed tributaries.
ii	Hurricane Creek (Smyth County) from its confluence with Comers Creek upstream including all named and unnamed tributaries.
iii	Hutton Branch from its confluence with Dickey Creek upstream including all named and unnamed tributaries.
iii	Jerrys Creek (Smyth County) from 1.5 miles above its confluence with Rowland Creek upstream including all named and unnamed tributaries.
ii	Little Laurel Creek (Smyth County) from its confluence with Whitetop Laurel Creek upstream including all named and unnamed tributaries.
***	Laurel Creek from its confluence with Beaverdam Creek (Washington County) to the state line.
ii	London Bridge Branch from its confluence with Beaverdam Creek (Washington County) 0.6 mile upstream.
iii	Long Branch from its confluence with Jerrys Creek upstream including all named and unnamed tributaries.
ii	Mill Creek (Washington County) from its confluence with the South Fork Holston River upstream including all named and unnamed tributaries.
iii	Parks Creek from its confluence with Cressy Creek upstream including all named and unnamed tributaries.
ii	Pennington Branch from its confluence with Whitetop Laurel Creek upstream including all named and unnamed tributaries.
iii	Quarter Branch from 1.1 miles above its confluence with Cressy Creek upstream including all named and unnamed tributaries.
iii	Raccoon Branch from its confluence with Dickey Creek upstream including all named and unnamed tributaries.
ii	Rowland Creek from 2.5 miles above its confluence with the South Fork Holston River upstream including all named and unnamed tributaries.
ii	Rush Creek (Washington County) from 2.2 miles above its confluence with the South Fork Holston River upstream including all named and unnamed tributaries.
iii	Scott Branch from its confluence with Dickey Creek upstream including all named and unnamed tributaries.
iii	Slemp Creek from 2 miles above its confluence with Cressy Creek upstream including all named and unnamed tributaries.

	ii		South Fork Holston River from 101.8 miles above its confluence with the Holston River to the Thomas Bridge Water Corporation's raw water intake (see section 6a).
	ii		South Fork Holston River from 5 miles above the Thomas Bridge Water Corporation's raw water intake to a point 12.9 miles upstream (see section 6a).
	ii		Star Hill Branch from its confluence with Green Cove Creek upstream including all named and unnamed tributaries.
	ii		St. Clair Creek from 3.3 miles above its confluence with the South Fork Holston River (at Route 600) above Horseshoe Bend upstream including all named and unnamed tributaries.
	ii		Sturgill Branch from its confluence with Whitetop Laurel Creek upstream including all named and unnamed tributaries.
	iii		Valley Creek (Washington County) from its confluence with Whitetop Laurel Creek upstream including all named and unnamed tributaries.
			Whitetop Laurel Creek from its confluence with Laurel Creek upstream including all named and unnamed tributaries.
	ii		Whitetop Laurel Creek from its confluence with Laurel Creek 8.1 miles upstream.
	i		Whitetop Laurel Creek from 8.1 miles above its confluence with Laurel Creek 4.4 miles upstream.
	iii		Whitetop Laurel Creek from 12.5 miles above its confluence with Laurel Creek 3.8 miles upstream.
6a	IV	PWS	South Fork Holston River and its tributaries from Thomas Bridge Water Corporation's raw water intake [~~at N36°46'25.78" latitude and W81°34'35.91" longitude~~ between Route 658 and Route 656] to points 5 miles upstream.
	VI		Natural Trout Waters in Section 6a
	ii		South Fork Holston River from Thomas Bridge Water Corporation's raw water intake to a point 5 miles upstream.

9VAC25-260-520. Chesapeake Bay, Atlantic Ocean and small coastal basins.

SEC.	CLASS	SP. STDS.	SECTION DESCRIPTION
1	I	a	The Atlantic Ocean from Cape Henry Light (Latitude 36°55'06" North; Longitude 76°00'04" West) east to the three mile limit and south to the North Carolina state line. The Atlantic Ocean from Cape Henry Light to Thimble Shoal Channel (Latitude 36°57'30" North; Longitude 76°02'30" West) from Thimble Shoal Channel to Smith Island (Latitude 37°07'04" North; Longitude 75°54'04" West) and north to the Virginia-Maryland state line.
1a	III		All free flowing portions of the streams, creeks and coves in Section 1 east of the east-west divide boundary on the Eastern Shore of Virginia.
1b	II	a	Tidal portions of streams, creeks and coves in Section 1 east of the east-west divide boundary on the Eastern Shore of Virginia.
2	II	~~a,NEW-20~~	Chesapeake Bay and its tidal tributaries from Old Point Comfort Tower (Latitude 37°00'00" North; Longitude 76°18'08" West) to Thimble Shoal Light (Latitude 37°00'09" North; Longitude 76°14'04" West) to and along the south side of Thimble Shoal Channel to its eastern end (Latitude 36°57'03" North; Longitude 76°02'03" West) to Smith Island (Latitude 37°07'04" North; Longitude 75°54'04" West) north to the Virginia-Maryland border following the east-west divide boundary on the Eastern Shore of Virginia, west along the Virginia-Maryland

			border, to the Virginia Coast, (Latitude 37°53'23" North; Longitude 76°14'25" West) and south following the Virginia Coast to Old Point Comfort Tower (previously described), unless otherwise designated in this chapter.
2a	III		Free flowing portions of streams lying on the Eastern Shore of Virginia west of the east-west divide boundary unless otherwise designated in this chapter.
2b	III		Drummonds Millpond including Coards Branch.
2c	III		The Virginia Department of Agriculture experimental station pond and its tributaries.
2d	III		The free flowing streams tributary to the western portion of the Chesapeake Bay lying between the Virginia-Maryland state line and Old Point Comfort.
2e	III	PWS	Harwood's Mill Reservoir (in Poquoson River's headwaters - a source of water for the City of Newport News) and its tributaries.
2f	III	PWS	Brick Kiln Creek and its tributaries from Fort Monroe's raw water intake (at the Big Bethel Reservoir) to points 5 miles upstream.
2g	III	PWS	Beaverdam Swamp and its tributaries (including Beaverdam Swamp Reservoir) from the Gloucester County Water System raw water intake [~~(at latitude 37°26'23" North; longitude 76°32'47" West)~~] to its headwaters.
3	II	a~~,NEW 20~~	Chesapeake Bay from Old Point Comfort Tower (Latitude 37°00'00" North; Longitude 76°18'08" West) to Thimble Shoal Light (Latitude 37°00'09" North; Longitude 76°14'04" West) along the south side of Thimble Shoal Channel to Cape Henry Light (Latitude 36°55'06" North; Longitude 76°00'04" West).
3a	II	a,~~NEW 20,~~z	Little Creek from its confluence with Chesapeake Bay (Lynnhaven Roads) to end of navigable waters.
3b	II	a~~,NEW 20~~	Tidal portions of Lynnhaven watershed from its confluence with the Chesapeake Bay (Lynnhaven Roads) to and including Lynnhaven Bay, Western Branch Lynnhaven River, Eastern Branch Lynnhaven River, Long Creek, Broad Bay and Linkhorn Bay, Thalia Creek and its tributaries to the end of tidal waters. Great Neck Creek and Little Neck Creek from their confluence with Linkhorn Bay and their tidal tributaries. Rainey Gut and Crystal Lake from their confluence with Linkhorn Bay.
3c	III		Free flowing portions of streams in Section 3b, unless otherwise designated in this chapter.
3d	III	PWS	The impoundments on the Little Creek watershed including Little Creek Reservoir, Lake Smith, Lake Whitehurst, Lake Lawson, and Lake Wright.
3e	II	~~NEW 20~~	London Bridge Creek from its confluence with the Eastern Branch of Lynnhaven River to the end of tidal waters. Wolfsnare Creek from its confluence with the Eastern Branch Lynnhaven River to the fall line.
3f	III		Free flowing portions of London Bridge Creek and Wolfsnare Creek <u>to the Dam Neck Road Bridge at N36°47'20.00"/W76°04'12.10" (West Neck Creek)</u> and their free flowing tributaries.
3g	III		Lake Joyce and Lake Bradford.

9VAC25-260-530. York River Basin.

SEC.	CLASS	SP. STDS	SECTION DESCRIPTION
1	II	a,~~NEW-17,~~aa	York River and the tidal portions of its tributaries from Goodwin Neck and Sandy Point upstream to Thorofare Creek and Little Salem Creek near West Point; Mattaponi River and the tidal portions of its tributaries from Little Salem Creek to the end of tidal waters; Pamunkey River and the tidal portions of its tributaries from Thorofare Creek near West Point to the end of tidal waters.
2	III	~~NEW-17~~	Free flowing tributaries of the York River, free flowing tributaries of the Mattaponi River to Clifton and the Pamunkey River to Romancoke, unless otherwise designated in this chapter.
2a	III	PWS,~~NEW-17~~	Waller Mill Reservoir and its drainage area above Waller Mill dam which serves as a raw water supply for the City of Williamsburg.
2b	III	PWS,~~NEW-17~~	Jones Pond (a tributary of Queen Creek near Williamsburg which serves as the raw water supply for Cheatham Annex Naval Station) and its tributaries to points 5 miles upstream.
3	III		
			Free flowing portions of the Mattaponi and Pamunkey Rivers, free flowing tributaries of the Mattaponi above Clifton, and free flowing tributaries of the Pamunkey above Romancoke, unless otherwise designated in this chapter.
	VII		Swamp Waters in Section 3
			Herring Creek from its headwaters at river mile 17.2 downstream to the confluence with the Mattaponi River and three named tributaries: Dorrell Creek, Fork Bridge Creek and Millpond Creek from their headwaters to their confluence with Herring Creek.
			Matadequin Creek and its tributaries, from below an unnamed tributary to Matadequin Creek at river mile 9.93 (between Rt. 350 and Sandy Valley Creek) downstream to its confluence with the Pamunkey River.
			Mattaponi River from its confluence with Maracossic Creek at river mile 57.17 to the head of tidal waters.
			Mechumps Creek from the confluence with Slayden Creek to the Pamunkey River, Slayden Creek and its tributaries to their headwaters, and Campbell Creek from the unnamed tributary at river mile 3.86 downstream to the confluence with Mechumps Creek.
			Reedy Creek from its headwaters to its confluence with Reedy Millpond at river mile 1.06.
3a	III	PWS	South Anna River [and its tributaries] from Ashland's raw water intake to a point 5 miles upstream.
3b	III	PWS	Northeast Creek [and its tributaries] from the Louisa County Water Authority's impoundment dam (approximately 1/8 mile upstream of Route 33) to [~~its~~ their] headwaters.
3c	III		South Anna River from Route 15 upstream to a point 1.5 miles below the effluent from the Gordonsville Sewage Treatment Plant.
3d	III	PWS	Ni River and its tributaries from Spotsylvania's raw water intake near Route 627

			to their headwaters.
3e	III	PWS	The North Anna River and its tributaries from Hanover County's raw water intake near Doswell (approximately 1/2 mile upstream from State Route 30) to points 5 miles upstream.
3f	III	PWS	Stevens Mill Run from the Lake Caroline water impoundment, and other tributaries into the impoundment upstream to their headwaters.

9VAC25-260-540. New River Basin.

SEC.	CLASS	SP. STDS	SECTION DESCRIPTION
1	IV	u	New River and its tributaries, unless otherwise designated in this chapter, from the Virginia-West Virginia state line to the Montgomery-Giles County line.
	V		Stockable Trout Waters in Section 1
	***		Laurel Creek (a tributary to Wolf Creek in Bland County) from Rocky Gap to the Route 613 bridge one mile west of the junction of Routes 613 and 21.
	viii		Laurel Creek (Bland County) from its confluence with Hunting Camp Creek 3.2 miles upstream.
	viii		Little Wolf Creek (Bland County) from its confluence with Laurel Creek 2.6 miles upstream.
	v		Sinking Creek from 5.1 miles above its confluence with the New River 10.8 miles upstream (near the Route 778 crossing).
	vi		Sinking Creek from the Route 778 crossing to the Route 628 crossing.
	vi		Spur Branch from its confluence with Little Walker Creek to its headwaters.
	v		Walker Creek from the Route 52 bridge to its headwaters.
	***		Wolf Creek (Bland County) from Grapefield to its headwaters.
	VI		Natural Trout Waters in Section 1
	ii		Bear Spring Branch from its confluence with the New River upstream including all named and unnamed tributaries.
	iii		Clear Fork (Bland County) from river mile 8.5 upstream including all named and unnamed tributaries.
	ii		Cove Creek (Tazewell County) from its confluence with Clear Fork upstream including all named and unnamed tributaries.
	ii		Cox Branch from its confluence with Clear Fork to Tazewell's raw water intake (river mile 1.6).
	iii		Ding Branch from its confluence with Nobusiness Creek upstream including all named and unnamed tributaries.
	ii		Dry Fork (Bland County) from 4.8 miles above its confluence with Laurel Creek upstream including all named and unnamed tributaries.
	ii		East Fork Cove Creek (Tazewell County) from its confluence with Cove Creek upstream including all named and unnamed tributaries.
			Hunting Camp Creek from its confluence with Wolf Creek upstream including all named and unnamed tributaries.
	***		Hunting Camp Creek from its confluence with Wolf Creek 8.9 miles upstream.
	iii		Hunting Camp Creek from 8.9 miles above its confluence with Wolf Creek 3 miles

			upstream.
	ii		Laurel Creek (tributary to Wolf Creek in Bland County) from Camp Laurel in the vicinity of Laurel Fork Church, upstream including all named and unnamed tributaries.
	ii		Laurel Creek from a point 0.7 mile from its confluence with Sinking Creek upstream including all named and unnamed tributaries.
	ii		Little Creek (Tazewell County) from 1.5 miles above its confluence with Wolf Creek above the Tazewell County Sportsmen's Club Lake upstream including all named and unnamed tributaries.
	ii		Mercy Branch from its confluence with Mill Creek upstream including all named and unnamed tributaries.
	ii		Mill Creek from the Narrows Town line upstream including all named and unnamed tributaries.
	ii		Mudley Branch from its confluence with the West Fork Cove Creek upstream including all named and unnamed tributaries.
			Nobusiness Creek from its confluence with Kimberling Creek upstream including all named and unnamed tributaries.
	***		(Nobusiness Creek from its confluence with Kimberling Creek 4.7 miles upstream.)
	iii		(Nobusiness Creek from 4.7 miles above its confluence with Kimberling Creek upstream including all named and unnamed tributaries.)
	ii		Oneida Branch from its confluence with the West Fork Cove Creek upstream including all named and unnamed tributaries.
	iii		Panther Den Branch from its confluence with Nobusiness Creek upstream including all named and unnamed tributaries.
	ii		Piney Creek from its confluence with the New River upstream including all named and unnamed tributaries.
	ii		Wabash Creek from its confluence with Walker Creek upstream including all named and unnamed tributaries.
	ii		West Fork Cove Creek from its confluence with Cove Creek upstream including all named and unnamed tributaries.
1a			(Deleted)
1b	IV	u	Wolf Creek and its tributaries in Virginia from its confluence with Mill Creek upstream to the Giles-Bland County line.
1c			(Deleted)
1d	IV	u [, ~~ESW 1~~]	Stony Creek and its tributaries, unless otherwise designated in this chapter, from its confluence with the New River upstream to its headwaters, and Little Stony Creek and its tributaries from its confluence with the New River to its headwaters.
	V		Stockable Trout Waters in Section 1d
	vi		Stony Creek (Giles County) from its confluence with the New River to its confluence with Laurel Branch.
	VI		Natural Trout Waters in Section 1d
	iii		Dismal Branch from its confluence with Stony Creek upstream including all named and unnamed tributaries.
	ii		Dixon Branch from its confluence with North Fork Stony Creek upstream including all

			named and unnamed tributaries.
	ii		Hemlock Branch from its confluence with Little Stony Creek upstream including all named and unnamed tributaries.
	ii		Laurel Branch from its confluence with Stony Creek upstream including all named and unnamed tributaries.
	ii		Laurel Creek from its confluence with Little Stony Creek upstream including all named and unnamed tributaries.
	ii		Little Stony Creek from its confluence with the New River upstream including all named and unnamed tributaries.
	ii		Maple Flats Branch from its confluence with Little Stony Creek upstream including all named and unnamed tributaries.
	ii		Meredith Branch from its confluence with Little Stony Creek upstream including all named and unnamed tributaries.
	iii		Nettle Hollow from its confluence with Little Stony Creek upstream including all named and unnamed tributaries.
	ii		North Fork Stony Creek from its confluence with Stony Creek upstream including all named and unnamed tributaries.
	iii		Pine Swamp Branch from its confluence with Stony Creek upstream including all named and unnamed tributaries.
	ii		Pond Drain from its confluence with Little Stony Creek upstream including all named and unnamed tributaries.
	iii		Stony Creek (Giles County) from the confluence of Laurel Branch at Olean upstream including all named and unnamed tributaries.
	ii		White Rock Branch from its confluence with Stony Creek upstream including all named and unnamed tributaries.
	ii		Wildcat Hollow from its confluence with Stony Creek upstream including all named and unnamed tributaries.
1e	IV	PWS,u	Kimberling Creek and its tributaries from Bland Correctional Farm's raw water intake to points 5 miles upstream.
	VI	PWS	Natural Trout Waters in Section 1e
	iii		Dismal Creek from its confluence with Kimberling Creek upstream including all named and unnamed tributaries.
	iii		Pearis Thompson Branch from its confluence with Dismal Creek upstream including all named and unnamed tributaries.
	iii		Standrock Branch from its confluence with Dismal Creek upstream including all named and unnamed tributaries.
1f			(Deleted)
1g	IV	[~~U~~ u]	Bluestone River and its tributaries, unless otherwise designated in this chapter, from the Virginia-West Virginia state line upstream to their headwaters.
1h	IV	PWS,u	Bluestone River and its tributaries from Bluefield's raw water intake upstream to its headwaters.
	VI	PWS	Natural Trout Waters in Section 1h
	iii		Bluestone River from a point adjacent to the Route [650/460 ~~650/720~~] intersection to

			a point 5.7 miles upstream.
1i	IV	PWS	Big Spring Branch from the Town of Pocahontas' intake, from the Virginia-West Virginia state line, including the entire watershed in Abbs Valley (the Town of Pocahontas' intake is located in West Virginia [~~(at latitude 37°18'23" and longitude 81°18'54")~~ near the intersection of West Virginia State Route 102 and Rye Road].
1j			(Deleted)
1k	IV	PWS	Walker Creek and its tributaries from the Wythe-Bland Water and Sewer Authority's raw water intake (for Bland) to points 5 miles upstream.
1l	VI ii	PWS	Cox Branch and its tributaries from Tazewell's raw water intake at the Tazewell Reservoir (river mile 1.6) to headwaters.
2	IV	v, NEW-5	New River and its tributaries, unless otherwise designated in this chapter, from the Montgomery-Giles County line upstream to the Virginia-North Carolina state line (to include Peach Bottom Creek from its confluence with the New River to the mouth of Little Peach Bottom Creek).
	V		Stockable Trout Waters in Section 2
	v		Beaverdam Creek from its confluence with the Little River to its headwaters.
	v		Big Indian Creek from its confluence with the Little River to a point 7.4 miles upstream.
	vi		Boyd Spring Run from its confluence with the New River to its headwaters.
	***		Brush Creek from the first bridge on Route 617 south of the junction of Routes 617 and 601 to the Floyd County line.
	vi		Camp Creek from its confluence with the Little River to its headwaters.
	vi		Cove Creek (Wythe County) from Route 77, 8.1 miles above its confluence with Reed Creek, 10.5 miles upstream.
			Dodd Creek from its confluence with the West Fork Little River to its headwaters.
	***		Dodd Creek from its confluence with the West Fork Little River 4 miles upstream.
	vi		Dodd Creek from 4 miles above its confluence with the West Fork Little River to its headwaters.
	vi		East Fork Stony Fork from its confluence with Stony Fork 4 miles upstream.
	***		Elk Creek from its confluence with Knob Fork Creek to the junction of State Routes 611 and 662.
	vi		Gullion Fork from its confluence with Reed Creek 3.3 miles upstream.
	vi		Little Brush Creek from its confluence with Brush Creek 1.9 miles upstream.
	vi		Lost Bent Creek from its confluence with the Little River to its headwaters.
	vi		Middle Creek from its confluence with Little River to its headwaters.
	vi		Middle Fox Creek from its confluence with Fox Creek 4.1 miles upstream.
	vi		Mill Creek (Wythe County) from its confluence with the New River 3.7 miles upstream.
	v		North Fork Greasy Creek from its confluence with Greasy Creek to its headwaters.
	vi		Oldfield Creek from its confluence with the Little River to its headwaters.
	vi		Peach Bottom Creek from the mouth of Little Peach Bottom Creek to its headwaters.

vi	Pine Branch from its confluence with the Little River to its headwaters.
vi	Pine Creek (Carroll County) from its confluence with Big Reed Island Creek to its headwaters.
vi	Piney Fork from its confluence with Greasy Creek to its headwaters.
vi	Poor Branch from its confluence with the New River to its headwaters.
vi	Poverty Creek (Montgomery County) from its confluence with Toms Creek to its headwaters.
vi	Reed Creek (Wythe County) within the Jefferson National Forest from 57 miles above its confluence with the New River 6.8 miles upstream, unless otherwise designated in this chapter.
vi	Shady Branch from its confluence with Greasy Creek to its headwaters.
vi	Shorts Creek from 6.2 miles above its confluence with the New River in the vicinity of Route 747, 3 miles upstream.
vi	South Fork Reed Creek from river mile 6.8 (at Route 666 below Groseclose) 11.9 miles upstream.
vi	St. Lukes Fork from its confluence with Cove Creek 1.4 miles upstream.
vi	Stony Fork (Wythe County) from 1.9 miles above its confluence with Reed Creek at the intersection of Routes 600, 682, and 21/52 at Favonia 5.7 miles upstream.
***	Toms Creek from its confluence with the New River to its headwaters.
vi	West Fork Big Indian Creek from its confluence with Big Indian Creek to its headwaters.
~~***~~	~~West Fork Peak Creek from the Forest Service Boundary to its headwaters.~~
vi	Wolf Branch from its confluence with Poor Branch 1.2 miles upstream.
VI	Natural Trout Waters in Section 2
ii	Baker Branch from its confluence with Cabin Creek upstream including all named and unnamed tributaries.
ii	Baldwin Branch from 0.2 mile above its confluence with Big Horse Creek at the Grayson County - Ashe County state line upstream including all named and unnamed tributaries.
ii	Bear Creek (Carroll County) from its confluence with Laurel Fork upstream including all named and unnamed tributaries.
iii	Beaver Creek from its confluence with the Little River upstream including all named and unnamed tributaries.
iii	Beaverdam Creek (Carroll County) from its confluence with Crooked Creek upstream including all named and unnamed tributaries.
ii	Big Branch from its confluence with Greasy Creek upstream including all named and unnamed tributaries.
iii	Big Horse Creek from 12.8 miles above its confluence with the North Fork New River (above the state line below Whitetop) upstream including all named and unnamed tributaries.
ii	Big Indian Creek from a point 7.4 miles upstream of its confluence with the Little River upstream including all named and unnamed tributaries.

ii	Big Laurel Creek from its confluence with the Little River upstream including all named and unnamed tributaries.
iii	Big Laurel Creek from its confluence with Pine Creek upstream including all named and unnamed tributaries.
iii	Big Reed Island Creek from Route 221 upstream including all named and unnamed tributaries.
iii	Big Run from its confluence with the Little River upstream including all named and unnamed tributaries.
	Big Wilson Creek from its confluence with the New River upstream including all named and unnamed tributaries.
***	Big Wilson Creek from its confluence with the New River 8.8 miles upstream.
ii	Big Wilson Creek from 8.8 miles above its confluence with the New River 6.6 miles upstream.
iii	Blue Spring Creek from its confluence with Cripple Creek upstream including all named and unnamed tributaries.
ii	Boothe Creek from its confluence with the Little River upstream including all named and unnamed tributaries.
ii	Bournes Branch from its confluence with Brush Creek upstream including all named and unnamed tributaries.
iii	Brannon Branch from its confluence with Burks Fork upstream including all named and unnamed tributaries.
ii	Brier Run from its confluence with Big Wilson Creek upstream including all named and unnamed tributaries.
ii	Buffalo Branch from its confluence with Laurel Fork upstream including all named and unnamed tributaries.
iii	Burgess Creek from its confluence with Big Horse Creek upstream including all named and unnamed tributaries.
iii	Burks Fork from the Floyd-Carroll County line upstream including all named and unnamed tributaries.
ii	Byars Creek from its confluence with Whitetop Creek upstream including all named and unnamed tributaries.
	Cabin Creek from its confluence with Helton Creek upstream including all named and unnamed tributaries.
ii	Cabin Creek from its confluence with Helton Creek 3.2 miles upstream.
i	Cabin Creek from 3.2 miles above its confluence with Helton Creek upstream including all named and unnamed tributaries.
ii	Cherry Creek from its confluence with Big Reed Island Creek upstream including all named and unnamed tributaries.
ii	Chisholm Creek from its confluence with Laurel Fork upstream including all named and unnamed tributaries.
iv	Crigger Creek from its confluence with Cripple Creek upstream including all named and unnamed tributaries.
***	Cripple Creek from the junction of the stream and U. S. Route 21 in Wythe County upstream including all named and unnamed tributaries.

iii	Crooked Creek (Carroll County) from Route 707 to Route 620.
ii	Crooked Creek from Route 620 upstream including all named and unnamed tributaries.
iii	Daniel Branch from its confluence with Crooked Creek upstream including all named and unnamed tributaries.
iii	Dobbins Creek from its confluence with the West Fork Little River upstream including all named and unnamed tributaries.
iv	Dry Creek from 1.9 miles above its confluence with Blue Spring Creek upstream including all named and unnamed tributaries.
iii	Dry Run (Wythe County) from its confluence with Cripple Creek upstream including all named and unnamed tributaries.
iii	Earls Branch from its confluence with Beaver Creek upstream including all named and unnamed tributaries.
iii	East Fork Crooked Creek from its confluence with Crooked Creek upstream including all named and unnamed tributaries.
ii	East Fork Dry Run from its confluence with Dry Run upstream including all named and unnamed tributaries.
ii	East Prong Furnace Creek from its confluence with Furnace Creek upstream including all named and unnamed tributaries.
ii	Elkhorn Creek from its confluence with Crooked Creek upstream including all named and unnamed tributaries.
ii	Fox Creek from junction of the Creek and Route 734 upstream including all named and unnamed tributaries.
iii	Francis Mill Creek from its confluence with Cripple Creek upstream including all named and unnamed tributaries.
ii	Furnace Creek from its confluence with the West Fork Little River upstream including all named and unnamed tributaries.
***	Glade Creek (Carroll County) from its confluence with Crooked Creek upstream including all named and unnamed tributaries.
iii	Grassy Creek (Carroll County) from its confluence with Big Reed Island Creek at Route 641, upstream including all named and unnamed tributaries.
vi**	Grassy Creek (Carroll County) from its confluence with Little Reed Island Creek at Route 769, upstream including all named and unnamed tributaries.
iii	Greasy Creek from the Floyd-Carroll County line upstream including all named and unnamed tributaries.
iii	Greens Creek from its confluence with Stone Mountain Creek upstream including all named and unnamed tributaries.
iii	Guffey Creek from its confluence with Fox Creek upstream including all named and unnamed tributaries.
ii	Helton Creek from the Virginia-North Carolina state line upstream including all named and unnamed tributaries.
ii	Howell Creek from its confluence with the West Fork Little River upstream including all named and unnamed tributaries.

ii	Jerry Creek (Grayson County) from its confluence with Middle Fox Creek upstream including all named and unnamed tributaries.
iii	Jones Creek (Wythe County) from its confluence with Kinser Creek upstream including all named and unnamed tributaries.
ii	Killinger Creek from its confluence with Cripple Creek and White Rock Creek upstream including all named and unnamed tributaries.
iii	Kinser Creek from 0.4 mile above its confluence with Crigger Creek above the National Forest Boundary at Groseclose Chapel upstream including all named and unnamed tributaries.
iii	Laurel Branch (Carroll County) from its confluence with Staunton Branch upstream including all named and unnamed tributaries.
iii	Laurel Creek (Grayson County) from its confluence with Fox Creek upstream including all named and unnamed tributaries.
ii	Laurel Fork from the Floyd-Carroll County line upstream including all named and unnamed tributaries.
iii	Laurel Fork (Carroll County) from its confluence with Big Reed Island Creek to the Floyd-Carroll County line.
i	Lewis Fork from its confluence with Fox Creek upstream including all named and unnamed tributaries.
iii	Little Cranberry Creek from its confluence with Crooked Creek upstream including all named and unnamed tributaries.
ii	Little Helton Creek from the Grayson County-Ashe County state line upstream including all named and unnamed tributaries.
***	Little Reed Island Creek from the junction of the stream and State Routes 782 and 772 upstream including all named and unnamed tributaries, unless otherwise designated in this chapter.
***	Little River from its junction with Route 706 upstream including all named and unnamed tributaries.
ii	Little Snake Creek from its confluence with Big Reed Island Creek upstream including all named and unnamed tributaries.
ii	Little Wilson Creek from its confluence with Wilson Creek (at Route 16 at Volney) upstream including all named and unnamed tributaries.
ii	Long Mountain Creek from its confluence with Laurel Fork upstream including all named and unnamed tributaries.
iii	Meadow Creek (Floyd County) from its confluence with the Little River upstream including all named and unnamed tributaries.
iii	Meadow View Run from its confluence with Burks Fork upstream including all named and unnamed tributaries.
iii	Middle Creek from its confluence with Crigger Creek upstream including all named and unnamed tributaries.
ii	Middle Fork Helton Creek from its confluence with Helton Creek 2.2 miles upstream.
i	Middle Fork Helton Creek from 2.2 miles above its confluence with Helton Creek upstream including all named and unnamed tributaries.

iii	Middle Fox Creek from 4.1 miles above its confluence with Fox Creek upstream including all named and unnamed tributaries.
iii	Mill Creek (Carroll County) from its confluence with Little Reed Island Creek upstream including all named and unnamed tributaries.
ii	Mill Creek (Grayson County) from its confluence with Fox Creek upstream including all named and unnamed tributaries.
iii	Mira Fork from its confluence with Greasy Creek upstream including all named and unnamed tributaries.
ii	North Branch Elk Creek from its confluence with Elk Creek upstream including all named and unnamed tributaries.
iii	North Prong Buckhorn Creek from its confluence with Buckhorn Creek upstream including all named and unnamed tributaries.
ii	Oldfield Creek from its confluence with Laurel Fork upstream including all named and unnamed tributaries.
ii	Opossum Creek from its confluence with Fox Creek upstream including all named and unnamed tributaries.
iii	Payne Creek from its confluence with the Little River upstream including all named and unnamed tributaries.
iii	Peak Creek from 19 miles above its confluence with the New River above the Gatewood Reservoir upstream including all named and unnamed tributaries.
iii	Pine Creek (Carroll County) from its confluence with Big Reed Island Creek upstream including all named and unnamed tributaries.
iii	Pine Creek (Floyd County) from its confluence with Little River upstream including all named and unnamed tributaries.
iii	Pipestem Branch from its confluence with Big Reed Island Creek upstream including all named and unnamed tributaries.
i	Quebec Branch from its confluence with Big Wilson Creek upstream including all named and unnamed tributaries.
iv	Raccoon Branch from its confluence with White Rock Creek upstream including all named and unnamed tributaries.
***	Reed Creek (Wythe County) from 5 miles above Wytheville's raw water intake upstream including all named and unnamed tributaries.
ii	Ripshin Creek from its confluence with Laurel Creek upstream including all named and unnamed tributaries.
iii	Road Creek (Carroll County) from its confluence with Big Reed Island Creek upstream including all named and unnamed tributaries.
ii	Roads Creek (Carroll County) from its confluence with Laurel Fork upstream including all named and unnamed tributaries.
iv	Rock Creek from its confluence with Big Reed Island Creek upstream including all named and unnamed tributaries.
iii	Silverleaf Branch from its confluence with the Little River upstream including all named and unnamed tributaries.
iii	Snake Creek from Route 670 (3.2 miles above its confluence with Big Reed Island Creek) upstream including all named and unnamed tributaries.

ii	Solomon Branch from its confluence with Fox Creek upstream including all named and unnamed tributaries.
vi**	South Branch Elk Creek from its confluence with Elk Creek upstream including all named and unnamed tributaries.
iii	Spurlock Creek from its confluence with the West Fork Little River upstream including all named and unnamed tributaries.
iii	Staunton Branch from its confluence with Crooked Creek upstream including all named and unnamed tributaries.
iii	Stone Mountain Creek from its confluence with Big Reed Island Creek upstream including all named and unnamed tributaries.
iii	Straight Branch (Carroll County) from its confluence with Greens Creek upstream including all named and unnamed tributaries.
ii	Sulphur Spring Branch from its confluence with Big Reed Island Creek upstream including all named and unnamed tributaries.
iii	Tory Creek from its confluence with Laurel Fork upstream including all named and unnamed tributaries.
iii	Tract Fork from the confluence of Fortnerfield Branch upstream including all named and unnamed tributaries.
ii	Trout Branch from its confluence with Little Reed Island creek upstream including all named and unnamed tributaries.
iii	Turkey Fork from 2.6 miles above its confluence with Elk Creek upstream including all named and unnamed tributaries.
ii	Venrick Run from its confluence with Reed Creek upstream including all named and unnamed tributaries.
iii	West Fork Comers Rock Branch from its confluence with Comers Rock Branch upstream including all named and unnamed tributaries.
iii	West Fork Dodd Creek from its confluence with Dodd Creek upstream including all named and unnamed tributaries.
iii	West Fork Dry Run from its confluence with Dry Run 2 miles upstream.
iii	West Fork Little Reed Island Creek (Carroll County) from its confluence with Little Reed Island Creek upstream including all named and unnamed tributaries.
***	West Fork Little River from its confluence with Little River upstream including all named and unnamed tributaries.
iii	West Prong Furnace Creek from its confluence with Furnace Creek upstream including all named and unnamed tributaries.
	White Rock Creek from its confluence with Cripple Creek upstream including all named and unnamed tributaries.
***	White Rock Creek from its confluence with Cripple Creek 1.9 miles upstream.
iv	White Rock Creek from 1.9 miles above its confluence with Cripple Creek upstream including all named and unnamed tributaries.
ii	Whitetop Creek from its confluence with Big Horse Creek upstream including all named and unnamed tributaries.
i	Wilburn Branch from its confluence with Big Wilson Creek upstream including all named and unnamed tributaries.

2a	IV	PWS,v	New River from Radford Army Ammunition Plant's raw water intake (that intake which is the further downstream), upstream to a point 5 miles above the Blacksburg-Christiansburg, V.P.I. Water Authority's raw water intake and including tributaries in this area to points 5 miles above the respective raw water intakes.
2b	IV	PWS,v	New River from Radford's raw water intake upstream to Claytor Dam and including tributaries to points 5 miles above the intake.
2c	IV	v, NEW-4	New River and its tributaries, except Peak Creek above Interstate Route 81, from Claytor Dam to Big Reed Island Creek (Claytor Lake).
	V		Stockable Trout Waters in Section 2c
	vi		Chimney Branch from its confluence with Big Macks Creek to its headwaters.
	vi		White Oak Camp Branch from its confluence with Chimney Branch to its headwaters.
	VI		Natural Trout Waters in Section 2c
	ii		Bark Camp Branch from its confluence with Big Macks Creek upstream including all named and unnamed tributaries.
	ii		Big Macks Creek from Powhatan Camp upstream including all named and unnamed tributaries.
	iii		Little Macks Creek from its confluence with Big Macks Creek upstream including all named and unnamed tributaries.
	ii		Puncheoncamp Branch from its confluence with Big Macks Creek upstream including all named and unnamed tributaries.
2d	IV	PWS,v,NEW-5	Peak Creek and its tributaries from Pulaski's raw water intake upstream, including Hogan Branch to its headwaters and Gatewood Reservoir.
	V		Stockable Trout Waters in Section 2d
	***		(West Fork) Peak Creek from the Forest Service Boundary to its headwaters.
2e			(Deleted)
2f	IV	PWS,v	Little Reed Island Creek and its tributaries from Hillsville's upstream raw water intake near Cranberry Creek to points 5 miles above Hillsville's upstream raw water intake, including the entire watershed of the East Fork Little Reed Island Creek.
	VI	PWS	Natural Trout Waters in Section 2f
	iii		East Fork Little Reed Island Creek from its confluence with West Fork Little Reed Island Creek upstream including all named and unnamed tributaries.
	***		Little Reed Island Creek from Hillsville's upstream raw water intake to a point 5 miles upstream.
	Iii		Mine Branch from its confluence with the East Fork Little Reed Island Creek 2 miles upstream.
2g	IV	PWS,v	Reed Creek and its tributaries from Wytheville's raw water intake to [points] 5 miles upstream.
	VI	PWS,v	Natural Trout Waters in Section 2g
	***		Reed Creek from the western town limits of Wytheville to 5 miles upstream.
2h	IV	PWS,v	Chestnut Creek and its tributaries from Galax's raw water intake upstream to their headwaters or to the Virginia-North Carolina state line.
	VI	PWS	Natural Trout Waters in Section 2h

	***		Coal Creek from its confluence with Chestnut Creek upstream including all named and unnamed tributaries.
	ii		East Fork Chestnut Creek (Grayson County) from its confluence with Chestnut Creek upstream including all named and unnamed tributaries.
	iii		Hanks Branch from its confluence with the East Fork Chestnut Creek upstream including all named and unnamed tributaries.
	iii		Linard Creek from its confluence with Hanks Branch upstream including all named and unnamed tributaries.
2i	IV		Fries Reservoir section of the New River.
2j	IV	PWS	Eagle Bottom Creek from Fries' raw water intake upstream to its headwaters.
2k	IV		Stuart Reservoir section of the New River.
2l	IV	PWS	New River and its tributaries inclusive of the Wythe County Water Department's Austinville intake [~~at latitude 36°51'8.47" and longitude 80°55'29.31"~~ near the Route 636 bridge], and the Wythe County Water Department's Ivanhoe intake on Powder Mill Branch [~~at latitude 36°49'15.96" and longitude 80°58'11.28"~~ just upstream of the Wythe/Carroll County line] to points 5 miles above the intakes.
	V	PWS	Stockable Trout Waters in Section 2l
	vi		Powder Mill Branch (from 0.6 mile above its confluence with the New River) 2.1 miles upstream.
2m	IV	PWS, NEW-4,5	New River (Claytor Lake) from the Klopman Mills raw water intake to the Pulaski County Public Service Authority's raw water intake and tributaries to points 5 miles upstream of each intake.
2n			(Deleted)

[DOCUMENTS INCORPORATED BY REFERENCE (9VAC25-260)

Chesapeake Bay Program Analytical Segmentation Scheme -- Revisions, Decisions and Rationales 1983-2003, EPA 903-R-04-008, CBP/TRS 268/04, October 2004, US EPA Region III Chesapeake Bay Office.

Chesapeake Bay Program Analytical Segmentation Scheme--Revisions, Decisions and Rationales 1983-2003, EPA 903-R-05-004, CBP/TRS 278-06, 2005 Addendum, December 2005, US EPA Region III Chesapeake Bay Office.

Ambient Water Quality Criteria for Dissolved Oxygen, Water Clarity and Chlorophyll a for the Chesapeake Bay and Its Tidal Tributaries, EPA 903-R-03-002, April 2003 and 2004 Addendum, October 2004, US EPA Region III Chesapeake Bay Office.

Ambient Water Quality Criteria for Dissolved Oxygen, Water Clarity and Chlorophyll a for the Chesapeake Bay and Its Tidal Tributaries, EPA 903-R-07-003, CBP/TRS 285/07 2007 Addendum, July 2007, US EPA Region III Chesapeake Bay Office.

Technical Support Document for Identification of Chesapeake Bay Designated Uses and Attainability, EPA 903-R-03-004, October 2003 and 2004 Addendum, October 2004, US EPA Region III Chesapeake Bay Office.]

VA.R. Doc. No. R06-344; Filed January 21, 2009, 3:34 p.m.

Fast-Track Regulation

Title of Regulation: **9VAC25-720. Water Quality Management Planning Regulation (amending 9VAC25-720-120).**

Statutory Authority: § 62.1-44.15 of the Code of Virginia; 33 USC § 1313(e) of the Clean Water Act.

Public Hearing Information: No public hearings are scheduled.

Public Comments: Public comments may be submitted until 5 p.m. on March 18, 2009.

Effective Date: April 2, 2009.

Agency Contact: John M. Kennedy, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4312, FAX (804) 698-4116, or email jmkennedy@deq.virginia.gov.

Basis: Section 62.1-44.15 of the Code of Virginia is the source of legal authority identified to promulgate these

amendments. The promulgating entity is the State Water Control Board.

The scope and purpose of the State Water Control Law is to protect and to restore the quality of state waters, to safeguard the clean waters from pollution, to prevent and to reduce pollution and to promote water conservation. The State Water Control Law (Code of Virginia) at § 62.1-44.15(10) mandates the board to adopt such regulations as it deems necessary to enforce the general water quality management program of the board in all or part of the Commonwealth. In addition, § 62.1-44.15(14) requires the board to establish requirements for the treatment of sewage, industrial wastes and other wastes that are consistent with the purposes of this chapter. The specific effluent limits needed to meet the water quality goals are discretionary.

The correlation between the proposed regulatory action and the legal authority identified above is that the amendments being considered are modifications of the current requirements for the treatment of wastewater that will contribute to the attainment of the Virginia Water Quality Standards.

Purpose: The purpose of this rulemaking is to amend the total nitrogen and total phosphorus waste load allocations for the New Kent County Parham Landing Wastewater Treatment Plant, located in the York River basin, reflecting use of an updated design flow figure in the underlying calculation of these allocations. It is the responsibility of the board to protect state waters by adopting regulations that are technically correct, necessary and reasonable. The effect of this regulatory action is to reduce the allowable annual loads of total nitrogen and total phosphorus discharged by this facility, due to the fact that a design flow expansion will be smaller than originally planned.

Resulting permit limitations are expressed principally as annual waste load allocations, and also as technology-based annual average concentrations where appropriate and authorized. These actions are needed because wastewater treatment plant discharges of nitrogen and phosphorus contribute to the overall, excessive loading of nutrients to the bay and its tributaries. These nutrients have been identified as pollutants contributing to adverse impacts in large portions of the bay and its tidal rivers, which are included in the list of impaired waters required under § 303(d) of the Clean Water Act and § 62.1-44.19:5 of the Code of Virginia. Waters not meeting standards require development of a Total Maximum Daily Load (TMDL), also required under the same sections of federal and state law. In May 1999, EPA Region III included most of Virginia's portion of the bay and extensive sections of several tidal tributaries on Virginia's impaired waters list. Virginia, EPA and the other Bay Program partner jurisdictions have begun the TMDL development process, scheduled for completion by the end of 2010.

Achievement of the point source effluent limitations governed by the proposed amendments will aid in compliance with Virginia's new tidal water quality standards and are reasonably expected to contribute to the attainment or maintenance of such water quality.

Rationale for Using Fast-Track Process: The proposed amendments are expected to be noncontroversial and, therefore, justify using the fast-track process. The total nitrogen and total phosphorus waste load allocations assigned to significant dischargers under the amendments to 9VAC25-720 adopted by the board in 2005 used a consistent approach of coupling full design flow with stringent nutrient reduction technology. In the case of New Kent County-Parham Landing WWTP, a planned expansion from 0.568 MGD to 3.0 MGD was expected to be certified for operation by December 31, 2010, and the nutrient waste load allocations were conditioned on this higher design flow. Now the county plans to expand the plant to just 2.0 MGD, which results in reduced nutrient waste load allocations and lower annual loads of nitrogen and phosphorus discharged to the York River. Another benefit is the funds saved by constructing the smaller plant will be used by the county to build a reuse system that will provide bulk irrigation water to aid in preventing groundwater shortages in the area.

Substance: In 9VAC25-720-120 C, for the New Kent County-Parham Landing WWTP (VA0088331), the amendments revise the total nitrogen (TN) waste load allocation figure from 54,820 to 36,547 pounds per year and the total phosphorus (TP) waste load allocation figure from 6,396 to 4,264 pounds per year. Also, the amendments revise the total basin TN waste load allocation figure from 1,079,212 to 1,060,939 pounds per year, and the total basin TP waste load allocation figure from 175,601 to 173,469 pounds per year.

These revised waste load allocations will still be conditioned on receipt of a Certificate to Operate (CTO) for the expanded facility by December 31, 2010. If the county does not secure a CTO for the 2.0 MGD design flow by that deadline, the allocations will decrease to TN = 10,416 lbs/yr; TP = 1,215 lbs/yr, based on a design flow of 0.57 MGD.

Issues: The public will benefit as these amendments will result in the discharge of reduced amounts of nitrogen and phosphorus in the Chesapeake Bay watershed. This, in turn, will aid in water quality restoration in the bay and its tributary rivers, and assist in meeting the water quality standards necessary for protection of the living resources that inhabit the bay. New Kent County will benefit, being able to secure revised waste load allocations for a smaller plant expansion and use the construction savings to build a reuse system that will provide bulk irrigation water to aid in preventing groundwater shortages in the area. There is no disadvantage to the agency or the Commonwealth that will result from the adoption of these amendments.

The Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. New Kent County has petitioned for revised nutrient waste load allocations for their Parham Landing Wastewater Treatment Plant, which is now in design for upgrade/expansion. The county originally planned to increase the design flow of the plant from 0.568 million gallons per day (MGD) to 3.0 MGD which is currently reflected in these regulations, and now intends to construct a smaller addition that will raise the design flow to only 2.0 MGD. The State Water Control Board (Board) proposes to amend these regulations to reflect this change.

Result of Analysis. The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact. New Kent County (county) is currently designing an upgrade/expansion to their Parham Landing Wastewater Treatment Plant which is scheduled to become operational by the end of 2010. However, the expansion will now be smaller than originally anticipated.[1] Consequently, this smaller expansion would allow the total nitrogen waste load allocation to be approximately 18,000 lbs/year[2] less and the total phosphorous waste load allocation be approximately 2,000 lbs/year[3] less than allowed under the current regulations. In addition, the proposed regulation would decrease the total waste load allocations for the entire York River basin by those same amounts. That is, the total nitrogen allocation would decrease from 1,079,212 lbs/year to 1,060,939 lbs/year and the total phosphorous allocation would decrease from 175,601 lbs/year to 173,469 lbs/year. Less waste is of course beneficial for the environment. Since New Kent does not need the higher waste load allotment, lowering it will not cause the county or anyone else any hardship. Thus, the proposal produces a net benefit.

Businesses and Entities Affected. The proposed amendments affect the government and citizens of New Kent County.

Localities Particularly Affected. The proposed amendments affect New Kent County.

Projected Impact on Employment. The proposal will not affect employment.

Effects on the Use and Value of Private Property. The proposal will not affect the use and value of private property.

Small Businesses: Costs and Other Effects. The proposal will not affect small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposal will not affect small businesses.

Real Estate Development Costs. The proposal 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.

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[1] The county originally planned to increase the design flow of the plant from 0.568 million gallons per day (MGD) to 3.0 MGD, and now intends to construct a smaller addition that will raise the design flow to 2.0 MGD.

[2] The nitrogen allocation would decrease from 54,820 to 36,547 lbs/year.

[3] The phosphorous allowance would decrease from 6,396 to 4,264 lbs/year.

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

Summary:

The proposed amendments to 9VAC25-720-120 C revise total nitrogen and total phosphorus waste load allocations for the New Kent County-Parham Landing Wastewater Treatment Plant (VA0088331) located in the York River basin.

By letter dated June 5, 2008, New Kent County petitioned for revised nutrient waste load allocations for their Parham Landing WWTP, which is now in design for upgrade/expansion. The county originally planned to increase the design flow of the plant from 0.568 million gallons per day (MGD) to 3.0 MGD, and now intends to construct a smaller addition that will raise the design flow to 2.0 MGD. The funds saved by constructing the smaller plant will be used by the county to build a reuse system that will provide bulk irrigation water to aid in

preventing groundwater shortages in the area. This sizing change will result in lower discharged nutrient waste load allocations; the total nitrogen allocation would decrease by 18,273 lbs/yr (from 54,820 to 36,547 lbs/yr) and the total phosphorus allocation would decrease by 2,132 lbs/yr (from 6,396 to 4,264 lbs/yr).

9VAC25-720-120. York River Basin.

A. Total Maximum Daily Load (TMDLs).

B. Stream segment classifications, effluent limitations including water quality based effluent limitations, and waste load allocations.

TABLE B1 -- RECOMMENDED STREAM SEGMENTS IN THE YORK RIVER BASIN

Segment Number	Classification	Name of River (Description)*
8-1	EL	North Anna River (main and tributaries except Goldmine Creek and Contrary Creek) R.M. 68.4-0.0
8-2	EL	Goldmine Creek
8-3	WQ	Contrary Creek (main only) R.M. 9.5-0.0
8-4	EL	South Anna River (main and tributaries) R.M. 101.2-97.1
8-5	EL	South Anna River (main only) R.M. 97.1-77.4
8-6	EL	South Anna River (main and tributaries) R.M.77.4-0.0
8-7	EL	Pamunkey River (main and tributaries) R.M. 90.7-12.2
8-8	WQ	Pamunkey River (main only) R.M. 12.2-0.0
8-9	EL	Mattaponi River (main and tributaries) R.M.102.2-10.2
8-10	EL	Mattaponi River (main only) R.M.10.2-0.0
8-11	WQ	York River (main only) R.M. 30.4-22.4
8-12	EL	York River (main and tributaries except King Creek and Carter Creek) –R.M. 22.4-0.0
8-13	EL	Carter Creek (main and tributaries) R.M. 5.4-2.0
8-14	EL	Carter Creek (main only) R.M. 2.0-0.0
8-15	EL	King Creek (main only) R.M.5.6-0.0
8-16	WQ	Condemned shellfish areas-Timberneck, Queens, and Sarah Creeks and portions of the main stream of the York River.

*R.M.= River Mile, measured from the river mouth

Source: Roy F. Western

TABLE B2 -- WASTE LOAD ALLOCATIONS (IN LBS PER DAY)

POINT SOURCE	1977 WASTE LOAD[2]		MAXIMUM[7] DAILY LOAD		RECOMMENDED ALLOCATION			RAW WASTE LOAD AT 1995		REQUIRED & REMOVAL EFFICENCY 1995	
	$CBOD_5$	UBOD[1]	$CBOD_5$	UBOD	$CBOD_5$	UBOD	PERCENT RESERVE	$CBOD_5$	UBOD	$CBOD_5$	UBOD
Gordonsville	145	398	150	412	150	412	0	1950	2730	92	85
Louisa-Mineral	50	108	55	118	55	118	0	850	1150	93	90
Doswell	52	110	862[8]	1407[8]	690[8]	1125[8]	20	1080	1444	85[4]	71
Thornburg	63	150	68	162	68	162	0	1240	1690	94	90
Bowling Green	27	64	29	68	29	68	0	680	926	96	93
Ashland	160	303	235	559	188	447	20	2250	3825	92	88
Hanover (Regional STP)	170	437	280	820	280	820	0	5730	7930	96	90
Chesapeake Corp.	6400	8000	10445[5]	15000[5]	10445[5]	15000[5]	N/A	51700	64630	90	90
West Point	105	380	281[3]	1020	225	814	20	1000	1600	85[4]	66

[1]BOD is Ultimate Biochemical Oxygen Demand. Its concentration is derived by the following: BOD_5 /0.80+ 4.5(TKN)=(UBOD). NOTE: The amount of TKN utilized depends on the location in the basin.

[2]Projected for 1977 based on population projections.

[3]Recommended allocation based on BPCTCA effluent guidelines applied to raw waste loads at 2020.

[4]Minimum removal efficiency.

[5]Allocation based on BPCTCA effluent guidelines; amended by Minute 25, June 3-5, 1979 board meeting.

[7]Assimilative capacity.

[8]Amended by Minute 1, August 17, 1978, board meeting.

Source: Roy F. Weston, Inc.

C. Nitrogen and phosphorus waste load allocations to restore the Chesapeake Bay and its tidal rivers. The following table presents nitrogen and phosphorus waste load allocations for the identified significant dischargers and the total nitrogen and total phosphorus waste load allocations for the listed facilities.

Virginia Waterbody ID	Discharger Name	VPDES Permit No.	Total Nitrogen (TN) Waste Load Allocation (lbs/yr)	Total Phosphorus (TP) Waste Load Allocation (lbs/yr)
F20R	Caroline County STP	VA0073504	9,137	1,066
F01R	Gordonsville STP	VA0021105	17,177	2,004
F04R	Ashland WWTP	VA0024899	36,547	4,264
F09R	Doswell WWTP	VA0029521	18,273	2,132
F09R	Bear Island Paper Company	VA0029521	47,328	12,791
F27E	Giant Yorktown Refinery	VA0003018	167,128	22,111
F27E	HRSD - York River STP	VA0081311	274,100	31,978
F14R	Parham Landing WWTP(1)	VA0088331	~~54,820~~ 36,547	~~6,396~~ 4,264
F14E	Smurfit Stone - West Point	VA0003115	259,177	70,048
F12E	Totopotomoy WWTP	VA0089915	182,734	21,319
F25E	West Point STP	VA0075434	10,964	1,279
C04E	HRSD - Mathews Courthouse STP	VA0028819	1,827	213
	TOTALS:		~~1,079,212~~ 1,060,939	~~175,601~~ 173,469

NOTES: (1) Parham Landing WWTP: waste load allocations (WLAs) based on a design flow capacity of ~~3.0~~ 2.0 million gallons per day (MGD). If plant is not certified to operate at ~~3.0~~ 2.0 MGD design flow capacity by December 31, 2010, the WLAs will decrease to TN = 10,416 lbs/yr; TP = 1,215 lbs/yr, based on a design flow capacity of 0.57 MGD.

VA.R. Doc. No. R09-1623; Filed January 21, 2009, 3:33 p.m.

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Fast-Track Regulation

Title of Regulation: **12VAC30-80. Methods and Standards for Establishing Payment Rates; Other Types of Care (amending 12VAC30-80-95).**

Statutory Authority: § 32.1-325 of the Code of Virginia; Title XIX of the Social Security Act (42 USC § 1396).

Public Hearing Information: No public hearings are scheduled.

Public Comments: Public comments may be submitted until 5 p.m. on March 18, 2009.

Effective Date: April 2, 2009.

Agency Contact: Molly Carpenter, Project Manager, Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219, telephone (804) 786-1793,

FAX (804) 786-1680, or email molly.carpenter@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.

DMAS is permitted by § 1902(a) of the Social Security Act and the enabling regulations at 42 CFR Part 440 to establish limits on its covered services.

Purpose: The purpose of this fast-track action is to incorporate into the Virginia Administrative Code (VAC) specific assurance language that was required by the Centers for Medicare and Medicaid Services (CMS). This action is not expected to have any impact on the health, safety, or welfare of citizens of the Commonwealth or Medicaid recipients. CMS required this specific language to be added to the State Plan during its amendment approval process. In order to maintain consistent language between the State Plan and the VAC, this federally required language must now be added to the VAC.

Rationale for Using Fast-Track Process: This rulemaking action is expected to be noncontroversial because it is making no difference in the reimbursement methodology or limitations on this covered service. The language being added to the State Plan is merely a federally required assurance that DMAS pays both public and private providers via the same methodology.

Substance: Virginia regulations (12VAC30-50-130), consistent with the Omnibus Budget Reconciliation Act of 1989, and federal regulations (42 CFR 440.40) require medical and mental health screenings and services through the Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) program for Medicaid eligible individuals under 21 years of age. When a provider recognizes a medical or mental health condition, regulations require that medically necessary measures to correct or ameliorate the condition be provided, whether or not such measures are covered under the Medicaid State Plan. The EPSDT program in Virginia's Medicaid State Plan has always expressly covered "hearing services," however, prior to the addition of a specific reference to "hearing aids," it did not specifically mention this covered service. Virginia's coverage for children's hearing aids is mandated through federal requirements found in § 1905(r)(4)(B) of the Social Security Act, which requires hearing aids to be included in EPSDT hearing services.

When Virginia sought federal approval of the addition of a specific reference to covered hearing aids, CMS required the addition of the language being added by this action. The new language being added by this action merely provides the assurance that DMAS does not differentiate in its reimbursement methodology between public and private providers of this service.

Issues: There are no advantages or disadvantages to either the public or Medicaid recipients in this action. The only advantage to the agency in this action is that it permits the agency to continue to maintain consistency between its VAC language and the State Plan for Medical Assistance.

The Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The proposed changes will clarify that all private and governmental providers of hearing aids are reimbursed according to the same Medicaid reimbursement methodology and also service limitations are published on the Department of Medical Assistance Services website.

Result of Analysis. The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact. The proposed changes will clarify that all private and governmental providers of hearing aids are reimbursed according to the same Medicaid reimbursement methodology and also service limitations are published on the Department of Medical Assistance Services website.

Pursuant to a request by the Centers for Medicare and Medicaid Services (CMS), the proposed language will specifically state that the private and governmental providers will be reimbursed the same for the same hearing aids and that service limitations are also published. Currently, the Medicaid reimbursement is the same for all providers. Thus, this is a mere clarification of an existing practice and no significant economic effect is expected other than complying with a CMS request.

Businesses and Entities Affected. There are approximately 520 licensed hearing aid specialists in Virginia.

Localities Particularly Affected. The proposed regulations apply throughout the Commonwealth.

Projected Impact on Employment. No effect on employment is expected.

Effects on the Use and Value of Private Property. No effect on the use and value of private property is expected.

Small Businesses: Costs and Other Effects. No costs and other effects on small businesses are expected.

Small Businesses: Alternative Method that Minimizes Adverse Impact. No adverse impact on small businesses is expected.

Real Estate Development Costs. No real estate development costs are expected.

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 economic impact analysis prepared by the Department of Planning and Budget regarding the regulations concerning Assurance of Public/Private Reimbursement for Hearing Aids Services (12VAC30-80-95).

Summary:

This regulatory action is intended to promulgate a federally required assurance statement regarding hearing aid services for children under the Medicaid Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) program. Although the Department of Medical Assistance Services (DMAS) pays private and public providers the same for this service, the current regulations do not specifically state that the reimbursement methodology is the same for private providers versus governmental providers. The Centers for Medicare and Medicaid Services (CMS) required that this statement be added to Virginia's State Plan for Medical Assistance.

12VAC30-80-95. Fee-for-service: hearing aids (under EPSDT).

A. Effective January 1, 2008, payment for hearing aids for individuals younger than 21 years of age shall be the actual cost of the device not to exceed limits set by the single state agency, plus a fixed dispensing and fitting fee not to exceed limits set by the single state agency.

B. All private and governmental providers are reimbursed according to the same methodology. Limitations set by the state agency are effective January 1, 2008, and for services provided on and after that date. The limitations are published at the following address (state agency website): http://www.dmas.virginia.gov/pr-fee_files.htm.

VA.R. Doc. No. R09-1594; Filed January 22, 2009, 10:25 a.m.

TITLE 14. INSURANCE

STATE CORPORATION COMMISSION, BUREAU OF INSURANCE

Proposed Regulation

REGISTRAR'S NOTICE: The State Corporation Commission is exempt from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

Titles of Regulations: **14VAC5-319. Life Insurance Reserves (amending 14VAC5-319-40).**

14VAC5-322. Use of the 2001 CSO Preferred Class Structure Mortality Table in Determining Reserve Liabilities (amending 14VAC5-322-20, 14VAC5-322-30, 14VAC5-322-40).

Statutory Authority: §§ 12.1-13 and 38.2-223 of the Code of Virginia.

Public Hearing Information: A public hearing will be scheduled upon request.

Public Comments: Public comments may be submitted until 5 p.m. on February 24, 2009.

Agency Contact: Raquel Pino-Moreno, Principal Insurance Analyst, State Corporation Commission, Bureau of Insurance, 1300 East Main Street, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9499, FAX (804) 371-9549, or email raquel.pino-moreno@scc.virginia.gov.

Summary:

The proposed amendments allow the Bureau of Insurance to authorize insurance companies to use the 2001 CSO Preferred Mortality Tables for policies issued on or after July 1, 2004, if certain conditions are met (14VAC5-322), and will eliminate the constraints on the X factors used in determining deficiency reserves (14VAC5-319). The proposed revisions are based on the

NAIC's Life and Health Actuarial Task Force's proposed revisions to the NAIC Valuation of Life Insurance Policies Model Regulation and the Model Regulation Permitting the Recognition of Preferred Mortality Tables for Use in Determining Minimum Reserve Liabilities, which are currently being considered by the NAIC for adoption.

AT RICHMOND, JANUARY 23, 2009

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. INS-2009-00008

Ex parte: In the matter of
Adopting Revisions to the Rules
Governing Life Insurance Reserves
And Use of the 2001 CSO Preferred
Class Structure Mortality Table in
Determining Reserve Liabilities

ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia provides that the State Corporation Commission ("Commission") shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction, and § 38.2-223 of the Code of Virginia provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of Title 38.2 of the Code of Virginia.

The rules and regulations issued by the Commission pursuant to § 38.2-223 of the Code of Virginia are set forth in Title 14 of the Virginia Administrative Code.

The Bureau of Insurance ("Bureau") has submitted to the Commission proposed revisions to Chapter 319 of Title 14 of the Virginia Administrative Code entitled "Life Insurance Reserves" and Chapter 322 of Title 14 of the Virginia Administrative Code entitled "Use of the 2001 CSO Preferred Class Structure Mortality Table in Determining Reserve Liabilities," which amend the rules at 14 VAC 5-319-40, 14 VAC 5-322-20, 14 VAC 5-322-30, and 14 VAC 5-322-40.

The proposed revisions adopt for Virginia many of the revisions currently under consideration by the National Association of Insurance Commissioners (NAIC) for its Model Regulations on the same subjects.

The Commission is of the opinion that the proposed revisions submitted by the Bureau and set out at 14 VAC 5-319-40, 14 VAC 5-322-20, 14 VAC 5-322-30, and 14 VAC-322-40 should be considered for adoption with an effective date of March 1, 2009.

IT IS THEREFORE ORDERED THAT:

(1) The proposed revisions to "Life Insurance Reserves" and "Use of the 2001 CSO Preferred Class Structure Mortality Table in Determining Reserve Liabilities," which amend the rules at 14 VAC 5-319-40, 14 VAC 5-322-20, 14 VAC 5-322-30, and 14 VAC 5-322-40, be attached and be made a part hereof.

(2) All interested persons who desire to comment in support of or in opposition to, or request a hearing to oppose the adoption of the proposed new rules shall file such comments or hearing request on or before February 24, 2009, in writing with the Clerk of the Commission, Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, and shall refer to Case No. INS-2009-00008.

(3) If no written request for a hearing on the proposed new rules is filed on or before February 24, 2009, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposed new rules, may adopt the rules as submitted by the Bureau.

(4) AN ATTESTED COPY hereof, together with a copy of the proposed new rules, shall be sent by the Clerk of the Commission to the Bureau in care of Deputy Commissioner Douglas C. Stolte, who forthwith shall give further notice of the proposed adoption of the new rules by mailing a copy of this Order, together with the proposed new rules, to all licensed life insurers, burial societies, fraternal benefit societies, and qualified reinsurers authorized by the Commission pursuant to Title 38.2 of the Code of Virginia, and certain interested parties designated by the Bureau.

(5) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, together with the proposed new rules, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(6) The Commission's Division of Information Resources shall make available this Order and the attached proposed new rules on the Commission's website, http://www.scc.virginia.gov/case.

(7) The Bureau shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of ordering paragraph (4) above.

14VAC5-319-40. General calculation requirements for basic reserves and premium deficiency reserves.

A. At the election of the company for any one or more specified plans of life insurance, the minimum mortality standard for basic reserves may be calculated using the 1980 CSO valuation tables with select mortality factors, or any other valuation mortality table adopted by the NAIC on or after January 1, 2000, and promulgated by regulation by the

commission for this purpose. If select mortality factors are elected, they may be:

1. The 10-year select mortality factors incorporated into the 1980 amendments to the NAIC Standard Valuation Law;

2. The 20-year select mortality factors in 14VAC5-319-70; or

3. Any other table of select mortality factors adopted by the NAIC on or after January 1, 2000, and promulgated by regulation by the commission for the purpose of calculating basic reserves.

B. Deficiency reserves, if any, are calculated for each policy as the excess, if greater than 0, of the quantity A over the basic reserve. The quantity A is obtained by recalculating the basic reserve for the policy using guaranteed gross premiums instead of net premiums when the guaranteed gross premiums are less than the corresponding net premiums. At the election of the company for any one or more specified plans of insurance, the quantity A and the corresponding net premiums used in the determination of quantity A may be based upon the 1980 CSO valuation tables with select mortality factors, or any other valuation mortality table adopted by the NAIC on or after January 1, 2000, and promulgated by regulation by the commission.

1. If select mortality factors are elected, they may be:

a. The 10-year select mortality factors incorporated into the 1980 amendments to the NAIC Standard Valuation Law;

b. The 20-year select mortality factors in 14VAC5-319-70;

c. For durations in the first segment, X percent of the 20-year select mortality factors in 14VAC5-319-70, subject to the conditions set forth in subdivisions B 2 and B 3 of this section; or

d. Any other table of select mortality factors adopted by the NAIC after January 1, 2000, and promulgated by regulation by the commission for the purpose of calculating deficiency reserves.

2. When calculating X as provided by this section, the following shall apply:

a. X may vary by policy year, policy form, underwriting classification, issue age or any other policy factor expected to affect mortality experience;

~~b. X shall not be less than 20%;~~

~~c. X shall not decrease in any successive policy years;~~

~~d.~~ b. X is such that, when using the valuation interest rate used for basic reserves, subdivision (1) is greater than or equal to subdivision (2), as follows:

(1) The actuarial present value of future death benefits, calculated using the mortality rates resulting from the application of X;

(2) The actuarial present value of future death benefits calculated using anticipated mortality experience without recognition of mortality improvement beyond the valuation date;

~~e.~~ c. X is such that the mortality rates resulting from the application of X are at least as great as the anticipated mortality experience, without recognition of mortality improvement beyond the valuation date, in each of the first five years after the valuation date;

~~f.~~ d. The appointed actuary shall increase X at any valuation date where it is necessary to continue to meet all the requirements of subdivisions B 2 and B 3 of this section;

~~g.~~ e. The appointed actuary may decrease X at any valuation date as long as X ~~does not decrease in any successive policy years and as long as it~~ continues to meet all the requirements of subdivisions B 2 and B 3 of this section; and

~~h.~~ f. The appointed actuary specifically shall take into account the adverse effect on expected mortality and lapsation of any anticipated or actual increase in gross premiums.

3. If X is less than 100% at any duration for any policy, the following requirements shall be met:

a. The appointed actuary annually shall prepare an actuarial opinion and memorandum for the company in conformance with the requirements of 14VAC5-310-90; ~~and~~

b. The appointed actuary shall disclose, in the regulatory asset adequacy issues summary, the impact of the insufficiency of assets to support the payment of benefits and expenses and the establishment of statutory reserves during one or more interim periods; and

c. The appointed actuary annually shall opine for all policies subject to this regulation as to whether the mortality rates resulting from the application of X meet the requirements of subdivisions B 2 and B 3 of this section. This opinion shall be supported by an actuarial report, subject to appropriate Actuarial Standards of Practice promulgated by the Actuarial Standards Board of the American Academy of Actuaries. The X factors shall reflect anticipated future mortality, without recognition of mortality improvement beyond the valuation date, taking into account relevant emerging experience.

C. This subsection applies to both basic reserves and deficiency reserves. Any set of select mortality factors may

be used only for the first segment. However, if the first segment is less than 10 years, the appropriate 10-year select mortality factors incorporated into the 1980 amendments to the NAIC Standard Valuation Law may be used thereafter through the tenth policy year from the date of issue.

D. In determining basic reserves or deficiency reserves, guaranteed gross premiums without policy fees may be used where the calculation involves the guaranteed gross premium if the policy fee is a level dollar amount after the first policy year. In determining deficiency reserves, policy fees may be included in guaranteed gross premiums, even if not included in the actual calculation of basic reserves.

E. Reserves for policies that have changes to guaranteed gross premiums, guaranteed benefits, guaranteed charges or guaranteed credits that are unilaterally made by the company after issue and that are effective for more than one year after the date of the change shall be the greatest of the following: (i) reserves calculated ignoring the guarantee, (ii) reserves assuming the guarantee was made at issue, and (iii) reserves assuming that the policy was issued on the date of the guarantee.

F. The commission may require that the company document the extent of the adequacy of reserves for specified blocks, including but not limited to policies issued prior to January 1, 2000. This documentation may include a demonstration of the extent to which aggregation with other nonspecified blocks of business is relied upon in the formation of the appointed actuary opinion pursuant to and consistent with the requirements of 14VAC5-310-90.

G. This section is effective for valuations on and after December 31, 2008.

14VAC5-322-20. Definitions.

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

"2001 CSO Mortality Table" means that mortality table, consisting of separate rates of mortality for male and female lives, developed by the American Academy of Actuaries CSO Task Force from the Valuation Basic Mortality Table developed by the Society of Actuaries Individual Life Insurance Valuation Mortality Task Force, and adopted by the NAIC in December 2002. The 2001 CSO Mortality Table is included in the Proceedings of the NAIC (2nd Quarter 2002) and supplemented by the 2001 CSO Preferred Class Structure Mortality Table. Unless the context indicates otherwise, the "2001 CSO Mortality Table" includes both the ultimate form of that table and the select and ultimate form of that table and includes both the smoker and nonsmoker mortality tables and the composite mortality tables. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality tables. The 2001 CSO Mortality Table may be accessed via the American Academy of Actuaries' website, http://www.actuary.org/life/cso/appendix_a_jun02.xls. Mortality tables in the 2001 CSO Mortality Table include the following:

1. "2001 CSO Mortality Table (F)" means that mortality table consisting of the rates of mortality for female lives from the 2001 CSO Mortality Table.

2. "2001 CSO Mortality Table (M)" means that mortality table consisting of the rates of mortality for male lives from the 2001 CSO Mortality Table.

3. "Composite mortality tables" means mortality tables with rates of mortality that do not distinguish between smokers and nonsmokers.

4. "Smoker and nonsmoker mortality tables" means mortality tables with separate rates of mortality for smokers and nonsmokers.

"2001 CSO Preferred Class Structure Mortality Table" means mortality tables with separate rates of mortality for Super Preferred Nonsmokers, Preferred Nonsmokers, Residual Standard Nonsmokers, Preferred Smokers, and Residual Standard Smoker splits of the 2001 CSO Nonsmoker and Smoker tables adopted by the NAIC in September 2006. The 2001 CSO Preferred Class Structure Mortality Table is included in the Proceedings of the NAIC (3rd Quarter 2006). Unless the context indicates otherwise, the "2001 CSO Preferred Class Structure Mortality Table" includes both the ultimate form of that table and the select and ultimate form of that table. It includes both the smoker and nonsmoker mortality tables. It includes both the male and female mortality tables and the gender composite mortality tables. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality table. The 2001 CSO Preferred Class Structure Mortality Table may be accessed via the Society of Actuaries website, http://www.soa.org/ccm/content/areas-of-practice/life-insurance/experience-s tudies/2001-cso-pref-mort-tables/.

"Commission" means the State Corporation Commission.

"Commissioner" means the Commissioner of Insurance in Virginia unless specific reference is made to another state, in which case "commissioner" means the insurance commissioner, director, superintendent or other supervising regulatory official of a given state who is responsible for administering the insurance laws of that state.

"NAIC" means the National Association of Insurance Commissioners.

"Statistical agent" means an entity with proven systems for protecting the confidentiality of individual insured and insurer information; demonstrated resources for and history of ongoing electronic communications and data transfer ensuring data integrity with insurers, which are its members or subscribers; and a history of and means for aggregation of

data and accurate promulgation of the experience modifications in a timely manner.

14VAC5-322-30. 2001 CSO Preferred Class Structure Mortality Table.

At the election of the insurer, for each calendar year of issue, for any one or more specified plans of insurance and subject to satisfying the conditions stated in this chapter, the 2001 CSO Preferred Class Structure Mortality Table may be substituted in place of the 2001 CSO Smoker or Nonsmoker Mortality Table as the minimum valuation standard for policies issued on or after January 1, 2007, or, with the consent of the commissioner and subject to the conditions set forth in 14VAC5-322-40 D, July 1, 2004. No such election shall be made until the insurer demonstrates at least 20% of the business to be valued on this table is in one or more of the preferred classes. A table from the 2001 CSO Preferred Class Structure Mortality Table used in place of a 2001 CSO Mortality Table, pursuant to the requirements of this chapter, will be treated as part of the 2001 CSO Mortality Table only for purposes of reserve valuation pursuant to the requirements of the rules entitled "Use of the 2001 CSO Mortality Table In Determining Minimum Reserve Liabilities And Nonforfeiture Benefits" (14VAC5-321).

14VAC5-322-40. Conditions.

A. For each plan of insurance with separate rates for Preferred and Standard Nonsmoker lives, an insurer may use the Super Preferred Nonsmoker, Preferred Nonsmoker, and Residual Standard Nonsmoker tables to substitute for the Nonsmoker mortality table found in the 2001 CSO Mortality Table to determine minimum reserves. At the time of election and annually thereafter, except for business valued under the Residual Standard Nonsmoker Table, the appointed actuary shall certify that:

1. The present value of death benefits over the next 10 years after the valuation date, using the anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the valuation basic table corresponding to the valuation table being used for that class.

2. The present value of death benefits over the future life of the contracts, using anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the valuation basic table corresponding to the valuation table being used for that class.

B. For each plan of insurance with separate rates for Preferred and Standard Smoker lives, an insurer may use the Preferred Smoker and Residual Standard Smoker tables to substitute for the Smoker mortality table found in the 2001 CSO Mortality Table to determine minimum reserves. At the time of election and annually thereafter, for business valued under the Preferred Smoker Table, the appointed actuary shall certify that:

1. The present value of death benefits over the next 10 years after the valuation date, using the anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the Preferred Smoker valuation basic table corresponding to the valuation table being used for that class.

2. The present value of death benefits over the future life of the contracts, using anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the Preferred Smoker valuation basic table.

C. Unless exempted by the commission, every authorized insurer having elected to substitute the 2001 CSO Preferred Class Structure Mortality Table pursuant to this chapter shall file annually with a statistical agent designated by the NAIC and acceptable to the commission, statistical reports showing mortality and such other information as the commission may deem necessary or expedient for the administration of the provisions of this chapter. The commission shall require the use of a statistical report form established by the NAIC or by a statistical agent designated by the NAIC and acceptable to the commission.

D. If a company uses the 2001 CSO Preferred Class Structure Mortality Table for the valuation of policies issued prior to January 1, 2007, and reports either of the following in any statutory financial statement, the company must demonstrate to the commissioner that surplus relief granted by such accounting treatment has been offset by redundant reserves in blocks of business to which the 2001 CSO Preferred Class Structure Mortality Table has not been applied.

1. A deferred premium asset that is based on the valuation net premiums, even if greater than the corresponding gross premiums, or the greater of the policy gross and valuation net premiums, and the reduction in the deferred premium asset resulting from reinsurance is based on the modal premium payments to the reinsurer; or

2. A reserve credit that exceeds the reserve the insurer would report in the absence of reinsurance, on the proportion of the policies reinsured.

E. This section is effective for valuations on and after December 31, 2008.

VA.R. Doc. No. R09-1763; Filed January 26, 2009, 9:50 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

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

Final Regulation

Title of Regulation: **18VAC10-20. Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects Regulations (amending 18VAC10-20-670, 18VAC10-20-680, 18VAC10-20-790; adding 18VAC10-20-683, 18VAC10-20-687).**

Statutory Authority: §§ 54.1-201, 54.1-404 and 54.1-404.2 of the Code of Virginia.

Effective Date: April 1, 2009.

Agency Contact: Kathleen Nosbisch, Executive Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers, and Landscape Architects, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8514, FAX (804) 527-4294, or email apelscidla@dpor.virginia.gov.

Summary:

The amendments establish a continuing education program to require the equivalent of 16 hours per biennium of approved continuing education activities for the renewal or reinstatement of architect, professional engineer, and land surveyor licenses. The changes are intended to fulfill the requirements of Chapter 683 of the 2006 Acts of Assembly.

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.

Part XI
Renewal and Reinstatement

18VAC10-20-670. Expiration and renewal.

A. Prior to the expiration date shown on the license, certificate or registration, licenses, certificates or registrations shall be renewed for a two-year period upon completion of a renewal application and payment of a fee established by the board. ~~An applicant must certify continued compliance with the Standards of Practice and Conduct as established by the board.~~ Registrations for professional corporations, professional limited liability companies and business entities shall expire on December 31 of each odd-numbered year. Branch office registrations expire the last day of February of each even-numbered year. If the renewal fee for a branch office is not received by the board within 30 days following the expiration date noted on the registration, a reinstatement fee of $25 will be required in addition to the renewal fee. Branch offices may not renew until the main office registration is properly renewed.

B. Failure to receive a renewal notice and application shall not relieve the regulant of the responsibility to renew. If the regulant fails to receive the renewal notice, a copy of the license, certificate or registration may be submitted with the required fee as an application for renewal~~, accompanied by a signed statement indicating that the applicant continues to comply with the Standards of Practice and Conduct of the board under whose authority the license, certificate or registration is issued~~.

C. By submitting the renewal fee, an applicant for renewal is certifying continued compliance with the Standards of Practice and Conduct as established by the board. In addition, by submitting the renewal fee, applicants to renew a license are certifying that they comply with the continuing education requirements as contained in this chapter.

D. Board discretion to deny renewal. The board may deny renewal of a license, certificate or registration for the same reasons as it may refuse initial licensure, certification or registration or discipline a regulant or for noncompliance with the continuing education requirements as contained in this chapter.

~~D.~~ E. If the renewal fee is not received by the board within 30 days following the expiration date noted on the license, certificate or registration, a late renewal fee equal to the regular fee plus $25 shall be required, unless a reinstatement fee is otherwise noted.

18VAC10-20-680. Reinstatement.

A. If the license, certificate or registration has expired for six months or more, but less than five years, the regulant shall be required to submit a reinstatement application, which shall be evaluated by the board to determine if the applicant meets the renewal requirements. In addition, a reinstatement fee equal to the regular renewal fee plus $100 shall be required. In addition, individual license holders applying for reinstatement are required to provide evidence of compliance with the continuing education requirements as contained in this chapter.

B. If the license, certificate or registration has expired for five years or more, an application for reinstatement shall be required, which shall be evaluated by the board to determine if the applicant remains qualified to be a regulant of the board, and a reinstatement fee equal to the regular renewal fee plus $250 shall be submitted. In addition, the board may require an individual applicant to submit to an examination. In addition, individual license holders applying for resintatement are required to provide evidence of compliance with the continuing education requirements as contained in this chapter.

C. Board discretion to deny reinstatement. The board may deny reinstatement of a license, certificate or registration for the same reasons as it may refuse initial licensure, certification or registration or discipline a regulant or for noncompliance with the continuing education requirements as contained in this chapter.

D. The date the renewal application and fee are received in the office of the board shall determine whether a license, certificate or registration shall be renewed without late renewal or reinstatement, or shall be subject to reinstatement application procedures.

E. A license, certificate or registration that is reinstated shall be regarded as having been continuously licensed, certified or registered without interruption. Therefore, the license, certificate or registration holder who is not subject to the licensure for life provisions of § 54.1-405 of the Code of Virginia shall remain under the disciplinary authority of the board during the entire period and shall be accountable for his activities during the period. A license, certificate or registration that is not reinstated and is not subject to the licensure for life provisions of § 54.1-405 of the Code of Virginia shall be regarded as unlicensed, uncertified or unregistered from the expiration date forward. Nothing in this chapter shall divest the board of its authority to discipline a license, certificate or registration holder for a violation of the law or regulation during the period of time for which the regulant was licensed, certified or registered.

18VAC10-20-683. Continuing education requirements for renewal or reinstatement.

A. Individuals whose licenses expire or who apply to reinstate after (insert date - 12 months after the effective date of these regulations) shall be required to comply with the continuing education provisions of this chapter.

B. Individuals are required to complete at least 16 continuing education credit hours of [~~board~~] approved continuing education activities for any license renewal or reinstatement.

C. Continuing education activities shall be deemed to be approved provided the following criteria are met:

1. Content and subject matter. Continuing education activities must be related to practice of the profession of the license being renewed, have a clear purpose and objective that will maintain, improve, or expand the skills and knowledge relevant to the licensee's area of practice as defined in Chapter 4 (§ 54.1-400 et seq.) of Title 54.1 of the Code of Virginia. The required continuing education credit hours may be in areas related to business practices, including project management, risk management, and ethics, which have demonstrated relevance to the licensee's area of practice as defined in Chapter 4 of Title 54.1 of the Code of Virginia.

2. Curriculum. The curriculum of the continuing education activity must be consistent with the purpose and objective of the continuing education activity.

3. Sponsors and instructors. Sponsors of continuing education activities must have sufficient resources to provide the continuing education activity and documentation of completion of the continuing education activity to those individuals who successfully complete the continuing education activity. Course instructors must be competent in the subject being taught, either by education or experience.

4. Methods of instruction for continuing education courses. The method of instruction must be consistent with the purpose and objective of the continuing education activity.

5. Computation of credit.

a. Fifty contact minutes shall equal one continuing education credit hour. For a continuing education course or activity in which individual segments are less than 50 minutes, the sum of the segments shall be totaled for computation of continuing education credit hours for that continuing education course or activity.

b. The sponsor of the continuing education activity must have predetermined the number of continuing education credit hours that an activity shall take to complete. A licensee cannot claim credit for more than the predetermined number of continuing education credit hours if the licensee took more than the predetermined number of hours to complete the continuing education activity.

c. One semester credit hour of approved college credit shall equal 15 continuing education credit hours and one quarter credit hour of approved college credit shall equal 10 continuing education credit hours.

d. For self-directed continuing education activity, there must be an assessment by the sponsor at the conclusion of the activity to verify that the individual has achieved the purpose and objective of the continuing education activity; credit will not be awarded if the individual has not successfully achieved the purpose and objective of the continuing education activity based upon the results of the assessment.

e. A licensee may be granted credit for the initial development or substantial updating of a continuing education activity or his initial teaching of a course that otherwise meets the requirements of this chapter at twice the amount of credit that students of the course or activity would receive. Additional credit for subsequent offerings of the course or activity with the same content will not be permitted.

f. A licensee will not receive credit for completing the same continuing education activity with the same content

more than once during the license period immediately prior to the expiration date of the license for renewal or during the two years immediately prior to the date of receipt of a complete reinstatement application.

D. 1. Only continuing education activities completed during the license period immediately prior to the expiration date of the license shall be acceptable in order to renew the license. Continuing education activities utilized to satisfy the continuing education requirements to renew a license shall be valid only for that renewal and shall not be accepted for any subsequent renewal cycles or reinstatement of that license.

2. Individuals shall maintain records of completion of continuing education activities that comply with the requirements of this chapter for three years from the date of expiration of the license for which the continuing education activities are being used to renew the license. Individuals shall provide such records to the board or its duly authorized agents upon request.

E. Notwithstanding the provisions of subsection D of this section, continuing education activities completed during a licensing renewal cycle to satisfy the continuing education requirements of the preceding licensing renewal cycle shall be valid only for that preceding license renewal cycle and shall not be accepted for any subsequent renewal cycles or reinstatement.

F. 1. Each individual license holder applying for reinstatement shall provide, as part of his reinstatement application, evidence of compliance with the continuing education requirements of this chapter. The completion date of continuing education activities submitted in support of a reinstatement application shall not be more than two years old as of the date a complete reinstatement application is received by the board.

2. Continuing education activities utilized to satisfy the continuing education requirements in order to reinstate a license shall be valid only for that reinstatement and shall not be accepted for any subsequent renewal cycles or reinstatement.

G. Periodically, the board may conduct a random audit of its licensees who have applied for renewal to determine compliance. Licensees who are selected for audit shall provide all documentation of all continuing education activities utilized to renew their license within 21 calendar days of receiving notification of audit.

18VAC10-20-687. Exemptions and waivers.

Pursuant to § 54.1-404.2 of the Code of Virginia, the board may grant exemptions or waive or reduce the number of continuing education activities required in cases of certified illness or undue hardship. However, such exemptions, waivers, or reductions shall not relieve the individual of their obligation to comply with any other requirements of this chapter including, but not limited to, the provisions of 18VAC10-20-670, 18VAC10-20-680, or 18VAC10-20-683.

18VAC10-20-790. Sanctions.

A. No license, certificate, or registration shall be suspended or revoked, nor shall any regulant be fined unless a majority of the members of the entire board who are eligible to vote, vote for the action. The board may ~~suspend or revoke~~ discipline or sanction, or both, any license holder, certificate holder, or the holder of a certificate of authority or registration~~, or fine any regulant,~~ if the board finds that:

1. The license, certification or registration was obtained or renewed through fraud or misrepresentation;

2. The regulant has been found guilty by the board, or by a court of competent jurisdiction, of any material misrepresentation in the course of professional practice, or has been convicted, pleaded guilty or found guilty, regardless of adjudication or deferred adjudication, of any felony or misdemeanor which, in the judgment of the board, adversely affects the regulant's ability to perform satisfactorily within the regulated discipline. Any plea of nolo contendere shall be considered a conviction for the purposes of this chapter;

3. The regulant is guilty of professional incompetence, negligence, or gross negligence;

4. The regulant has abused drugs or alcohol to the extent that professional competence is adversely affected;

5. The licensee fails to comply, or misrepresents any information pertaining to their compliance, with any of the continuing education requirements as contained in this chapter;

6. The regulant violates any standard of practice and conduct, as defined in this chapter; or

~~6.~~ 7. The regulant violates or induces others to violate any provision of Chapters 1 through 4 of Title 54.1 or Chapters 7 and 13 of Title 13.1 of the Code of Virginia, or any other statute applicable to the practice of the professions herein regulated, or any provision of this chapter.

B. If evidence is furnished to the board which creates doubt as to the competency of a regulant to perform professional assignments, the board may require the regulant to prove competence by interview, presentation or examination. Failure to appear before the board, pass an examination, or otherwise demonstrate competency to the board shall be grounds for revocation or suspension of the license, certification or registration.

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 (18VAC10-20)

Architect License Application~~,~~ (Architect Information Sheet)~~,~~ 0401LIC (rev. 10/10/08).

Verification of Architect Examination and Licensure Form, 0401EXVER v.1.0 (rev. 9/5/08).

Architect Experience Verification Form, 0401EXP v1.0 (rev. 9/5/08).

Architect Client Experience Verification Form, 0401CEXP v1.0 (rev. 9/5/08).

Architect Degree Verification Form, 0401DEG v1.0 (rev. 9/5/08).

Architect Reference Form, 0401REF v1.0 (rev. 9/5/08).

Architect License Reinstatement Application, 0401REI ~~v.1.0~~ (rev. ~~9/5/08)~~ 4/09).

Architect License Renewal Form, 0401REN ~~v1.0 (eff. 9/5/08)~~ (rev. 4/09).

Professional Engineer License Application, (Professional Engineer Information Sheet) 0402LIC (rev. 9/22/08).

Professional Engineer Reference Form, 0402REF v.1.0 (rev. 9/5/08).

Professional Engineer License Reinstatement Application, 0402REI ~~v1.1~~ (rev. ~~9/15/08)~~ 4/09).

Professional Engineer and Engineer-in-Training Degree Verification Form, 0402_20DEG v1.0 (rev. 9/5/08).

Professional Engineer and Engineer-in-Training Experience Verification Form, 0402_20EXP v1.0 (rev. 9/5/08).

Engineer Verification of Examination and Licensure Form, 0402_20EXVER v1.0 (rev. 9/5/08).

Engineer-in-Training Designation Application, (Engineer-in-Training Information Sheet) 0420DES v1.0 (rev. 9/5/08).

Engineer-in-Training Reference Form, 0402REF v1.0 (rev. 9/5/08).

Course Requirements for Engineering Technology Program, 0402_20CREQ v1.0 (eff. 9/5/08).

Professional Engineer License Renewal Form, 0402REN ~~v1.0 (eff. 9/5/08)~~ (rev. 4/09).

Land Surveyor License Application, (Land Surveyor Information Sheet) 0403LIC (rev. 9/17/08).

Land Surveyor License Reinstatement Application, 0403REI (rev. ~~9/17/08)~~ 4/09).

Land Surveyor B License Application, (Land Surveyor B Information Sheet) 0404LIC (rev. 9/17/08).

Land Surveyor B License Reinstatement Application, 0404REI (rev. ~~9/17/08)~~ 4/09).

Land Surveyor License Renewal Form, 0403_04REN (rev. 4/09).

Land Surveyor and Surveyor-in-Training Degree Verification Form, 0403_30DEG (rev. 9/17/08).

Land Surveyor Verification of Examination and Licensure Form, 0403_30ELV (rev. 07 9/17/08).

Land Surveyor & Surveyor-in-Training Experience Verification Form, 0403_30EXP (rev. 9/17/08).

Surveyor Photogrammetrist License Application (Surveyor Photogrammetrist Information Sheet), 0408LIC ~~(eff. 9/19/08)~~ rev. 4/09).

Surveyor Photogrammetrist License Renewal Form, 0408REN ~~(eff. 9/19/08)~~ (rev. 4/09).

"Grandfather" Surveyor Photogrammetrist Reference Form, 0408REF (eff. 9/19/08).

Surveyor Photogrammetrist Experience Verification Form, 0408EXP (eff. 9/19/08).

"Grandfather" Surveyor Photogrammetrist Experience Verification Form, 0408GXP (eff. 9/19/08).

Surveyor Photogrammetrist License Reinstatement Application, 0408REI ~~(eff. 9/19/08)~~ (rev. 4/09).

Surveyor Photogrammetrist Degree Verification Form, 0408DEG (eff. 9/19/08).

Surveyor Photogrammetrist Verification of Examination and Licensure Form, 0408ELVF (eff. 9/19/08).

Surveyor-In-Training Designation Application, (Surveyor-in-Training Information Sheet) 0430DES (rev. 9/17/08).

~~Land Surveyor License Renewal Form, 0403_04REN (eff. 9/17/08).~~

Landscape Architect Certificate Application, (Landscape Architect Information Sheet) 0406CERT (rev. 10/6/08).

Verification of Landscape Architect Examination and Licensure Form, 0406ELV (rev. 9/17/08).

Landscape Architect Experience Verification Form for Examination and Comity Applicants, 0406EXP (rev. 9/17/08).

Landscape Architect Degree Verification Form, 0406DEG (rev. 9/17/08).

Landscape Architect Certificate Reinstatement Application, 0406REI (rev. 9/17/08).

Landscape Architect Certificate Renewal Form, 0406REN (eff. 9/17/08).

Interior Designer Certificate Application, (Interior Designer Information Sheet) 0412CERT (rev. 9/17/08).

Verification of Interior Designer Examination and Certification Form, 0412ELV (rev. 9/17/08).

Interior Designer Degree Verification Form, 0412DEG v1.0 (rev. 9/11/08).

Interior Designer Experience Verification Form, 0412EXP v1.0 (rev. 9/11/08).

Interior Designer Certificate Reinstatement Application, 0412REI v1.0 (rev. 9/11/08).

Interior Designer Certificate Renewal Form, 0412REN v1.0 (eff. 9/11/08).

Professional Corporation Registration Application (Professional Corporation Information Sheet), 04PCREG (rev. 9/25/08).

Professional Corporation Branch Office Registration Application, 04BRPCREG (eff. 9/25/08).

Business Entity Registration Application (Business Entity Information Sheet) 04BUSREG, (rev. 9/25/08).

Business Entity Branch Office Registration Application, 04BRBUSREG (rev. 9/25/08).

Professional Limited Liability Company Registration Application (Professional Limited Liability Company Information Sheet) 04PLCREG (rev. 9/25/08).

Professional Limited Liability Company Branch Office Registration Application, 04BRPLCREG (rev. 9/25/08).]

VA.R. Doc. No. R07-135; Filed January 22, 2009, 11:50 a.m.

BOARD FOR CONTRACTORS

Proposed Regulation

Title of Regulation: **18VAC50-22. Board for Contractors Regulations (amending 18VAC50-22-100, 18VAC50-22-140, 18VAC50-22-170, 18VAC50-22-250).**

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

Public Hearing Information:

March 13, 2009 - 10 a.m. - Department of Professional and Occupational Regulation, 9960 Mayland Drive, Board Room 3, Richmond, VA

Public Comments: Public comments may be submitted until April 17, 2009.

Agency Contact: Eric L. Olson, Executive Director, Board for Contractors, 9960 Mayland Drive, Richmond, VA 23233, telephone (804) 367-2785, FAX (804) 527-4401, or email contractors@dpor.virginia.gov.

Basis: The proposed regulatory action is mandated by the following sections of the Code of Virginia. To comply with these statutes, the board evaluates its current and projected financial position, and determines the type of fees and amounts to be established for each fee that will provide revenue sufficient to cover its expenses.

1. § 54.1-113 (Callahan Act) authorizes regulatory boards to adjust fees levied by it for certification or licensure and renewal thereof so that the fees are sufficient but not excessive to cover expenses.

2. § 54.1-201 describes each regulatory board's power and duty to "levy and collect fees for the certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the regulatory board and a proportionate share of the expenses of the Department…"

3. § 54.1-304 describes the power and duty of the director to "collect and account for all fees prescribed to be paid into each board and account for and deposit the moneys so collected into a special fund from which the expenses of the Board, regulatory boards, and the Department shall be paid…"

4. § 54.1-308 provides for compensation of the director, employees, and board members to be paid out of the total funds collected. This section also requires the director to maintain a separate account for each board showing moneys collected on its behalf and expenses allocated to the board.

5. § 54.1-1102 of the Code of Virginia provides the authority for the Board for Contractors to promulgate regulations for the licensure of contractors in the Commonwealth. The content of the regulations is left to the discretion of the board, but shall not be in conflict with the purposes of the statutory authority.

Purpose: The intent of the proposed changes is to increase licensing fees for regulants of the Board for Contractors. The board must establish fees adequate to support the costs of board operations and a proportionate share of the department's operations. By the close of the current biennium, fees will not provide adequate revenue for those costs.

The Board for Contractors provides protection to the safety and welfare of the citizens of the Commonwealth by ensuring that only those individuals and firms that meet specific criteria set forth in the statutes and regulations are eligible to receive a contractor or tradesman license. The board is also tasked with ensuring that its regulants meet standards of conduct that are set forth in the regulations. Without adequate funding, complaints against regulants, brought to the attention of the board by citizens, could not be investigated and processed in a timely manner. This could provide an opportunity for a dishonest contractor, waiting for action to

be taken by the board, to continue to work, harming additional citizens.

The Department of Professional and Occupational Regulation receives no general fund money but, instead, is funded almost entirely from revenue collected through applications for licensure, renewals, examination fees, and other licensing fees. The department is self-supporting, and must collect adequate revenue to support its mandated and approved activities and operations. Fees must be established at amounts that will provide that revenue. Fee revenues collected on behalf of the boards fund the department's authorized special revenue appropriation.

The Board for Contractors has no other source of revenue from which to funds its operations.

Substance: The existing regulations are being amended to increase the fees applicable to several licensing items as follows:

The fee for Class C initial licensure is increased from $150 to $200.

The fee for Class B initial licensure is increased from $175 to $225.

The fee for Class A initial licensure is increased from $200 to $250.

The fee for the declaration of a designated employee at the time of application is increased from $40 to $80.

The Virginia Transaction Recovery Fund assessment remains $25.

The fee for Class C renewal is increased from $110 to $175.

The fee for Class B renewal is increased from $150 to $200.

The fee for Class A renewal is increased from $165 to $225.

The Virginia Transaction Recovery Fund assessment is $50.

The fee for Class C reinstatement is increased from $260 to $375.

The fee for Class B reinstatement is increased from $325 to $425.

The fee for Class A reinstatement is increased from $365 to $475.

The Virginia Transaction Recovery Fund assessment is $50.

The fee to change a designated employee is increased from $40 to $80.

The fee to change a qualified individual is increased from $40 to $80.

The fee to add a classification or specialty designation is increased from $40 to $80.

Issues: The primary issue for the proposed fee increase is the department's statutory requirement to comply with the Callahan Act.

Further issues to be addressed as regulations are developed include:

The Callahan Act required DPOR to review each board's expenditures at the close of each biennium, and to adjust fees if necessary. The Board for Contractors is expected to incur a deficit of $579,707 and a Callahan Act percentage of -3.5%.

The regulatory review process generally takes a minimum of 18 months, and so it is essential to consider fee increases now, before the deficit increases to the amount greater than previously anticipated. To avoid increasing the deficit the new fees will need to become effective by the beginning of the 2010 biennium. Otherwise, the board's deficit will increase to the point that the new fees would be inadequate to provide sufficient revenue for upcoming operating cycles, which could result in the board having to consider additional fee increases in the near future.

The advantage of these changes is that the regulatory program will be able to continue to function in order to protect the public. The disadvantage is that these changes will increase the cost of the license to the regulated population; however, the impact of these changes on the income of the regulated population should not be of a great significance compared to their level of income.

The Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Contractors (Board) proposes to amend its regulations for contractors to increase fees.

Result of Analysis. There is insufficient information to determine if benefits outweigh costs for these proposed regulatory changes.

Estimated Economic Impact. Board of Contractor regulations set fees for initial licensure, renewal of licensure and for reinstatement of licensure for Class A, B and C contractors.

Currently, Class C contractors must pay $150 for initial licensure and $110 biennially for license renewal. Any licenses not renewed within 30 days of license expiration must be reinstated. Class C contractors who must reinstate their licenses are currently subject to a $260 fee.

Currently, Class B contractors must pay $175 for initial licensure and $150 biennially for license renewal. Class B contractors who must reinstate their licenses are currently subject to a $325 fee.

Currently, Class A contractors must pay $200 for initial licensure and $165 biennially for license renewal. Class A contractors who must reinstate their licenses are currently subject to a $365 fee.

The Board proposes to increase all of these fees in order to cover anticipated program revenue deficits. The Department of Professional and Occupational Regulation (DPOR) reports that the Board has incurred increased expenses for enforcement activities, information systems development costs and application processing/customer support services.

The Board proposes to increase the fee for initial licensure of Class C contractors to $200 (from $150), increase the renewal fee to $175 (from $110) and increase the reinstatement fee to $375 (from $260). Also under these proposed regulations, the fee for initial licensure for Class B contractors will increase to $305 (from $175), the Class B renewal fee will increase to $200 (from $150) and Class B reinstatement fee will increase to $425 (from $325). The Class A initial licensure fee will increase to $330 (from $200), the renewal fee will increase to $225 (from $165) and the Class A reinstatement fee will increase to $475 (from $365).

The Board also has other miscellaneous fees, for change of designated employee, change of qualified individual and for addition of classification or specialty, which are increasing under this proposed regulatory action. These fees are currently all set at $40; the Board proposes to double them to $80.

DPOR reports that these fee increases will allow investigation of complaints against regulated entities to continue to be carried out in a timely fashion; absent these fee increases, DPOR reports, the public might be adversely affected by contractors who continue to work after a complaint is filed but before their cases are adjudicated. To the extent that possible customers for contractors rely on the Board for information about whom to hire (or, more importantly, whom not to hire) a slow down in complaint investigations would likely lead to questionable contractors being hired. To the extent that possible customers rely on private sources of information, such as references from trusted friends or family or information from the Better Business Bureau, any bad effects of a slow down are likely to be partially or completely mitigated.

The possible benefits of these proposed regulations must be weighed against the adverse impact that these fee increases will have on contractor businesses in the Commonwealth. For healthy, full-time contractor businesses, these fees will likely be absorbed and at least partially passed on to customers who will likely pay slightly higher fees for contracting work. These fee increases may, however, serve as the tipping point for some marginally profitable and/or part-time contracting businesses so that fewer individuals choose to renew their licenses. Entry into this field will also likely decrease slightly on account of the higher proposed initial licensure fees.

Additionally the Board proposes to eliminate a fee listing for the water well exam, since it is no longer applicable to contractors, and add a statutory $50 Recovery Fund assessment to regulatory language for renewal fees and reinstatement fees. Since it appears that contractors were already subject to the Recovery Fund fee, adding this fee to the proposed regulations will not increase costs but will add clarity for contractors who might have been confused about what they had to pay for renewal or reinstatement of licensure.

Businesses and Entities Affected. These proposed regulations will affect all licensed contractors in the Commonwealth. DPOR reports that the Board currently licenses 101,714 contractors and tradesmen (whose fees are increasing in a separate proposed regulatory action).

Localities Particularly Affected. No locality will be particularly affected by this proposed regulatory action.

Projected Impact on Employment. This regulatory action is likely to slightly decrease the number of licensed contractors doing business in the Commonwealth.

Effects on the Use and Value of Private Property. To the extent that this proposed regulatory action increases the cost of maintaining a contracting business, profits for some businesses may slightly decrease. Any businesses that do experience a decrease in profits will also likely experience a corresponding decrease in their value.

Small Businesses: Costs and Other Effects. Most, if not all, licensed contractors in the Commonwealth qualify as small businesses. All of these small businesses will have to pay the proposed higher fees discussed above to continue operating.

Small Businesses: Alternative Method that Minimizes Adverse Impact. In general small businesses will benefit from agency actions that look toward cutting agency costs, when doing so will not adversely affect their mission, rather than raising fees.

Real Estate Development Costs. To the extent that licensed contractors are involved with real estate development, this regulatory action is likely to slightly increase real estate development costs in the Commonwealth.

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 response to economic impact analysis performed by the Virginia Department of Planning and Budget.

Summary:

The proposed amendments (i) increase fees for initial licensure and license renewal and reinstatement of Class A, B and C contractors; (ii) eliminate the water well examination as it is no longer applicable to contractors; (iii) add the Virginia Transaction Recovery Fund assessment required by § 54.1-1119 B of the Code of Virginia; and (iv) increase fees for a designated employee change, a qualified individual change, and the addition of a classification or specialty.

18VAC50-22-100. Fees.

Each check or money order shall be made payable to the Treasurer of Virginia. All fees required by the board are nonrefundable. In the event that a check, money draft or similar instrument for payment of a fee required by statute or regulation is not honored by the bank or financial institution named, the applicant or regulant shall be required to remit fees sufficient to cover the original fee, plus an additional processing charge set by the department:

Fee Type	When Due	Amount Due
Class C Initial License	with license application	~~$150~~ $200
Class B Initial License	with license application	~~$175~~ $305
Class A Initial License	with license application	~~$200~~ $330
~~Declaration of Designated Employee~~	~~with license application~~	~~$40~~
Qualified Individual Exam Fee	with exam application	$20
Class B Exam Fee	with exam application ($20 per section)	$40
Class A Exam Fee	with exam application ($20 per section)	$60
~~Water Well Exam~~	~~with exam application~~	~~$40~~

Note: A $25 Recovery Fund assessment is also required with each initial license application. If the applicant does not meet all requirements and does not become licensed, this assessment will be refunded. The examination fees approved by the board but administered by another governmental agency or organization shall be determined by that agency or organization.

18VAC50-22-140. Renewal fees.

Each check or money order should be made payable to the Treasurer of Virginia. All fees required by the board are nonrefundable.

In the event that a check, money draft, or similar instrument for payment of a fee required by statute or regulation is not honored by the bank or financial institution named, the applicant or regulant shall be required to remit fees sufficient to cover the original fee, plus an additional processing charge set by the department:

Fee Type	When Due	Amount Due
Class C Renewal	with renewal application	~~$110~~ $175
Class B Renewal	with renewal application	~~$150~~ $200
Class A Renewal	with renewal application	~~$165~~ $225

Note: A $50 Recovery Fund assessment is also required with each renewal.

The date on which the renewal fee is received by the Department of Professional and Occupational Regulation or its agent shall determine whether the licensee is eligible for renewal or must apply for reinstatement.

18VAC50-22-170. Reinstatement fees.

Each check or money order should be made payable to the Treasurer of Virginia. All fees required by the board are nonrefundable. In the event that a check, money draft, or similar instrument for payment of a fee required by statute or regulation is not honored by the bank or financial institution named, the applicant or regulant shall be required to remit fees sufficient to cover the original fee, plus an additional processing charge set by the department:

Fee Type	When Due	Amount Due
Class C Reinstatement	with reinstatement application	~~$260*~~ $375*
Class B Reinstatement	with reinstatement application	~~$325*~~ $425*
Class A Reinstatement	with reinstatement application	~~$365*~~ $475*
*Includes renewal fee listed in 18 VAC 50-22-140.		

Note: A $50 Recovery Fund assessment is also required with reinstatement.

The date on which the reinstatement fee is received by the Department of Professional and Occupational Regulation or its agent shall determine whether the licensee is eligible for reinstatement or must apply for a new license and meet the entry requirements in place at the time of that application. In order to ensure that licensees are qualified to practice as contractors, no reinstatement will be permitted once one year from the expiration date of the license has passed.

18VAC50-22-250. Fees.

Each check or money order should be made payable to the Treasurer of Virginia. All fees required by the board are nonrefundable. In the event that a check, money draft, or similar instrument for payment of a fee required by statute or regulation is not honored by the bank or financial institution named, the applicant or regulant shall be required to remit fees sufficient to cover the original fee, plus an additional processing charge set by the department:

Fee Type	When Due	Amount Due
Change of Designated Employee	with change form	~~$40~~ $80
Change of Qualified Individual	with change form	~~$40~~ $80
Addition of Classification or Specialty	with addition application	~~$40~~ $80

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 (18VAC50-22)

Contractor Licensing Information, 27INTRO (8/07).

Trade-Related Examinations and Qualifications Information, 27EXINFO (8/07).

License Application, 27LIC (rev. 8/08).

Class C License Application (Short Form), 27CSF (rev. ~~8/08)~~ insert date).

Additional License Classification/Specialty Designation Application, 27ADDCL (rev. ~~8/07)~~ insert date).

Change of Qualified Individual Application, 27CHQI (rev. ~~8/07)~~ insert date).

Change of Designated Employee Application, 27CHDE (rev. ~~8/07)~~ insert date).

Changes of Responsible Management Form, 27CHRM (eff. 8/07).

Experience Reference, 27EXP (8/07).

Certificate of License Termination, 27TERM (8/07).

Education Provider Registration/Course Approval, 27CONTEDREG (eff. 4/08).

Education Provider Listing Form, 27EDLIST (eff. 4/08).

Financial Statement, 27FINST (eff. 8/07).

Additional Qualified Individual Experience Reference Form, 27QIEXP (eff. 8/07).

VA.R. Doc. No. R08-1169; Filed January 14, 2009, 11:13 a.m.

Proposed Regulation

Title of Regulation: **18VAC50-30. Individual License and Certification Regulations (amending 18VAC50-30-90, 18VAC50-30-120, 18VAC50-30-130, 18VAC50-30-150; repealing 18VAC50-30-110).**

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

Public Hearing Information:

March 13, 2009 - 10 a.m. - Department of Professional and Occupational Regulation, 9960 Mayland Drive, Board Room 3, Richmond, VA

Public Comments: Public comments may be submitted until April 17, 2009.

Agency Contact: Eric L. Olson, Executive Director, Board for Contractors, 9960 Mayland Drive, Richmond, VA 23233, telephone (804) 367-2785, FAX (804) 527-4401, or email contractors@dpor.virginia.gov.

Basis: The proposed regulatory action is mandated by the following sections of the Code of Virginia. To comply with these statutes, the board evaluates its current and projected financial position, and determines the type of fees and

amounts to be established for each fee that will provide revenue sufficient to cover its expenses.

1. § 54.1-113 (Callahan Act) provides the authority to the regulatory boards to adjust fees so that the fees are sufficient but not excessive to cover expenses.

2. § 54.1-201 describes each regulatory board's power and duty to "levy and collect fees for the certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the regulatory board and a proportionate share of the expenses of the Department…"

3. § 54.1-304 describes the power and duty of the director to "collect and account for all fees prescribed to be paid into each board and account for and deposit the moneys so collected into a special fund from which the expenses of the board, regulatory boards, and the Department shall be paid…"

4. § 54.1-308 provides for compensation of the director, employees, and board members to be paid out of the total funds collected. This section also requires the Director to maintain a separate account for each board showing moneys collected on its behalf and expenses allocated to the board.

Section 54.1-1102 of the Code of Virginia provides the authority for the Board for Contractors to promulgate regulations for the licensure of contractors in the Commonwealth. The content of the regulations is left to the discretion of the board, but shall not be in conflict with the purposes of the statutory authority.

Purpose: The intent of the proposed changes in regulations is to increase licensing fees for regulants of the Board for Contractors. The board must establish fees adequate to support the costs of board operations and a proportionate share of the department's operations. By the close of the current biennium, fees will not provide adequate revenue for those costs.

The Board for Contractors provides protection to the safety and welfare of the citizens of the Commonwealth by ensuring that only those individuals and firms that meet specific criteria set forth in the statutes and regulations are eligible to receive a contractor or tradesman license. The board is also tasked with ensuring that its regulants meet standards of conduct that are set forth in the regulations. Without adequate funding, complaints against regulants, brought to the attention of the board by citizens, could not be investigated and processed in a timely manner. This could provide an opportunity for a dishonest contractor, waiting for action to be taken by the board, to continue to work, harming additional citizens.

The Department of Professional and Occupational Regulation receives no general fund money, but instead, is funded almost entirely from revenue collected through applications for licensure, renewals, examination fees, and other licensing fees. The department is self-supporting, and must collect adequate revenue to support its mandated and approved activities and operations. Fees must be established at amounts that will provide that revenue. Fee revenues collected on behalf of the boards fund the department's authorized special revenue appropriation.

The Board for Contractors has no other source of revenue from which to funds its operations.

Substance: The existing regulations are being amended to increase the fees applicable to several licensing items.

The fee for original tradesman license by examination is increased from $90 to $130.

The fee for original tradesman license without examination is increased from $90 to $130.

The fee for card exchange (exchange of locality-issued card for state-issued Virginia tradesman license is increased from $40 to $80.

The fee for liquefied petroleum gas fitter is increased from $90 to $130.

The fee for natural gas provider is increased from $90 to $130.

The fee for backflow prevention device worker certification is increased from $90 to $130.

The fee for elevator mechanic certification is increased from $90 to $130.

The fee for water well systems provider certification is increased from $90 to $130.

Fees for duplicate cards will be repealed.

The fee for tradesman license renewal is increased from $40 to $80.

The fee for liquefied petroleum gas fitter license renewal is increased from $40 to $80.

The fee for natural gas fitter provider license renewal is increased from $40 to $80.

The fee for backflow prevention device worker certification renewal is increased from $40 to $80.

The fee for elevator mechanic certification renewal is increased from $40 to $80.

The fee for water well systems provider certification renewal is increased from $40 to $80.

The fee for tradesman license reinstatement is increased from $130 to $140.

The fee for liquefied petroleum gas fitter license reinstatement is increased from $130 to $140.

The fee for natural gas fitter provider license reinstatement is increased from $130 to $140.

The fee for backflow prevention device worker certification reinstatement is increased from $130 to $140.

The fee for elevator mechanic certification reinstatement is increased from $130 to $140.

The fee for water well systems provider certification reinstatement is increased from $130 to $140.

The fee for each addition is increased from $40 to $80.

Issues: The primary issue for the proposed fee increase is the department's statutory requirement to comply with the Callahan Act.

Further issues to be addressed as regulations are developed include:

The Callahan Act required DPOR to review each board's expenditures at the close of each biennium and to adjust fees if necessary. The Board for Contractors is expected to incur a deficit of $579,707 and a Callahan Act percentage of -3.5%.

The regulatory review process generally takes a minimum of 18 months, and so it is essential to consider fee increases now, before the deficit increases to the amount greater than previously anticipated. To avoid increasing the deficit the new fees will need to become effective by the beginning of the 2010 biennium. Otherwise, the board's deficit will increase to the point that the new fees would be inadequate to provide sufficient revenue for upcoming operating cycles, which could result in the board having to consider additional fee increases in the near future.

The advantage of these changes is that the regulatory program will be able to continue to function in order to protect the public. The disadvantage is that these changes will increase the cost of the license to the regulated population; however, the impact of these changes on the income of the regulated population should not be of a great significance compared to their level of income.

The Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Contractors (Board) proposes to amend its regulations for tradesmen to increase fees.

Result of Analysis. There is insufficient information to determine if benefits outweigh costs for these proposed regulatory changes.

Estimated Economic Impact. The Board of Contractors (Board) sets fees for tradesman initial licensure, biennial license renewal and license reinstatement, for licenses not renewed within 30 days of expiration. Additionally, the Board has a fee for adding or subtracting a trade designation from a tradesman's license and a fee for exchanging a locally issued tradesman card of a Board issued license. The Board proposes to increase all of these fees.

The Board's current fees and proposed fees are in the table below:

Initial Licensure Fees

Fee	Current	Proposed
Tradesman license by examination	$90	$130
Tradesman license without examination	$90	$130
Liquefied petroleum gas fitter license	$90	$130
Natural gas provider	$90	$130
Backflow prevention device worker certification	$90	$130
Elevator mechanic certification	$90	$130
Water well systems provider certification	$90	$130

License Renewal Fees

Fee	Current	Proposed
Tradesman license renewal	$40	$80
Liquefied petroleum gas fitter license renewal	$40	$80
Natural gas fitter provider license renewal	$40	$80
Elevator mechanic certification renewal	$40	$80
Water well systems provider certification renewal	$40	$80

License Reinstatement Fees

Fee	Current	Proposed
Tradesman license reinstatement	$130	$140
Liquefied petroleum gas fitter license reinstatement	$130	$140
Natural gas fitter provider license reinstatement	$130	$140
Elevator mechanic certification reinstatement	$130	$140
Water well systems provider certification reinstatement	$130	$140

Other Fees

Fee	Current	Proposed
Card exchange	$40	$80
Additional trade designations	$40	$80

The Board proposes to increase all of these fees in order to cover anticipated program revenue deficits. The Department of Professional and Occupational Regulation (DPOR) reports that the Board has incurred increased expenses for enforcement activities, information systems development costs and application processing/customer support services.

DPOR reports that these fee increases will allow investigation of complaints against regulated entities to continue to be carried out in a timely fashion; absent these fee increases, DPOR reports, the public might be adversely affected by tradesmen who continue to work after a complaint is filed but before their cases are adjudicated. To the extent that possible customers for tradesmen rely on the Board for information about whom to hire (or, more importantly, whom not to hire) a slow down in complaint investigations would likely lead to questionable tradesmen being hired. To the extent that possible customers rely on private sources of information, such as references from trusted friends or family or information from the Better Business Bureau, any bad effects of a slow down are likely to be partially or completely mitigated.

The possible benefits of these proposed regulations must be weighed against the adverse impact that these fee increases will have on tradesman businesses in the Commonwealth. For healthy, full-time tradesman businesses, these fees will likely be absorbed and at least partially passed on to customers who will likely pay slightly higher fees for tradesman work. These fee increases may, however, serve as the tipping point for some marginally profitable and/or part-time tradesman businesses so that fewer individuals choose to renew their licenses. Entry into this field will also likely decrease slightly on account of the higher proposed initial licensure fees.

Businesses and Entities Affected. These proposed regulations will affect all licensed tradesmen in the Commonwealth. DPOR reports that the Board currently licenses 101,714 tradesmen and contractors (whose fees are increasing in a separate proposed regulatory action).

Localities Particularly Affected. No locality will be particularly affected by this proposed regulatory action.

Projected Impact on Employment. This regulatory action is likely to slightly decrease the number of licensed tradesmen doing business in the Commonwealth.

Effects on the Use and Value of Private Property. To the extent that this proposed regulatory action increases the cost of maintaining a tradesman business, profits for some businesses may slightly decrease. Any businesses that do experience a decrease in profits will also likely experience a corresponding decrease in their value.

Small Businesses: Costs and Other Effects. Most, if not all, licensed tradesmen in the Commonwealth qualify as small businesses. All of these small businesses will have to pay the proposed higher fees discussed above to continue operating.

Small Businesses: Alternative Method that Minimizes Adverse Impact. In general small businesses will benefit from agency actions that look toward cutting agency costs, when doing so will not adversely affect their mission, rather than raising fees.

Real Estate Development Costs. To the extent that licensed tradesmen are involved with real estate development, this regulatory action is likely to slightly increase real estate development costs in the Commonwealth.

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 response to the economic impact analysis performed by the Virginia Department of Planning and Budget.

Summary:

The proposed amendments (i) increase fees for (a) initial licensure and license renewal and reinstatement of tradesmen, liquefied petroleum gas fitters, and natural gas providers; (b) initial certification and certification renewal and reinstatement for backflow prevention device workers, elevator mechanics, and water well systems providers; (c)

card exchanges; (d) trade designation additions and deletions; and (ii) repeal fees for the issuance of replacement cards.

18VAC50-30-90. Fees for licensure and certification.

A. Each check or money order shall be made payable to the Treasurer of Virginia. All fees required by the board are nonrefundable and shall not be prorated. The date of receipt by the department or its agent is the date that will be used to determine whether or not it is on time. Fees remain active for a period of one year from the date of receipt and all applications must be completed within that time frame.

B. Fees are as follows:

Original tradesman license by examination	~~$90~~ $130
Original tradesman license without examination	~~$90~~ $130
Card exchange (exchange of locality-issued card for state-issued Virginia tradesman license)	~~$40~~ $80
Liquefied petroleum gas fitter	~~$90~~ $130
Natural gas fitter provider	~~$90~~ $130
Backflow prevention device worker certification	~~$90~~ $130
Elevator mechanic certification	~~$90~~ $130
Water well systems provider certification	~~$90~~ $130

18VAC50-30-110. ~~Fees for duplicate cards.~~ (Repealed.)

~~The fee for a duplicate card shall be as follows:~~

~~First request~~	~~$30~~
~~Second request~~	~~$30~~
~~Third request~~	~~$45~~

~~Any request for the issuance of such a card must be in writing to the board. Requests for a third or subsequent duplicate card may be referred for possible disciplinary action.~~

18VAC50-30-120. Renewal.

A. Licenses and certification cards issued under this chapter shall expire two years from the last day of the month in which they were issued as indicated on the license or certification card.

B. Effective with all licenses issued or renewed after December 31, 2007, as a condition of renewal or reinstatement and pursuant to § 54.1-1133 of the Code of Virginia, all individuals holding tradesman licenses with the trade designations of plumbing, electrical and heating ventilation and cooling shall be required to satisfactorily complete three hours of continuing education for each designation and individuals holding licenses as liquefied petroleum gas fitters and natural gas fitter providers, one hour of continuing education, relating to the applicable building code, from a provider approved by the board in accordance with the provisions of this chapter.

C. Certified elevator mechanics, as a condition of renewal or reinstatement and pursuant to § 54.1-1143 of the Code of Virginia, shall be required to satisfactorily complete eight hours of continuing education relating to the provisions of the Virginia Statewide Building Code pertaining to elevators, escalators and related conveyances. This continuing education will be from a provider approved by the board in accordance with the provisions of this chapter.

D. Certified water well systems providers, as a condition of renewal or reinstatement and pursuant to § 54.1-1129 B of the Code of Virginia, shall be required to satisfactorily complete eight hours of continuing education in the specialty of technical aspects of water well construction, applicable statutory and regulatory provisions, and business practices related to water well construction from a provider approved by the board in accordance with the provisions of this chapter.

E. Renewal fees are as follows:

Tradesman license	~~$40~~ $80
Liquefied petroleum gas fitter license	~~$40~~ $80
Natural gas fitter provider license	~~$40~~ $80
Backflow prevention device worker certification	~~$40~~ $80
Elevator mechanic certification	~~$40~~ $80
Water well systems provider certification	~~$40~~ $80

All fees are nonrefundable and shall not be prorated.

F. The board will mail a renewal notice to the regulant outlining procedures for renewal. Failure to receive this notice, however, shall not relieve the regulant of the obligation to renew. If the regulant fails to receive the renewal notice, a photocopy of the tradesman license or backflow prevention device worker certification card may be submitted with the required fee as an application for renewal within 30 days of the expiration date.

G. The date on which the renewal fee is received by the department or its agent will determine whether the regulant is eligible for renewal or required to apply for reinstatement.

H. The board may deny renewal of a tradesman license or a backflow prevention device worker certification card for the same reasons as it may refuse initial issuance or to discipline a regulant. The regulant has a right to appeal any such action by the board under the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

I. Failure to timely pay any monetary penalty, reimbursement of cost, or other fee assessed by consent order or final order shall result in delaying or withholding services provided by the department such as, but not limited to, renewal, reinstatement, processing of a new application, or exam administration.

18VAC50-30-130. Reinstatement.

A. Should the Department of Professional and Occupational Regulation fail to receive the renewal application or fees within 30 days of the expiration date, the regulant will be required to apply for reinstatement of the license or certification card.

B. Reinstatement fees are as follows:

Tradesman license	~~$130*~~ $140*
Liquefied petroleum gas fitter license	~~$130*~~ $140*
Natural gas fitter provider license	~~$130*~~ $140*
Backflow prevention device worker certification	~~$130*~~ $140*
Elevator mechanic certification	~~$130*~~ $140*
Water well systems provider certification	~~$130*~~ $140*

*Includes renewal fee listed in 18VAC50-30-120.

All fees required by the board are nonrefundable and shall not be prorated.

C. Applicants for reinstatement shall meet the requirements of 18VAC50-30-30.

D. The date on which the reinstatement fee is received by the department or its agent will determine whether the license or certification card is reinstated or a new application is required.

E. In order to ensure that license or certification card holders are qualified to practice as tradesmen, liquefied petroleum gas fitters, natural gas fitter providers, backflow prevention device workers, elevator mechanics, or water well systems providers, no reinstatement will be permitted once one year from the expiration date has passed. After that date the applicant must apply for a new license or certification card and meet the then current entry requirements.

F. Any tradesman, liquefied petroleum gas fitter, or natural gas fitter provider activity conducted subsequent to the expiration of the license may constitute unlicensed activity and may be subject to prosecution under Title 54.1 of the Code of Virginia. Further, any person who holds himself out as a certified backflow prevention device worker, as defined in § 54.1-1128 of the Code of Virginia, or as a certified elevator mechanic, as defined in § 54.1-1140 of the Code of Virginia, or as a water well systems provider as defined in § 54.1-1129.1 of the Code of Virginia, without the appropriate certification, may be subject to prosecution under Title 54.1 of the Code of Virginia. Any activity related to the operating integrity of an elevator, escalator, or related conveyance, conducted subsequent to the expiration of an elevator mechanic certification may constitute illegal activity and may be subject to prosecution under Title 54.1 of the Code of Virginia.

G. The board may deny reinstatement of a license or certification card for the same reasons as it may refuse initial issuance or to discipline a regulant. The regulant has a right to appeal any such action by the board under the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

H. Failure to timely pay any monetary penalty, reimbursement of cost, or other fee assessed by consent order or final order shall result in delaying or withholding services provided by the department, such as, but not limited to, renewal, reinstatement, processing of a new application, or exam administration.

Part IV
Standards of Practice

18VAC50-30-150. Adding or deleting trade designations.

A. A regulant may add designations to a license by demonstrating, on a form provided by the board, acceptable evidence of experience, and examination if appropriate, in the designation sought. The experience, and successful completion of examinations, must be demonstrated by meeting the requirements found in Part II (18VAC50-30-20 et seq.) of this chapter.

B. The fee for each addition is ~~$40~~ $80. All fees required by the board are nonrefundable.

C. While a regulant may have multiple trade designations on his license, the renewal date will be based upon the date the card was originally issued to the individual by the board, not the date of the most recent trade designation addition.

D. If a regulant is seeking to delete a designation, then the individual must provide a signed statement listing the designation to be deleted. There is no fee for the deletion of a designation. If the regulant only has one trade or level designation, the deletion of that designation will result in the termination of the license.

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 (18VAC50-30)

Tradesman License Application, 2710LIC (rev. ~~8/07~~) *insert date*).

Backflow Prevention Device Worker Certification Application, 2710BPD (rev. ~~8/07)~~ *insert date*).

Elevator Mechanic Certification Application, 2710ELE (rev. ~~8/07)~~ *insert date*).

Individual Experience Form, 2710EXP (rev. ~~8/07)~~ 2/08).

Vocational Training Form, 2710VOTR (rev. ~~8/07)~~ 2/08).

Education Provider Registration/Course Approval Application, 27edreg (eff. 8/06).

Certified Water Well System Provider Application, 2710WSP ~~(eff. 11/07)~~ (rev. *insert date*).

VA.R. Doc. No. R08-1262; Filed January 14, 2009, 11:14 a.m.

TITLE 19. PUBLIC SAFETY

DEPARTMENT OF STATE POLICE

Fast-Track Regulation

Title of Regulation: **19VAC30-200. Approved Helmets for All-Terrain Vehicles and Mopeds (adding 19VAC30-200-10).**

Statutory Authority: §§ 46.2-915.1, 46.2-915.2, and 46.2-1005 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 18, 2009.

Effective Date: April 2, 2009.

Agency Contact: Lt. Colonel Robert Kemmler, Regulatory Coordinator, Department of State Police, Bureau of Administrative and Support Services, P.O. Box 27472, Richmond, VA 23261-7472, telephone (804) 674-4606, FAX (804) 674-2234, or email robert.kemmler@vsp.virginia.gov.

Basis: Section 46.2-915.1 of the Code of Virginia provides that no all-terrain vehicle shall be operated by any person unless he is wearing a protective helmet of a type approved by the Superintendent of State Police for use by motorcycle operators.

Section 46.2-915.2 of the Code of Virginia provides that the governing body of any county, city, or town may, by ordinance, provide that every person operating a moped, as defined in § 46.2-100, on a public street or highway wear protective helmets of a type approved by the Superintendent.

Section 46.2-1005 of the Code of Virginia authorizes the Superintendent to establish a procedure for the approval of equipment required to be approved by him.

Purpose: The purpose of this rulemaking is to set the specifications for helmets approved for use by operators of all-terrain vehicles as required in § 46.2-915.1 of the Code of Virginia and, when required by local ordinance, operators of mopeds as required in § 46.2-915.2 of the Code of Virginia. The regulations are intended to ensure that helmets worn by citizens meet uniform, minimum safety standards.

Rationale for Using Fast-Track Process: The proposed regulation is noncontroversial and reflects the requirements set forth by the Code of Virginia.

Substance: A new regulatory chapter will set the requirements for a helmet to be deemed approved. No specific manufacturer or model will be designated. Approved helmets will be required to meet the standards and specifications of the Snell Memorial Foundation, the American National Standards Institute, Inc., or the federal Department of Transportation.

Issues: This is a statutory mandate to ensure that helmets worn by citizens meet uniform, minimum, recognized safety standards. In reviewing the proposed regulation the department determined that it relates to a vital public safety matter, adoption was mandated by statute, and the regulation does not pose any known disadvantages to the public or the Commonwealth.

The Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to § 46.2-915.1 of the Code of Virginia, the Department of Virginia State Police proposes to promulgate a regulation that sets standards for helmets approved for operators of all-terrain vehicles and mopeds.

Result of Analysis. The benefits likely exceed the costs for this proposed regulation.

Estimated Economic Impact. Currently, the Code of Virginia requires that individuals operating all-terrain vehicles and mopeds wear protective helmets of a type approved by the Superintendent of the Virginia State Police. This proposed regulation will instantiate standards for this approval. The State Police propose to require that all helmets worn by operators of mopeds or all-terrain vehicles meet or exceed the standards set by 1) the Snell Foundation, 2) the American Standards Institute, Inc., or 3) the federal Department of Transportation. In general, these groups set performance-based standards (the amount of impact energy a helmet must be able to absorb, that helmets must stay on in variety of crash conditions, etc.) which will allow wide producer participation in the helmet market.

Since there is a statutory requirement to buy and wear a helmet when operating a moped or all-terrain vehicle, the costs and benefits of that requirement cannot fairly be attributed to this proposed regulation. Indeed, it is unlikely

that any affected entities will incur costs on account of this proposed regulation. Affected entities will, however, benefit from the approval standards required in § 46.2-915.1 being set out clearly in regulation. Affected entities will also benefit from the fact that approval standards are performance based as this will allow all willing producers to participate in the market and will, consequently, tend to keep the price of helmets lower.

Businesses and Entities Affected. This proposed regulation will affect all individuals who operate mopeds or all-terrain vehicles in the Commonwealth.

Localities Particularly Affected. No locality will be particularly affected by this proposed regulatory action.

Projected Impact on Employment. This regulatory action will likely have no impact on employment in the Commonwealth.

Effects on the Use and Value of Private Property. This regulatory action will likely have no effect on the use or value of private property in the Commonwealth.

Small Businesses: Costs and Other Effects. Small businesses in the Commonwealth are unlikely to incur any costs on account of this regulatory action.

Small Businesses: Alternative Method that Minimizes Adverse Impact. Small businesses in the Commonwealth are unlikely to incur any costs on account of this regulatory action.

Real Estate Development Costs. This regulatory action will likely have no effect on real estate development costs in the Commonwealth.

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 Department of State Police (VSP) has reviewed the economic impact analysis (EIA) prepared by the Department of Planning and Budget (DPB) and determined that the EIA as submitted appears to be substantially accurate.

Summary:

The proposed regulation sets forth the specifications for helmets approved for use by operators of all-terrain vehicles as required in § 46.2-915.1 of the Code of Virginia and, when required by local ordinance, operators of mopeds as required in § 46.2-915.2 of the Code of Virginia.

CHAPTER 200
APPROVED HELMETS FOR ALL-TERRAIN VEHICLES AND MOPEDS

19VAC30-200-10. Approved helmets for all-terrain vehicles and mopeds.

A. Helmets approved for wear by individuals operating or riding an all-terrain vehicle are those that meet or exceed the standards and specifications of the Snell Memorial Foundation, the American National Standards Institute, Inc., or the federal Department of Transportation.

B. Helmets approved for wear by individuals operating or riding a moped in a jurisdiction that has adopted an ordinance pursuant to § 46.2-915.2 of the Code of Virginia are those that meet or exceed the standards and specifications of the Snell Memorial Foundation, the American National Standards Institute, Inc., or the federal Department of Transportation.

VA.R. Doc. No. R09-1689; Filed January 23, 2009, 4:05 p.m.

TITLE 23. TAXATION

DEPARTMENT OF TAXATION

Proposed Regulation

Title of Regulation: **23VAC10-70. Virginia Slaughter Hog and Feeder Pig Excise Tax Regulations (repealing 23VAC10-70-10 through 23VAC10-70-70).**

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

Public Hearing Information:

March 25, 2009 - 10 a.m. - 2200 West Broad Street, Multipurpose Room, Rear Entrance, Richmond, VA

Public Comments: Public comments may be submitted until 5 p.m. on April 17, 2009.

Agency Contact: Jospeh Mayer, Lead Tax Policy Analyst, Department of Taxation, 600 East Main Street, Richmond, VA 23219, telephone (804) 371-2299, FAX (804) 371-2355, or email joseph.mayer@tax.virginia.gov.

Basis: Section 58.1-203 of the Code of Virginia provides that the "Tax Commissioner shall have the power to issue regulations relating to the interpretation and enforcement of the laws of this Commonwealth governing taxes administered by the Department." The authority for the current regulatory action is discretionary.

Purpose: As the result of a comprehensive review of all of its regulations, TAX has identified numerous regulations that have been made obsolete by changes in state and federal law. As these regulations are obsolete, they are being repealed. As these regulations are obsolete, their repeal will have no effect on the health, safety and welfare of citizens. Repeal of these regulations does not reflect a change in existing departmental policy.

Effective November 1, 1986, federal law ("The Pork, Promotion, Research, and Consumer Information Act of 1985", 7 USC § 4801) ceded to the federal government the sole right to levy an excise tax on pork. As a result, the Virginia Slaughter Hog and Feeder Pig Excise Tax imposed by § 3.1-763.9 of the Code of Virginia is no longer imposed. This regulatory action will repeal the Virginia Slaughter Hog and Feeder Pig Excise Tax Regulation.

Substance: This regulatory action will repeal the Virginia Slaughter Hog and Feeder Pig Excise Tax Regulation. Currently, the regulation sections repeat the statute and in the case of 23VAC10-70-40, the section is inconsistent with the statute. 23VAC10-70-40 imposes a three-year recordkeeping requirement, where as the statute only requires two years.

Issues: This regulatory action will ease voluntary taxpayer compliance and TAX's administration of the state tax laws by eliminating an obsolete regulation. As this regulation is obsolete the repeal will result in no disadvantages to the public or the Commonwealth.

The Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Department of Taxation (Department) proposes to repeal these regulations.

Result of Analysis. The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact. Effective November 1, 1986, the federal "Pork, Promotion, Research, and Consumer Information Act of 1985," 7 USC § 4801 (Federal Pork Act), ceded to the federal government the sole right to levy an excise tax on pork. As a result, the Virginia Slaughter Hog and Feeder Pig Excise Tax provided for by Code of Virginia § 3.1-763.9 has not been imposed since that date.

Some citizens have expressed concern that if the Federal Pork Act is overturned, the Virginia pork industry would no longer be able to continue with its tax-funded programs. Since Code of Virginia § 3.1-763.9 has not been repealed, the Virginia Slaughter Hog and Feeder Pig Excise Tax would become effective again if the Federal Pork Act were to be overturned.

The Virginia Slaughter Hog and Feeder Pig Excise Tax Regulations are essentially duplicative of Code of Virginia § 3.1-763.6, § 3.1-763.9, 3.1-763.10, § 3.1-763.11, and § 3.1-763.12, with one exception; the Regulations require that records be preserved for at least three years, while Code of Virginia section § 3.1-763.9 requires that records be kept for a period not less than two years. When the Code of Virginia and the Virginia Administrative Code are in conflict, the Code of Virginia applies. Thus, if as proposed by the Department these regulations are repealed, the effective law in Virginia would not change. Consequently, the proposed repeal of these regulations would have no impact, other than perhaps to prevent confusion for those who find and read the regulations.

Businesses and Entities Affected. The proposed repeal of these regulations will not significantly affect businesses and entities.

Localities Particularly Affected. No localities are particularly affected.

Projected Impact on Employment. The proposed repeal of these regulations will not affect employment.

Effects on the Use and Value of Private Property. The proposed repeal of these regulations will not affect the use and value of private property.

Small Businesses: Costs and Other Effects. The proposed repeal of these regulations will not affect small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed repeal of these regulations will not affect small businesses.

Real Estate Development Costs. The proposed repeal of these regulations 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 agrees with the Department of Planning and Budget's economic impact analysis.

Summary:

Effective November 1, 1986, federal law ("The Pork, Promotion, Research, and Consumer Information Act of 1985", 7 USC § 4801) ceded to the federal government the sole right to levy an excise tax on pork. As a result, the Virginia Slaughter Hog and Feeder Pig Excise Tax provided for by § 3.2-2006 of the Code of Virginia is no longer imposed. This regulatory action will repeal the Virginia Slaughter Hog and Feeder Pig Excise Tax Regulation.

VA.R. Doc. No. R07-36; Filed January 26, 2009, 1:23 p.m.

Proposed Regulation

Title of Regulation: **23VAC10-210. Retail Sales and Use Tax (amending 23VAC10-210-910).**

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

Public Hearing Information:

March 25, 2009 - 10 a.m. - 2200 West Broad Street, Multipurpose Room, Rear Entrance, Richmond, VA

Public Comments: Public comments may be submitted until 5 p.m. on April 17, 2009.

Agency Contact: Bland Sutton, Analyst, Department of Taxation, 600 East Main Street, Richmond, VA 23219, telephone (804) 371-2332, FAX (804) 371-2355, or email bland.sutton@tax.virginia.gov.

Basis: Section 58.1-203 of the Code of Virginia provides that the "Tax Commissioner shall have the power to issue regulations relating to the interpretation and enforcement of the laws of this Commonwealth governing taxes administered by the Department." The authority for the current regulatory action is discretionary.

Purpose: As a result of legislation passed by the 1994 General Assembly, the department's policy with respect to the application of the sales tax to maintenance contracts that contain both parts and labor was overturned. This regulation section must be amended to reflect this legislative change and provide examples of the new policy. TAX receives frequent inquiries as to the proper sales tax application to maintenance contract and warranty plans.

This regulatory action is necessary to ensure a predictable and adequate revenue stream for the government to provide for the health, safety and welfare of its citizens.

Substance: The application of the retail sales and use tax to maintenance contracts that provide both parts and labor was amended by the 1994 General Assembly effective January 1, 1996. This regulation section is being amended to reflect this statutory change and provide examples illustrating the tax application of this change. TAX receives frequent inquiries as to the proper sales tax application to maintenance contract and warranty plans.

The 1994 General Assembly changed the application of the retail sales and use tax with respect to maintenance contracts that include both parts and labor. These contracts are now taxed at one-half of the total charge for the contract, as opposed to the previous policy of taxing the entire amount of the contract if parts were included. As this is the subject of frequent inquiries and audit issues, the regulation section is being amended to reflect this legislative change.

Issues: The primary advantages of this proposed regulatory action are to provide guidance to the public and the Commonwealth as to the sales and use tax application to all types of maintenance contracts and to reflect a 1994 legislative change to maintenance contracts and warranty plans that include both parts and labor. This guidance will ensure compliance with TAX's policies with regard to maintenance contracts and warranty plans and ensure that these policies are universally applied by TAX's audit staff.

The regulatory action poses no disadvantages to the public or the Commonwealth.

The Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The proposed regulations will clarify in the regulations the application of retail and use tax to maintenance contracts.

Result of Analysis. The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact. The application of retail sales and use tax to maintenance contracts was amended by legislation in 1994[1] to be effective January of 1996. However, the regulations have never been updated to reflect the 1994 legislative change. The proposed regulations will merely amend the regulatory language to clarify that only one-half of

the total charge for maintenance contracts that provide labor and materials is subject to sales and use tax. Prior to the 1994 legislative change, the full amount of the charge for maintenance contracts that provide labor and materials was subject to sales and use tax.

Because the proposed changes have been already in effect since 1994 under the statutory language, no significant economic effect is expected. However, updating the current language in the regulations that is in direct conflict with the statute and the current policy enforced in practice is expected to create net benefits in terms of potential costs that could have surfaced from inaccurate regulatory language.

Businesses and Entities Affected. The proposed regulations apply to maintenance contracts that provide labor and materials.

Localities Particularly Affected. The proposed regulations apply throughout the Commonwealth.

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

Effects on the Use and Value of Private Property. No significant impact on the use and value of private property is expected.

Small Businesses: Costs and Other Effects. No significant costs and other effects on small businesses are expected.

Small Businesses: Alternative Method that Minimizes Adverse Impact. No adverse impact on small businesses is expected.

Real Estate Development Costs. No adverse impact on real estate development costs is expected.

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.

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[1] Senate Bill 28, Chapter 595, 1994 Acts of Assembly.

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

Summary:

The application of the retail sales and use tax to maintenance contracts that provide both parts and labor was amended by the 1994 General Assembly effective January 1, 1996. The proposed amendments reflect this statutory change and provide examples illustrating the tax application of this change.

23VAC10-210-910. Maintenance contracts and warranty plans.

A. Definitions. The following words and terms when used in this section shall have the following meanings unless the context clearly indicates otherwise:

"Maintenance contract" ~~defined. As used in this regulation the term "maintenance contract"~~ means ~~any~~ an agreement whereby a person agrees to maintain or repair an item of tangible personal property over a specified period of time for a fee ~~which~~ that is determined ~~at the time~~ when the agreement is ~~entered into~~ made. A maintenance contract may provide for ~~provision of~~ labor only, parts only, or labor and parts.

B. Maintenance contracts, generally.

1. Labor only contracts. Maintenance contracts ~~which~~ that provide ~~only~~ solely for the furnishing of repair labor are contracts for ~~the provision of a service only~~ services and charges for such contracts are not ~~subject to the tax~~ taxable. This includes software maintenance contracts that provide services, i.e., updates, revisions, replacements and programming, by electronic means such as online downloads or online remote access. Persons providing repair services under such contracts are liable for the tax on all items ~~purchased for use in making repairs~~ used and consumed in the provision of their services.

~~C.~~ 2. Parts only contracts. Maintenance contracts ~~which~~ that provide ~~only~~ solely for the furnishing or replacement of parts, rather than labor, represent a sale of tangible personal property. The total charge to the customer for ~~such~~ parts only contracts is ~~subject to the tax~~ taxable. Persons providing replacement parts may purchase such parts under a resale certificate of exemption.

Example: Buyer A purchases a maintenance contract from Seller B that provides for repair and replacement parts only. It is stipulated in the contract that all repair labor will be billed separately to the buyer based on an hourly rate. This contract constitutes a parts only contract and is 100% taxable.

~~D.~~ 3. Parts and labor contracts. Maintenance contracts~~, the terms of which provide~~ that provide for the furnishing of both repair or replacement parts and repair labor~~, represent a sale of tangible personal property~~ are a combination of taxable sales and nontaxable services. As it is impossible to determine in advance the percentages of labor and parts that will be provided under the contract, the contract will be deemed to be a contract for one-half labor and one-half parts, regardless of the percentages of labor and parts actually provided under the contract. ~~The~~ Thus, one-half of the total charge for such ~~contracts~~ a contract is subject to the tax ~~since at the time the contract is entered into it is impossible to ascertain what portion of future repair transactions will represent parts and what portion will represent labor~~. Persons providing maintenance pursuant to such contracts may purchase repair or replacement parts under a resale certificate of exemption, but are liable for the tax on all items purchased for their own personal use and consumption in performing repairs or maintenance.

Example 1: A maintenance contract provides that if Purchaser C's refrigerator breaks down, Seller D will come out and fix it (repair labor) and replace any parts that are defective (replacement parts) for one year. The contract is a parts and labor contract and subject to tax on one-half of the total contract price.

Example 2: Buyer E purchases a maintenance contract for computer hardware and software from Seller F. Under the terms of the contract, Seller F provides 24-hour telephone hotline support, parts replacement for hardware, new releases, updates, revisions, and replacements of licensed software in tangible form, and services to correct programming errors. This maintenance contract constitutes a parts and labor contract and would be subject to the tax based on one-half the total contract price.

~~Thus the tax will apply to the total charge for such contracts, regardless of the fact that the contract may specify separate charges for parts and labor. Persons providing maintenance pursuant to such contracts may purchase repair or replacement parts under a resale certificate of exemption, but are liable for the tax on all items purchased for use in performing the repairs or maintenance.~~

~~E.~~ 4. After hours maintenance charges. ~~Additional~~ Any additional charges for extended or after hours maintenance ~~which~~ that are based upon a percentage of or addition to the standard maintenance contract are taxable in the same manner as the contract upon which the additional charges are based.

Example: A maintenance contract that is part labor and part replacement parts will continue to be taxed at one-half of the total charge whether or not the buyer decides to add additional after hours protection to the contract.

~~F.~~ 5. Extended warranty plans. ~~The~~ With the exception of extended warranty plans issued by licensed insurance companies, the tax applies to charges for extended warranty plans ~~which~~ that provide for the provision of repair parts and labor. The application of the tax to extended warranty plans is calculated in the same manner as maintenance contracts in this subsection. Extended warranty plans issued by an insurance company regulated by the Bureau of Insurance of the State Corporation Commission are insurance transactions and are not subject to the tax. For repairs generally, see 23VAC10-210-3050.

VA.R. Doc. No. R07-248; Filed January 26, 2009, 1:24 p.m.

Proposed Regulation

Title of Regulation: **23VAC10-210. Retail Sales and Use Tax (amending 23VAC10-210-2032).**

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

Public Hearing Information:

March 25, 2009 - 10 a.m. - 2200 West Broad Street, Multipurpose Room, Rear Entrance, Richmond, VA

Public Comments: Public comments may be submitted until 5 p.m. on April 17, 2009.

Agency Contact: Bland Sutton, Analyst, Department of Taxation, 600 East Main Street, Richmond, VA 23219, telephone (804) 371-2332, FAX (804) 371-2355, or email bland.sutton@tax.virginia.gov.

Basis: Section 58.1-203 of the Code of Virginia provides that the "Tax Commissioner shall have the power to issue regulations relating to the interpretation and enforcement of the laws of this Commonwealth governing taxes administered by the Department." The authority for the current regulatory action is discretionary.

Purpose: Businesses and various industry groups have always advocated that TAX's method of calculating use tax compliance in audit situations unfairly omits sales taxes paid to vendors, a component they believe more accurately reflects their compliance efforts to comply with the sales and use tax statutes. This regulation has been amended to allow an alternative method for computing use tax compliance that does include sales taxes paid to vendors on taxable purchases. It is anticipated that this amendment will reduce the assessments of audit penalty as it relates to use tax compliance and reduce the number of appeals and offers in compromise submitted to TAX.

Substance: This regulation has been amended to reflect an administrative change allowing sales and use tax audit candidates an alternative method to calculate their use tax compliance to include sales taxes paid to vendors. The regulation has also been amended to expand the definitions section to define terms used in calculating the alternative use tax compliance. This change was instituted at the request of businesses and various industry groups.

During sales and use tax audits, TAX calculates the use tax compliance of a business. The use tax compliance measures the business's compliance in accruing and remitting the Virginia use tax on untaxed purchases. The level of the use tax compliance ratio, calculated as a percentage, determines the application of audit penalty to use tax liabilities resulting from audit. TAX's use tax compliance calculation does not include taxes paid to vendors. This regulation has been amended to allow an alternative method for calculating use tax compliance that does include sales taxes paid to vendors.

Issues: The assessment of penalty in audit situations is determined based on an established level of compliance as computed by the sales and use tax compliance ratio. For use tax compliance (the level in which a business self-assesses use tax on untaxed purchases), TAX's audit program does not include sales taxes paid to vendors in its calculation. The alternative method of computing use tax compliance proposed in this regulation allows businesses the option of calculating their use tax compliance to include sales taxes paid to vendors. The alternative method will increase businesses likelihood that they will meet the tolerances established by TAX and avoid the assessment of use tax penalty in audit situations. This alternative method is also advantageous to TAX as it will reduce the number of audit appeals and offers in compromises as they relate to audit penalty.

The regulatory action poses no disadvantages to the public or the Commonwealth.

The Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Effective October 1, 1999, the Department of Taxation (Department) allowed the use of an alternative method of computing the use tax compliance ratio in audit situations. This alternative method is an administrative change for the Department and is not reflected in statute. The Department proposes to amend these regulations to delineate the alternative method for computing use tax compliance, and to specify that taxpayers may use the alternative method if desired.

Result of Analysis. The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact. During sales and use tax audits, the Department calculates the use tax compliance of businesses. Use tax compliance measures business's compliance in accruing and remitting the Virginia use tax on purchases where the vendor does not collect sales tax. As delineated in the current regulations the use tax compliance ratio does not include taxes paid to vendors. It is calculated as follows:

> Compliance Ratio = (Measure Reported) / (Measure Reported + Measure Found),
>
> where Measure Reported means the dollar amounts of taxable sales or the dollar amounts of purchases reported on a return for the entire audit period, and Measure Found means the dollar amounts of additional sales deficiency or dollar amounts of additional use deficiency disclosed by the audit.

The compliance ratio determines the application of audit penalty to use tax liabilities resulting from audit.

As stated earlier, the Department has allowed the use of an alternative method of computing the use tax compliance ratio since October 1, 1999. Under the alternative method the compliance ratio is calculated as follows:

> Compliance Ratio = (Measure Reported + Measure Paid to Vendors) /
>
> (Measure Reported + Measure Paid to Vendors + Measure Found),
>
> where Measure Paid to Vendors means the dollar amounts of purchases on which the purchaser paid the Virginia sales or use tax to the vendor.

The alternate method increases the compliance ratio where sales taxes have been paid to vendors. Consequently since October 1, 1999 some firms have avoided audit penalties who would have been subject to penalties under the original compliance ratio formula. The alternative method also reduces costs for the Department since it reduces the number of audit appeals and offers in compromises as they relate to the audit penalty.

Since the proposal under consideration is to place in regulations policy that has been applied since 1999, no businesses other than those who may have been unaware of the opportunity to use the alternative method of calculating the use tax compliance ratio will be significantly affected. Delineating the alternative method for computing use tax compliance, and specifying that taxpayers may use the alternative method if desired is beneficial in that some firms that would not otherwise been aware of the opportunity to potentially avoid the audit penalty may became aware of the opportunity and thus save costs.

Businesses and Entities Affected. These regulations on computing the use tax compliance ratio in audit situations can potentially affect any in business in the Commonwealth since all businesses are potentially subject to such audits. Since the proposal under consideration is to place in regulations policy

that has been applied since 1999, no businesses other than those who may have been unaware of the opportunity to use the alternative method of calculating the use tax compliance ratio will be significantly affected.

Localities Particularly Affected. The proposed amendments do not disproportionately affect particular localities.

Projected Impact on Employment. The proposal amendments do not significantly affect employment.

Effects on the Use and Value of Private Property. The proposal to amend these regulations to delineate the alternative method for computing use tax compliance, and to specify that taxpayers may use the alternative method if desired may moderately increase the value of a small number of firms if they would have otherwise been unaware of the opportunity to use the alternative method and are able to avoid the audit penalty by doing so.

Small Businesses: Costs and Other Effects. The proposal to amend these regulations to delineate the alternative method for computing use tax compliance and to specify that taxpayers may use the alternative method if desired may moderately reduce costs for a small number of small businesses if they would have otherwise been unaware of the opportunity to use the alternative method and are able to avoid the audit penalty by doing so.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed amendments do not adversely affect small business.

Real Estate Development Costs. The proposed amendments do not significantly 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 agrees with the Department of Planning and Budget's economic impact analysis.

Summary:

The proposed amendments reflect an administrative change allowing sales and use tax audit candidates an alternative method to calculate their use tax compliance to include sales taxes paid to vendors on taxable purchases. The proposed amendments also define terms used in calculating the alternative use tax compliance. This change was instituted at the request of businesses and various industry groups.

23VAC10-210-2032. Penalties and interest; audits.

A. Definitions. The following words and terms when used in this section shall have the following meanings unless the context clearly indicates otherwise:

"Compliance ratio" means the percentage figure used by the department to determine a taxpayer's effort to comply with the retail sales and use tax laws of the Commonwealth.

"Measure found" means the dollar amounts of additional sales deficiency or dollar amounts of additional use deficiency disclosed by the audit. Separate compliance ratios for sales and use taxes will be necessary if the audit contains deficiencies in both areas.

"Measure paid to vendor" means the dollar amounts of purchases on which the purchaser paid the Virginia sales or use tax to the vendor.

"Measure reported" means the dollar amounts of taxable sales or the dollar amounts of purchases reported on a return for the entire audit period.

"Net underpayment" means use tax deficiency for each month determined by the audit.

"Net understatement" means sales tax deficiency determined by the audit less allowable credits, such as the sales price of tangible personal property returned by the purchaser, repossessed, or charged off as bad debts for each month during the period of the audit.

B. Penalty.

1. The application of penalty to audit deficiencies is mandatory and its application is generally based on the percentage of compliance determined by computing the dealer's compliance ratio. The compliance ratio for the sales or use tax may be computed by using the following ratio:

$$\frac{\text{Measure Reported}}{\text{Measure Reported + Measure Found}} = \text{Compliance Ratio}$$

This method is to be used by the auditor in separately computing the compliance ratio on both the sales portion of the audit and the purchases portion of the audit.

2. If the auditor's computation indicates that a taxpayer has failed to meet the required compliance ratio for the accrual of use tax on the purchases portion of the audit, the taxpayer may, at its option, compute a separate compliance ratio by including the measure on which tax was paid to its vendors, as follows:

$$\frac{\text{Measure Reported + Measure Paid to Vendors}}{\text{Measure Reported + Measure Paid to Vendors + Measure Found}} = \text{Compliance Ratio}$$

It is the taxpayer's responsibility to compute the above compliance ratio (hereinafter referred to as the "alternative method") and provide the auditor with documentation supporting the computation. The taxpayer must compute the ratio based on a review of purchases for the same period used by the auditor to compute the compliance ratio. Use tax penalty will not be assessed if the taxpayer's tax compliance ratio falls within the required tolerances.

~~Measure Reported~~

~~———————————~~ ~~= Compliance Ratio~~

~~Measure Reported + Measure Found~~

~~"Measure reported" means dollar amounts of gross sales or the cost price of purchases reported on returns for the audit period.~~

~~"Measure found" means dollar amounts of additional sales deficiency or dollar amounts of additional use deficiency disclosed by the audit. Separate ratios for sales and use taxes will be necessary if the audit contains deficiencies in both areas. Tax paid to vendors will not be included in the computation of the compliance ratio.~~

~~1.~~ 3. First generation audits. Generally, penalty will be waived for first generation audits. First generation audit penalty cannot be waived if any of the following conditions exist:

a. The taxpayer has been previously notified in writing by the Department of Taxation to collect tax on sales or to pay tax on purchases, but has failed to follow instructions; ~~or~~

b. The taxpayer has collected the sales tax, but failed to remit it to the Department of Taxation; or

c. The taxpayer has willfully evaded reporting and remitting the tax to the Department of Taxation and indications of fraud exist.

The audit of a business ~~which~~ that has experienced a name change, a change in responsible partners or officers or the addition of new locations, and where the business is conducted in the same manner and for the same purposes as during a prior audit, will not be considered a first audit for purposes of this subsection.

Similarly, audits performed for periods subsequent to the institution of reorganization plans, where during such reorganizations, the continuity of the business was not affected and the business entity maintained operations for the purpose of producing the same product(s) or rendering the same service(s), will not qualify for first generation audit status. In addition, audits performed for periods subsequent to business mergers, absorptions and like ventures, where the intent is to diversify or expand, will not qualify for first generation audit status. However, penalty generally will not be applied to audit deficiencies occurring in new areas not covered in prior audit(s) as set forth in subdivision ~~6~~ 8 of this subsection.

In the event that a business should undergo a reorganization, restructuring, acquisition, merger, diversification of product line or process, or any other event that would subject the business to a different sales tax application than its normal course of business, it is recommended that the business request a written ruling from the department as to the proper sales and use tax application. See 23VAC10-210-20.

~~2.~~ 4. Second generation audits. Penalty will generally be applied unless the taxpayer's compliance ratios meet or exceed 85% for sales tax and 60% for use tax, as computed by the auditor or under the alternative method.

~~3.~~ 5. All subsequent generation audits. Penalty will generally be applied unless the taxpayer's compliance ratios meet or exceed 85% for sales tax and 85% for use tax, as computed by the auditor or under the alternative method.

~~4.~~ 6. Taxable sales. Penalty, based on the compliance ratio, will generally be applied to the net understatement of the sales tax. ~~"Net understatement" means sales tax deficiency determined by the audit less allowable credits, such as the sales price of tangible personal property returned by the purchaser, repossessed, or charged off as bad debts during the period of the audit.~~

~~5.~~ 7. Taxable purchases. Penalty, based on the compliance ratio calculated by either the auditor or under the alternative method, will generally be applied to the net underpayment of the use tax on recurring purchases of tangible personal property used regularly in the business.

~~"Net underpayment" means use tax deficiency determined by the audit.~~

a. Withdrawals from inventory. Withdrawals of tangible personal property are subject to the use tax on a cost basis (or fabricated cost basis in the case of a fabricator/manufacturer) and should be added to taxable recurring purchases for purposes of computing the compliance ratio.

b. Fixed assets. The tax applies to purchases of fixed assets used in the business and such purchases should be added to taxable recurring purchases and taxable withdrawals from inventory for purposes of computing the compliance ratio.

~~6.~~ 8. Exceptions. Penalty generally will not be applied to audit deficiencies occurring in new areas not covered by prior audit(s), provided the application of the tax is not clearly established under existing law, regulations or other published documents of which the taxpayer reasonably should have had knowledge, or areas where the taxpayer has relied on prior correspondence with the department that has not been superseded by a law change, a change in regulations, or other published documents of which the taxpayer reasonably should have had knowledge. Deficiencies in these areas will not be included in compliance ratio computations. Notwithstanding the above, items of like class or similar nature may be subject to penalty even though the specific item was not addressed in the previous audit(s) if the general class of items was held taxable in previous audit(s). The application of penalty to audit deficiencies will not be waived on second and subsequent audits for other than exceptional mitigating circumstances.

~~B.~~ C. Interest. The application of interest to all audit deficiencies is mandatory and accrues as set forth in 23VAC10-210-2030 C.

VA.R. Doc. No. R07-252; Filed January 26, 2009, 1:24 p.m.

STATE CORPORATION COMMISSION

AT RICHMOND, JANUARY 13, 2009

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

CASE NO. PUE-2009-00002

Ex. Parte: Establishing rate case filing schedule
for Virginia's investor-owned electric utilities
pursuant to § 56-585.1 A of the Code of Virginia

ORDER PROPOSING INITIATION OF RATE PROCEEDINGS AND SCHEDULE

This Order of the State Corporation Commission ("Commission") proposes a rate case filing schedule for Virginia's investor-owned electric utilities ("IOU") subject to the provisions of § 56-585.1 of the Code of Virginia ("Code").

In particular, § 56-585.1 A directs the Commission, after notice and opportunity for hearing, to initiate proceedings within the first six months of 2009 to review the rates, terms, and conditions for the provision of generation, distribution, and transmission services of each investor-owned incumbent electric utility ("2009 Rate Cases"). As set forth in this statute, the 2009 Rate Cases for Virginia's IOUs will be governed by the provisions of Chapter 10 (§ 56-232 et seq.) of Title 56 of the Code, except as modified by § 56-585.1 A of the Code.

The Commission proposes the following rate case filing dates:

Virginia Electric and Power Company d/b/a/ Dominion Virginia Power shall file its 2009 Rate Case on or before April 1, 2009.
Appalachian Power Company shall file its 2009 Rate Case on July 1, 2009.
The Potomac Edison Company d/b/a/ Allegheny Power shall file its 2009 Rate Case on October 1, 2009.

Accordingly, IT IS ORDERED THAT:

(1) On or before thirty (30) days from the date of this Order, interested persons may submit comments or requests for hearing on the filing dates proposed herein. Comments or requests for hearing may be submitted in writing to the Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118; or electronically by following the instructions available at the Commission's website: http://www.scc.virginia.gov/caseinfo.htm.

(2) This matter is hereby continued.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: Karen L. Bell, Esquire, Dominion Resources, Inc., P.O. Box 26532, Richmond, Virginia 23261; James R. Bacha, Esquire, American Electric Power Service Corporation, One Riverside Plaza, Columbus, Ohio 43215; Jeffrey P. Trout, Esquire, Allegheny Power, 800 Cabin Hill Road, Greensburg, Pennsylvania 15601; C. Meade Browder, Jr., Senior Assistant Attorney General, Division of Consumer Counsel, Office of Attorney General, 900 East Main Street, 2nd Floor, Richmond, Virginia 23219; and the Commission's Office of General Counsel and Divisions of Energy Regulation, Economics and Finance, and Public Utility Accounting.

DEPARTMENT OF CRIMINAL JUSTICE SERVICES

Edward Byrne Memorial Justice Assistance Grant (JAG) Program

The Department of Criminal Justice Services intends to submit an application to the Bureau of Justice Assistance of the U.S. Department of Justice to obtain supplemental federal fiscal year 2008 funding available through the Edward Byrne Memorial Justice Assistance Grant (JAG) Program. The Bureau has advised us that the amount of the supplement is $200,000.

The department will use these funds to make grants to support local and state agency law-enforcement, prosecution and judicial programs; crime prevention and education programs; corrections and community corrections programs; drug treatment programs; and planning, evaluation and technology improvement programs.

The application to the Bureau of Justice Assistance is available for public review at the department's offices at 202 North Ninth Street, Richmond, Virginia 23219; and comments from the public are welcome. Inquiries should be directed to Joe Marshall at (804) 786-1577 or by email to joe.marshall@dcjs.virginia.gov.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Announcement of Public Meetings for the Results of a Water Quality Restoration Study for the James River and Tributaries in Richmond City, Chesterfield, Henrico, and Powhatan Counties, Virginia

Public meeting: VCU Monroe Campus, 1000 W. Cary Street, Trani Life Sciences Building, Room 151, Richmond, Virginia 23284. Public meetings will be held on Tuesday, March 10, 2009, from 2 p.m. to 4 p.m. and 6 p.m. to 8 p.m. In case of inclement weather, check the DEQ website for a rescheduled date. Both meetings are open to the public.

Purpose of notice: The Virginia Department of Environmental Quality (DEQ) and the Department of Conservation and Recreation are presenting the final draft report of a study to

restore water quality, a public comment opportunity, and two public meetings.

Meeting description: Final public meetings on a study to restore water quality along the James River and tributaries in and around the jurisdictions mentioned in the title above.

Description of study: Virginia agencies have been 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
Bernards Creek	Chesterfield, Powhatan	6.95	Bacteria
Powhite Creek	Chesterfield, Richmond City	8.13	Bacteria
Reedy Creek	Richmond City	3.69	Bacteria
James River	Richmond City	2.99	Bacteria
Gillies Creek	Richmond City, Henrico	5.75	Bacteria
Almond Creek	Henrico	2.08	Bacteria
Goode Creek	Richmond City	1.22	Bacteria
Falling Creek	Chesterfield	3.10	Bacteria
No Name Creek	Chesterfield	2.07	Bacteria
James River	Chesterfield, Henrico, Richmond City	6.75	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 (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.

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, which will end on April 10, 2009. DEQ also accepts written and oral comments at the public meeting announced in this notice.

Contact for additional information: Margaret Smigo, TMDL Coordinator, department of Environmental Quality, Piedmont Regional Office, 4949A Cox Road, Glen Allen, VA 23060, telephone (804) 527-5124, FAX (804) 527-5106, or email mjsmigo@deq.virginia.gov.

Proposed Consent Order for Boone Homes, Inc.

An enforcement action has been proposed for Boone Homes, Inc., of Roanoke for alleged violations in Roanoke County, Virginia. The Special Order by Consent will address and resolve certain violations of environmental law, regulations, and Boone Homes, Inc., of Roanoke's Virginia Water Protection Permit. A description of the proposed action is available at the DEQ office named below or online at www.deq.virginia.gov. Jerry Ford, Jr. will accept comments by email at jrford@deq.virginia.gov or postal mail at Department of Environmental Quality, Blue Ridge Regional Office, 3019 Peters Creek Road, Roanoke, VA 24019 from February 17, 2009, to March 18, 2009.

Proposed Consent Order for Palm Pools Service Corporation

An enforcement action has been proposed for Palm Pools Service Corporation for alleged violations at the Palm Pools facility in Prince William County. The consent order describes a settlement to resolve hazardous waste violations. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Stephanie Bellotti will accept comments by email at sabellotti@deq.virginia.gov, FAX (703) 583-3821, or postal mail at Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from February 17, 2009, through March 19, 2009.

Announcement of Public Meetings Relating to Report to Restore Water Quality for Shellfish Growing Areas Along Owens Pond, Little Taskmakers Creek, and an UT to the Chesapeake Bay

Public meeting: March 12, 2009, at the Northumberland Public Library, 7204 Northumberland Highway, Heathsville, Virginia 22473. An afternoon public meeting will be held from 1 p.m. to 3 p.m. and the evening public meeting from 6 p.m. to 8 p.m. The library asks that you please park at the side or in back of the building.

Purpose of notice: The Virginia Department of Environmental Quality (DEQ) and the Department of Conservation and Recreation are presenting a summary of the final draft report to restore water quality for a shellfish growing area, a public comment opportunity, and two public meetings.

Meeting description: Final public meetings to present a study to restore water quality for shellfish growing areas along Owens Pond, Little Taskmakers Creek, and an UT to the Chesapeake Bay near Fleeton Point that are impaired due to bacterial violations.

Description of study: Virginia agencies have been working to identify sources of the bacterial contamination in the shellfish growing waters of the (tidal) Owens Pond and Little Taskmakers Creek including their tributaries, and an UT to the Chesapeake Bay near Fleeton Point. These condemnations include an area of approximately 0.246 square miles in Northumberland County. These streams are impaired for failure to meet the designated use of shellfish consumption because of bacterial water quality standard violations.

Stream	County	Area (miles^2)	Impairment
Owens Pond	Northumberland	0.187	Shellfish Use (Fecal Coliform) bacteria
Little Taskmakers Creek	Northumberland	0.040	
UT to Chesapeake Bay	Northumberland	0.019	

The study reports the "maximum extent" status of the creeks via sampling performed by the Virginia Department of Health, Division of Shellfish Sanitiation, shellfish area condemnations and the possible sources of bacterial contamination. The study recommends total maximum daily loads (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.

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, which will expire on April 13, 2009. DEQ also accepts written and oral comments at the public meeting announced in this notice.

Contact for additional information: Margaret Smigo, TMDL Coordinator, Department of Environmental Quality, Piedmont Regional Office, 4949A Cox Road, Glen Allen, VA 23060, telephone (804) 527-5124, FAX (804)-527-5106, or email mjsmigo@deq.virginia.gov.

Bacteria Total Maximum Daily Load for the Pamunkey River Basin

Notice is hereby given that the Virginia Department of Environmental Quality (DEQ) requests comment on the proposed modifications to the bacteria total maximum daily load (TMDL) developed for the Pamunkey River Basin in Louisa, Caroline, Hanover, Orange, King William, and New Kent counties.

The total maximum daily load (TMDL) of E. coli was developed to address bacterial impairment in the Pamunkey River Basin. The TMDL was approved by the Environmental Protection Agency (EPA) on August 2, 2006, and can be found at the following website:

www.epa.gov/reg3wapd/tmdl/VA_TMDLs/PamunkeyRiverBac/PamunkeyRvBac_DR.pdf

The DEQ seeks written comments from interested persons on the modification of this TMDL. In the Pamunkey River Basin bacterial TMDL approved by the U.S. Environmental Protection Agency and the State Water Control Board in 2006, the HRSD King William Sewage Treatment Plant (STP), permit number (VA0088102), was issued a waste load allocation of 8.71E+10 cfu/year, based on the design flow of 0.050 million gallons per day (MGD) at the time of issuance. DEQ proposes to revise the TMDL by increasing the bacteria waste load allocation to 1.74E+11 cfu/year to accommodate this facility at a maximum design flow of 0.100 MGD and an E. coli concentration of 126 N/100mL. The expansion will result in an increase to the total TMDL for Moncuin/Webb Creek (VAP-F13-04) to 3.55E+11 cfu/year.

This increase will neither cause nor contribute to the nonattainment of the Pamunkey River Basin, as documented in the EPA approved TMDL report. This modification was anticipated and an expansion matrix for two times the WLA was included in the TMDL report.

The public comment period for this modification will end on March 16, 2009. Questions or information requests should be addressed to Margaret Smigo. Written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, telephone (804) 527-5124, or email mjsmigo@deq.virginia.gov.

Total Maximum Daily Load Studies in Mill Creek and Oyster Harbor, Northampton County

The Virginia Department of Environmental Quality (DEQ) will host a public meeting on water quality studies for Mill Creek and Oyster Harbor, both located in Northampton County, on Tuesday, February 24, 2009.

The meeting will start at 6:30 p.m. in the Kiptopeke Elementary School Library located at 24023 Fairview Road, Cape Charles. The purpose of the meeting is to provide information and discuss the study with interested local community members and local government.

Mill Creek (VAT-D06R-01) was identified in Virginia's 1998 § 303(d) TMDL Priority List and Report as impaired for not supporting the aquatic life use. The impairments are based on water quality monitoring data reports of sufficient exceedances of Virginia's water quality standard for dissolved oxygen. Oyster Harbor (VAT-D05E-10) was identified in Virginia's 1998 § 303(d) TMDL Priority List and Report as impaired for not supporting the shellfishing use. The impairment is based on the shellfish harvesting

condemnation of Growing Area 94 imposed by the Virginia Department of Health-Division of Shellfish Sanitation.

Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia, require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's § 303(d) TMDL Priority List and Report and subsequent Water Quality Assessment Reports.

During the study, DEQ will develop a Total Maximum Daily Load 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, pollutant levels have to be reduced to the TMDL amount.

The public comment period on materials presented at this meeting will extend from February 24, 2009, to March 25, 2009. For additional information or to submit comments, contact Jennifer Howell, Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Blvd., Virginia Beach, VA 23462, telephone (757) 518-2111, or email jshowell@deq.virginia.gov. Additional information is also available on the DEQ website at www.deq.virginia.gov/tmdl.

Total Maximum Daily Load Study in Sandy Bottom Branch and Tributary, Accomack County

The Virginia Department of Environmental Quality (DEQ) will host a public meeting on a water quality study for Sandy Bottom Branch and tributary, located in Accomack County, on Thursday, February 19, 2009.

The meeting will start at 6 p.m. in the Arcadia Middle School cafeteria located at 29485 Horsey Road in Oak Hall. The purpose of the meeting is to provide information and discuss the study with interested local community members and local government.

Sandy Bottom Branch (VAT-C10R-02) and its tributary (VAT-C10R-01) were identified in Virginia's 1998 § 303(d) TMDL Priority List and Report as impaired for not supporting the aquatic life use. The impairments are based on biological monitoring data of the stream's benthic community. Virginia agencies are working to identify the stressors that are affecting the benthic communities in these creeks.

Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia, require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's § 303(d) TMDL Priority List and Report and subsequent Water Quality Assessment Reports.

During the study, DEQ will develop a total maximum daily load 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, pollutant levels have to be reduced to the TMDL amount.

The public comment period on materials presented at this meeting will extend from February 19, 2009, to March 20, 2009. For additional information or to submit comments, contact Jennifer Howell, Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Blvd., Virginia Beach, VA 23462, telephone (757) 518-2111, or email jshowell@deq.virginia.gov. Additional information is also available on the DEQ website at www.deq.virginia.gov/tmdl.

DEPARTMENT OF ENVIRONMENTAL QUALITY AND DEPARTMENT OF CONSERVATION AND RECREATION

Watershed Cleanup Plan

The Virginia Department of Conservation and Recreation and the Department of Environmental Quality will host a public meeting on Tuesday, March 3, 2009, in Kilmarnock, Virginia, on the development of a cleanup plan for Greenvale and Beach creeks in Lancaster County, Virginia.

The meeting will start at 6 p.m. at the Bank of Lancaster North Branch Meeting Room located at 432 N. Main Street in Kilmarnock, Virginia. The meeting will describe the process for developing the plan and how citizens can be involved in the plan development.

DEQ has developed a total maximum daily load (TMDL) for polluted streams in the Greenvale and Beach creeks watersheds. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. The streams have excessive bacteria which decrease the quality of the water, prohibiting the harvest of molluscan shellfish. To restore water quality, pollutant levels have to be reduced to the TMDL amount.

The public comment period on materials presented at this meeting will extend from March 3, 2009, to April 3, 2009. For more information, contact May Sligh, IP Coordinator, Department of Conservation and Recreation, Tappahannock Field Office, telephone (804) 443-1494 and email at may.sligh@dcr.virginia.gov. Additional information is also available on the DEQ website at www.deq.virginia.gov/tmdl.

DEPARTMENT OF HEALTH

Notice of Agreement with Nuclear Regulatory Commission

Pursuant to 12VAC5-481-160 and 12VAC5-490-40, the Department of Health, Division of Radiological Health, is announcing that the Commonwealth of Virginia is entering into an agreement on March 31, 2009, with the Nuclear Regulatory Commission (NRC) under the provisions of § 274b of the Atomic Energy Act of 1954, as amended.

By entering into this agreement the Division of Radiological Health will protect the public and occupational radiation workers and maintain effective control over licensed radioactive materials to ensure their safe handling and disposal by regulating the following: (i) any radioactive material, except special nuclear material, yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material; (ii) the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily of its source material content; (iii) any discrete source of radium-226 that is produced, extracted, or converted after extraction for use for a commercial, medical, or research activity; (iv) any material that has been made radioactive by use of a particle accelerator and is produced, extracted, or converted after extraction for use for a commercial, medical, or research activity; and (v) any discrete source of naturally occurring radioactive material (NORM), other than source material that the Nuclear Regulatory Commission (NRC), in consultation with the Administrator of the Environmental Protection Agency, the Secretary of Energy, the Secretary of Homeland Security, and the head of any other appropriate federal agency, determines would pose a threat similar to the threat posed by a discrete source of radium-226 to the public health and safety or the common defense and security, that is extracted, or converted after extraction, for use for a commercial, medical, or research activity.

Any questions should be directed to Leslie P. Foldesi, Director, Division of Radiological Health, 109 Governor Street, Room 730, Richmond, VA 23219, FAX (804) 864-8155, or email les.foldesi@vdh.virginia.gov.

STATE LOTTERY DEPARTMENT

Director's Orders

The following Director's Orders of the State Lottery Department were filed with the Virginia Registrar of Regulations on January 23, 2009 and January 27, 2009. The orders may be viewed at the State Lottery Department, 900 East Main Street, Richmond, Virginia, or at the office of the Registrar of Regulations, 910 Capitol Street, 2nd Floor, Richmond, Virginia.

Final Rules for Game Operation:

Director's Order Number One (09)

Virginia's Instant Game Lottery 1089; "Sacks of Cash" (effective 1/19/09)

Director's Order Number Seven (09)

Virginia's Instant Game Lottery 1121; "Bass Pro Shops" (effective 1/19/09)

Director's Order Number Seventy-Seven (08)

Virginia's Instant Game Lottery 1038; "Bingo Doubler" (effective 1/21/09)

Director's Order Number Seventy-Eight (08)

Virginia's Instant Game Lottery 1097; "Beat The Dealer" (effective 1/21/09)

Director's Order Number Eighty (08)

Virginia's Instant Game Lottery 1106; "Crossword" (effective 1/21/09)

Director's Order Number Eighty-Nine (08)

Virginia's Instant Game Lottery 1103; "Face Cards" (effective 1/21/09)

Director's Order Number Two (09)

Virginia's Instant Game Lottery 1107; "$100,000 Bankroll" (effective 1/21/09)

Director's Order Number Three (09)

Virginia's Instant Game Lottery 1109; "Win Pigs Fly" (effective 1/21/09)

Director's Order Number Four (09)

Virginia's Instant Game Lottery 1118; "Magic 8 Ball" (effective 1/21/09)

Director's Order Number Five (09)

Virginia's Instant Game Lottery 1119; "Fabulous 5's" (effective 1/21/09)

Director's Order Number Six (09)

Virginia's Instant Game Lottery 1120; "Flying Aces" (effective 1/21/09)

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Director's Orders

The following Director's Orders of the State Lottery Department were filed with the Virginia Registrar of Regulations on January 27, 2009.

Director's Order Number Eight (09)
Certain Virginia Instant Game Lotteries; End of Games.

In accordance with the authority granted by §§ 2.2-4002 B 15 and 58.1-4006 A of the Code of Virginia, I hereby give notice that the following Virginia Lottery instant games will officially end at midnight on January 30, 2009:

Game 713	Blackjack
Game 727	Double Triple Cashword
Game 738	Hit $200,000
Game 773	$100 Million Cash Extravaganza

Game 804	Extreme 7's
Game 805	Blackjack Bonus
Game 1009	Cut The Deck
Game 1015	Tax Free Million
Game 1016	Whole Lotta 100's
Game 1018	Big Money
Game 1021	Kings and Queens
Game 1024	Lucky Dog
Game 1031	Easy Money
Game 1034	King of Cash
Game 1040	Washington Nationals
Game 1050	Deal or No Deal
Game 1059	Sizzlin' 7's
Game 1060	Good Luck Tripler
Game 1066	Triple Dough
Game 1069	Monster Money
Game 1079	Stocking Stuffer
Game 1080	Deuces Wild
Game 1081	Holiday Dough Doubler
Game 1082	Holiday Treasures

The last day for lottery retailers to return for credit unsold tickets from any of these games will be March 6, 2009. The last day to redeem winning tickets for any of these games will be July 29, 2009, 180 days from the declared official end of the game. Claims for winning tickets from any of these games will not be accepted after that date. Claims that are mailed and received in an envelope bearing a postmark of the United States Postal Service or another sovereign nation of July 29, 2009, or earlier, will be deemed to have been received on time. This notice amplifies and conforms to the duly adopted State Lottery Board regulations for the conduct of lottery games.

This order is available for inspection and copying during normal business hours at the Virginia Lottery headquarters, 900 East Main Street, Richmond, Virginia; and at any Virginia Lottery regional office. A copy may be requested by mail by writing to Director's Office, Virginia Lottery, 900 East Main Street, Richmond, VA 23219.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ Paula I. Otto
Executive Director

January 21, 2009

STATE WATER CONTROL BOARD

Notice of Amendment of Water Quality Management Planning Regulation

Notice of action: The State Water Control Board (board) is considering the amendment of the regulation on water quality management planning in accordance with the Public Participation Procedures for Water Quality Management Planning. A regulation is a general rule governing people's rights or conduct that is upheld by a state agency.

Purpose of notice: The board is seeking comments through the Department of Environmental Quality on the proposed amendment. The purpose of the amendment to the state's Water Quality Management Planning Regulation (9VAC25-720) is to adopt nine total maximum daily load (TMDL) waste load allocations.

Public comment period: February 16, 2009, to March 16, 2009.

Description of proposed action: DEQ staff will propose amendments of the state's Water Quality Management Planning regulation for the Potomac-Shenandoah River Basin (9VAC25-720-50 A), the Tennessee-Big Sandy River Basin (9VAC25-720-90 A), the James River Basin (9VAC25-720-60 A), and the Chesapeake Bay-Small Coastal Basin (9VAC25-720-110 A). Statutory authority for promulgating these amendments can be found in § 62.1-44.15(10) of the Code of Virginia.

Staff intends to recommend (i) that the board approve four TMDL reports and one TMDL modification as the plans for the pollutant reductions necessary for attainment of water quality goals in the impaired segments, and (ii) that the board adopt nine TMDL waste load allocations as part of the state's Water Quality Management Planning Regulation in accordance with § 2.2-4006 A 4 c and B of the Code of Virginia.

The four TMDL reports and one TMDL modification were developed in accordance with federal regulations (40 CFR 130.7) and are exempt from the provisions of Article II of the Virginia Administrative Process Act. The reports were subject to the TMDL public participation process contained in DEQ's Public Participation Procedures for Water Quality Management Planning. The public comment process provides the affected stakeholders an opportunity for public appeal of the TMDLs. EPA approved all TMDLs presented under this public notice. The approved reports can be found at https://www.deq.virginia.gov/TMDLDataSearch/ReportSearch.jspx

Affected Waterbodies and Localities:

Potomac - Shenandoah River Basin (9VAC25-720-50 A):

"Benthic TMDL Development for Difficult Run, Virginia"- The benthic TMDL for Difficult Run, located in Fairfax, proposes sediment reductions for portions of the watershed and provides a sediment wasteload allocation of 3,663.2 T/TR.

"Opequon Watershed TMDLs for Benthic Impairments: Abrams Creek and Lower Opequon Creek, Frederick and Clarke Counties, Virginia" modification -

-Abrams Creek, located in Frederick and Winchester Counties, proposes sediment reductions for portions of the watershed and provides a sediment wasteload allocation of 1039 T/YR.

-Lower Opequon, located in Frederick and Winchester Counties, proposes sediment reductions for portions of the watershed and provides a sediment wasteload allocation of 1039 T/YR.

Tennessee-Big Sandy river Basin (9VAC25-720-90 A):

"Lick Creek TMDLs for a Benthic Impairment Dickenson, Russell, and Wise Counties, Virginia"

-Lick Creek Benthic TMDL, located in Dickenson, Russell and Wise Counties, proposes sediment reductions for portions of the watershed and provides a sediment wasteload allocation of 63 T/YR.

-Cigarette Hollow Benthic TMDL, located in Dickenson, Russell and Wise Counties, proposes sediment reductions for portions of the watershed and provides a sediment wasteload allocation of 0.4 T/YR

-Laurel Branch Benthic TMDL, located in Dickenson, Russell and Wise Counties, proposes sediment reductions for portions of the watershed and provides a sediment wasteload allocation of 3.9 T/YR

-Right Fork Benthic TMDL, located in Dickenson, Russell and Wise Counties, proposes sediment reductions for portions of the watershed and provides a sediment wasteload allocation of 1.3 T/YR

James River Basin (9VAC25-720-60 A):

"Benthic TMDL Development for the Rivanna River Watershed" - The Benthic TMDL for the Rivanna River Watershed, located in the City of Charlottesville, and covers portions of four counties: Albemarle, Greene, Nelson, and Orange counties, proposes sediment reductions for portions of the watershed and provides a sediment wasteload allocation of 10,229 lbs/day.

Chesapeake Bay-Small Coastal (9VAC25-720-110 A):

"Benthic Total Maximum Daily Load (TMDL) Development Parker Creek, Virginia"- The benthic TMDL for Parker Creek, located in Accomack County, proposes Total Phosphorus reductions for portions of the watershed and provides a TP wasteload allocation of 664.2 lbs/yr.

How to comment: The DEQ accepts written comments by email, fax and postal mail. All written comments must include the full name, address and telephone number of the person commenting and be received by DEQ by 5 p.m. on the last day of the comment period.

How a decision is made: After comments have been considered, the board will make the final decision. Citizens that submit statements during the comment period may address the board members during the board meeting at which a final decision is made on the proposal.

To review documents: The TMDL reports and the proposed regulatory amendments are available on the DEQ website at https://www.deq.virginia.gov/TMDLDataSearch/ReportSearch.jspx and by contacting the DEQ representative named below. The electronic copies are in PDF format and may be read online or downloaded.

Contact for public comments, document requests and additional information: David S. Lazarus, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4299, FAX (804) 698-4116, or email dslazarus@deq.virginia.gov.

Notice of Approval of Water Quality Management Planning Actions

Notice of action: The State Water Control Board (board) is considering the approval of 29 total maximum daily load (TMDL) reports (90 TMDLs) and 10 TMDL modifications (20 TMDLs), and granting authorization to include the TMDL reports in the appropriate Water Quality Management Plans (WQMPs).

Purpose of notice: The board is seeking comment on the proposed approvals and authorizations. The purpose of these actions is to approve 29 TMDL reports as Virginia's plans for the pollutant reductions necessary for attainment of water quality goals in several impaired waterbodies. These actions are taken in accordance with the Public Participation Procedures for Water Quality Management Planning.

Public comment period: February 16, 2009, to March 16, 2009.

Description of proposed action: DEQ staff intends to recommend (i) that the State Water Control Board approve the TMDL reports listed below as Virginia's plans for the pollutant reductions necessary for attainment of water quality goals in the impaired segments, and (ii) that the State Water Control Board authorize inclusion of the TMDL reports in the appropriate WQMPs. No regulatory amendments are required for these TMDLs and their associated waste load allocations.

The TMDLs listed below were developed in accordance with Federal Regulations (40 CFR 130.7) and are exempt from the

provisions of Article II of the Virginia Administrative Process Act. The TMDLs have been through the TMDL public participation process contained in DEQ's Public Participation Procedures for Water Quality Management Planning. The public comment process provides the affected stakeholders an opportunity for public appeal of the TMDLs. EPA approved all TMDL reports presented under this public notice. The approved reports can be found at https://www.deq.virginia.gov/TMDLDataSearch/ReportSearch.jspx

Affected Waterbodies and Localities:

In the Potomac/Shenandoah River Basin:

"Bacteria TMDL for Neabsco Creek, Prince William County, Virginia"

- 1 bacteria TMDL, located in Prince William County, proposes bacteria reductions for portions of the watershed to address a primary contact (swimming use) impairment.

"Potomac River: (Popes Head Creek) Mattox Creek to Currioman Bay

Total Maximum Daily Load (TMDL) Report for Shellfish Condemnation Areas Listed Due to Bacteria Contamination"

- 1 bacteria TMDL, located in Westmoreland County, proposes bacteria reductions for portions of the watershed to address a VDH Shellfish Area Condemnation.

"Rosier Creek Total Maximum Daily Load (TMDL) Report for Shellfish Condemnation Areas Listed Due to Bacteria Contamination"

- 1 bacteria TMDL, located in Westmoreland County, proposes bacteria reductions for portions of the watershed to address a VDH Shellfish Area Condemnation.

"Yeocomico River Watersheds Total Maximum Daily Load (TMDL) Report for Shellfish Condemnation Areas Listed Due to Bacteria Contamination"

- 5 bacteria TMDLs, located in Westmoreland and Northumberland Counties, propose bacteria reductions for portions of the watershed to address VDH Shellfish Area Condemnations.

"Bacteria TMDL for the Lower Accotink Creek Watershed"

- 1 bacteria TMDL, located in Fairfax County, proposes bacteria reductions for portions of the watershed to address a primary contact (swimming use) impairment.

"Bacteria TMDL for the Difficult Run Watershed"

- 1 bacteria TMDL, located in Fairfax County, proposes bacteria reductions for portions of the watershed to address a primary contact (swimming use) impairment.

"Lower Machodoc Creek Watershed: Total Maximum Daily Load (TMDL) Report for Shellfish Areas Listed Due to Bacterial Contamination"

- 5 TMDLs, located in Westmoreland County, propose bacteria reductions for portions of the watershed to address VDH Shellfish Area Condemnations.

"Bacteria TMDL for Limestone Branch Loudoun County, Virginia" modification

- 1 bacteria TMDL modification, located in Loudoun County, proposes bacteria reductions for portions of the watershed to address a primary contact (swimming use) impairment.

"Bacteria TMDLs for the Goose Creek Watershed" modification

- 1 bacteria TMDL modification, located in Loudoun County, proposes bacteria reductions for portions of the watershed to address a primary contact (swimming use) impairment.

"Fecal Coliform TMDL for Muddy Creek, Virginia" modification

- 1 bacteria TMDL modification, located in Rockingham County, proposes bacteria reductions for portions of the watershed to address a primary contact (swimming use) impairment.

"Bacteria TMDLs for Abrams Creek and Upper and Lower Opequon Creek Located in Frederick and Clarke County, Virginia" modification

- 1 bacteria TMDL modification, located in Rockingham County, proposes bacteria reductions for portions of the watershed to address a primary contact (swimming use) impairment.

"Bacteria Total Maximum Daily Load Development for North River" modification

- 1 bacteria TMDL modification, located in Augusta and Rockingham Counties, proposes bacteria reductions for portions of the watershed to address a primary contact (swimming use) impairment.

In the New River Basin:

"Fecal Bacteria and General Standard Total Maximum Daily Load Development for Bluestone River" modification

- 1 bacteria TMDL modification, located in Tazewell County, proposes bacteria reductions for portions of the watershed to address a primary contact (swimming use) impairment.

In the Rappahannock River Basin:

"Bacteria Total Maximum Daily Load (TMDL) Development for the Hoskins Creek Watershed"

- 1 bacteria TMDL, located in Essex and Queen and King Counties, proposes bacteria reductions for portions of the watershed to address a primary contact (swimming use) impairment.

"Bacteria TMDL for the Tidal Freshwater Rappahannock River Watershed"

- 6 bacteria TMDLs, located in Caroline, King George, Spotsylvania, and Stafford Counties, propose bacteria reductions for portions of the watershed to address primary contact (swimming use) impairments.

In the York River Basin:

"Bacteria Total Maximum Daily Load (TMDL) Development for the Queen Creek, King Creek, and Felgates Creek Watersheds"

- 5 bacteria TMDLs, located in Isle of Wight County, propose bacteria reductions for portions of the watershed to address primary contact (swimming use) impairments and VDH Shellfish Area Condemnations.

"Bacteria Total Maximum Daily Load Development for the Pamunkey River Basin" modification

- 1 bacteria TMDL modification, located in Louisa County, proposes bacteria reductions for portions of the watershed to address primary contact (swimming use) impairments

In the Clinch Powell River Basin:

"Bacteria Total Maximum Daily Load Development for Lick Creek"

- 4 bacteria TMDLs, located in Wise and Dickenson Counties, propose bacteria reductions for portions of the watershed to address primary contact (swimming use) impairments.

"Bacteria Total Maximum Daily Load Development for Indian Creek in Tazewell County, Virginia"

- 1 bacteria TMDL, located in Tazewell County, proposes bacteria reductions for portions of the watershed to address primary contact (swimming use) impairments.

In the James River Basin:

"Bacterial Total Maximum Daily Load Development for the James River – Hopewell to Westover"

- 4 bacteria TMDLs, located in Charles City County, City of Hopewell, and Prince George County, propose bacteria reductions for portions of the watershed to address primary contact (swimming use) impairments.

"Total Maximum Daily Load Development for the James River and Tributaries – Lower Piedmont Region"

- 6 bacteria TMDLs, located in Fluvanna, Goochland, Louisa, Powhatan and Cumberland Counties, propose bacteria reductions for portions of the watershed to address primary contact (swimming use) impairments.

"Fecal Bacteria Total Maximum Daily Load Development for Warwick River"

- 4 bacteria TMDLs, located in the City of Newport News, York County, and James City County, propose bacteria reductions for portions of the watershed to address primary contact (swimming use) impairments and to address VDH Shellfish Area Condemnations.

"Fecal Bacteria Total Maximum Daily Load Development for Pagan River"

- 3 bacteria TMDLs, located in Isle of Wight County, propose bacteria reductions for portions of the watershed to address primary contact (swimming use) impairments and VDH Shellfish Area Condemnations.

"Bacteria Total Maximum Daily Load Development for Hays Creek, Moffatts Creek, Walker Creek, and Otts Creek in Augusta County and Rockbridge County, Virginia"

- 5 bacteria TMDLs, located in Augusta and Rockbridge Counties, propose bacteria reductions for portions of the watershed to address primary contact (swimming use) impairments.

"Total Maximum Daily Load Development for the Upham Brook Watershed"

- 1 bacteria TMDL, located in Henrico County and the City of Richmond, proposes bacteria reductions for portions of the watershed to address primary contact (swimming use) impairments.

"Bacteria Total Maximum Daily Load Development for North Fork Hardware River and Hardware River"

- 2 bacteria TMDLs, located in Albemarle and Fluvanna Counties, propose bacteria reductions for portions of the watershed to address primary contact (swimming use) impairments.

"Bacteria TMDL Development for the Rivanna River Mainstem, North Fork Rivanna River, Preddy Creek and Tributaries, Meadow Creek, Mechums River, and Beaver Creek Watersheds"

- 6 bacteria TMDLs, located in Albemarle Greene, and Orange Counties, propose bacteria reductions for portions of the watershed to address primary contact (swimming use) impairments.

"Total Maximum Daily Load Development for the Appomattox River Basin" modification

- 11 bacteria TMDL modifications, Appomattox, Buckingham Prince Edward, Cumberland, Amelia,

Powhatan, Chesterfield, Hopewell, Prince George, and Chesterfield Counties, propose bacteria reductions for portions of the watershed to address primary contact (swimming use) impairments.

In the Roanoke River Basin:

"Bacteria TMDL Development for the Dan River, Blackberry Creek, Byrds Branch, Double Creek, Fall Creek, Leatherwood Creek, Marrowbone Creek, North Fork Mayo River, South Fork Mayo River, Smith River, Sandy Creek, and Sandy River Watersheds"

- 13 bacteria TMDLs, located in Carroll, Floyd, Franklin, Halifax, Henry, Mecklenburg, Patrick, and Pittsylvania Counties, propose bacteria reductions for portions of the watershed to address primary contact (swimming use) impairments.

"Bacteria TMDL Development for the Banister River, Bearskin Creek, Cherrystone Creek, Polecat Creek, Stinking River, Sandy Creek, and Whitehorn Creek Watersheds" modification

- 1 bacteria TMDL modification, located in Halifax and Pittsylvania Counties, proposes bacteria reductions for portions of the watershed to address primary contact (swimming use) impairments.

In the Chowan River Basin:

"Bacteria TMDL for the Flat Rock Creek Watershed and Broad Branch, Lunenburg County, Virginia"

- 2 bacteria TMDLs, located in Lunenburg County, propose bacteria reductions for portions of the watershed to address primary contact (swimming use) impairments.

"Bacteria TMDL for Roses Creek Watershed, Virginia" modification

- 1 bacteria TMDL modification, located in Brunswick and Alberta Counties, proposes bacteria reductions for portions of the watershed to address primary contact (swimming use) impairments.

In the Chesapeake Bay-Small Coastal-Eastern Shore Basin:

"Total Maximum Daily Load (TMDL) Report For Shellfish Waters Impaired by Bacteria East River and Put in Creek"

- 2 bacteria TMDLs, located in Mathews County, propose bacteria reductions for portions of the watershed to address VDH Shellfish Area Condemnations.

"Bacteria Total Maximum Daily Load (TMDL) Development for the Hungars Creek Watershed"

- 2 bacteria TMDLs, located in Mathews County, propose bacteria reductions for portions of the watershed to address VDH Shellfish Area Condemnations.

"Bacteria Total Maximum Daily Load (TMDL) Development for the Messongo Creek Watershed"

- 2 bacteria TMDLs, located in Mathews County, propose bacteria reductions for portions of the watershed to address VDH Shellfish Area Condemnations.

"Cockrell Creek: Total Maximum Daily Load (TMDL) Report for Shellfish Condemnation Areas Listed Due to Bacteria Contamination"

- 1 bacteria TMDL, located in Northumberland County, proposes bacteria reductions for portions of the watershed to address VDH Shellfish Area Condemnations.

"Fecal Coliform Total Maximum Daily Load Development for Holdens Creek, Sandy Bottom Branch, and Unnamed Tributary to Sandy Bottom Branch, Accomack County, Virginia"

- 3 bacteria TMDLs, located in Accomack County, propose bacteria reductions for portions of the watershed to address primary contact (swimming use) impairments and VDH Shellfish Area Condemnations.

"Total Maximum Daily Load of Bacteria for Pettit Branch in Accomack County, Virginia"

- 1 bacteria TMDL, located in Accomack County, proposes bacteria reductions for portions of the watershed to address primary contact (swimming use) impairments.

"Total Maximum Daily Load on Dissolved Oxygen In Unnamed Tributary to Pitts Creek, Accomack County, Virginia"

- 1 dissolved oxygen TMDL, located in Accomack County, proposes total nitrogen and total phosphorus reductions for portions of the watershed to address the benthic impairment.

How to comment: The DEQ accepts written comments by email, fax and postal mail. All written comments must include the full name, address and telephone number of the person commenting and be received by DEQ by 5 p.m. on the last day of the comment period.

How a decision is made: After comments have been considered, the board will make the final decision.

To review documents: The TMDL reports and TMDL implementation plans are available on the DEQ website at https://www.deq.virginia.gov/TMDLDataSearch/ReportSearch.jspx and by contacting the DEQ representative named below. The electronic copies are in PDF format and may be read online or downloaded.

Contact for public comments, document requests and additional information: David S. Lazarus, Department of Environmental Quality, P.O. Box 1105, Richmond, VA

23218, telephone (804) 698-4299, FAX (804) 698-4116, or email dslazarus@deq.virginia.gov.

* * *

Notice of action: The State Water Control Board (board) is considering the approval of six TMDL implementation plans (TMDL IPs) and granting authorization to include the TMDL implementation plans in the appropriate Water Quality Management Plans (WQMPs).

Purpose of notice: The board is seeking comment on the proposed approvals and authorizations. The purpose of these actions is to approve six TMDL IPs as Virginia's plans for the management actions necessary for attainment of water quality goals in several impaired waterbodies. These actions are taken in accordance with the Public Participation Procedures for Water Quality Management Planning.

Public comment period: February 16, 2009, to March 16, 2009.

Description of proposed action: DEQ staff intends to recommend (i) that the State Water Control Board approve the TMDL IPs listed below as Virginia's plans for the management actions necessary for attainment of water quality goals in the impaired segments, and (ii) that the DEQ Director authorize inclusion of the TMDL IPs in the appropriate WQMPs. No regulatory amendments are required for these TMDL IPs.

The TMDL IPs listed below were developed in accordance with the 1997 Water Quality Monitoring, Information and Restoration Act (WQMIRA, § 62.1-44.19:4 through § 62.1-44.19:8 of the Code of Virginia) and federal recommendations. The TMDL IPs were developed in accordance with DEQ's Public Participation Procedures for Water Quality Management Planning. Extensive public participation was solicited during the development of the plans, and the public comment process provided the affected stakeholders with opportunities for comment on the proposed plans. The final TMDL IPs can be found at https://www.deq.virginia.gov/TMDLDataSearch/ReportSearch.jspx

Affected Waterbodies and Localities:

In the Tennessee/Big Sandy River Basin:

"Dumps Creek Implementation Plan" – proposes management actions needed to restore the aquatic life use in Dumps Creek, Russell County.

In the James River Basin:

"Spring Creek, Briery Creek, Bush River, Little Sandy Creek and Saylers Creek TMDL Implementation Plan – proposes management actions needed to restore the primary contact (swimming) use in the Spring Creek watershed, Prince Edward and Amelia Counties.

"Looney Creek E. coli TMDL Implementation Plan – proposes management actions needed to restore the primary contact (swimming) use in Looney Creek, Botetourt County.

In the Roanoke River Basin:

"Falling River TMDL Implementation Plan" – proposes management actions needed to restore the primary contact (swimming) use in Falling River, Campbell and Appomattox Counties.

In the Potomac/Shenandoah River Basin:

"Mill and Hawksbill Creek TMDL Implementation Plan" – proposes management actions needed to restore the primary contact (swimming) use in Mill and Hawksbill Creeks, Page County.

"Water Quality Implementation Plan for Blacks Run and Cooks Creek" – Proposes management actions needed to restore the primary contact (swimming) use and aquatic life use in Blacks Run and Cooks Creek, Rockingham and Harrisonburg Counties.

How to comment: The DEQ accepts written comments by email, fax and postal mail. All written comments must include the full name, address and telephone number of the person commenting and be received by DEQ by 5 p.m. on the last day of the comment period.

How a decision is made: After comments have been considered, the board will make the final decision.

To review documents: The TMDL implementation plans are available on the DEQ website at https://www.deq.virginia.gov/TMDLDataSearch/ReportSearch.jspx and by contacting the DEQ representative named below. The electronic copies are in PDF format and may be read online or downloaded.

Contact for public comments, document requests and additional information: David S. Lazarus, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4299, FAX (804) 698-4116, or email dslazarus@deq.virginia.gov.

VIRGINIA CODE COMMISSION

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.

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 CORPORATION COMMISSION

Title of Regulation: **20VAC5-201. Rules Governing Utility Rate Increase Applications, Annual Informational Filings, Optional Performance-Based Regulation Applications, Biennial Review (adding 20VAC5-201-10 through 20VAC5-201-110).**

Publication: 25:9 VA.R. 1765-1816 January 5, 2009.

Correction to Final Regulation:

Page 1774, 20VAC5-201-90, Schedule 12, column 2, line 9 of third paragraph, change "case working" to "cash working"

VA.R. Doc. R08-1134

STATE BOARD OF HEALTH

Title of Regulations: **12VAC5-90. Regulations for Disease Reporting and Control (amending 12VAC5-90-80).**

Publication: 25:11 VA.R. 1935-1939 February 2, 2009.

Correction to Final Regulation:

Page 1935, Effective Date, change "March 4, 1990" to "March 4, 2009."

VA.R. Doc. R08-1024

STATE BOARD OF SOCIAL SERVICES

Titles of Regulations: **22VAC40-110. Minimum Standards for Licensed Family Day Homes (repealing 22VAC40-110-10 through 22VAC40-110-1400).**

22VAC40-111. Standards for Licensed Family Day Homes (adding 22VAC40-111-10 through 22VAC40-111-1020).

Publication: 25:11 VA.R. 1969-1993 February 2, 2009.

Correction to Proposed Regulation:

Page 1969, "Public Hearing Information," delete "No public hearings are scheduled" and insert the following public hearing date, time and location:

February 19, 2009 - Noon - Department of Social Services, 7 North 8th Street, 6th Floor Board Room, Richmond, VA

VA.R. Doc. R03-186; Filed February 6, 2009, 12:15 p.m.