http://register.dls.virginia.gov Virginia Code Commission

Virginia Register of Regulations

VOL. 26 ISS. 4 PUBLISHED EVERY OTHER WEEK BY THE VIRGINIA CODE COMMISSION OCTOBER 26, 2009

TABLE OF CONTENTS

THE VIRGINIA REGISTER OF REGULATIONS (USPS-001831) is published biweekly, with quarterly cumulative indices published in January, April, July and October, for $179.00 per year by LexisNexis Matthew Bender, 1275 Broadway, Albany, NY 12204. Periodical postage is paid at Albany, NY and at additional mailing offices. POSTMASTER: Send address changes to LexisNexis Matthew Bender, 1275 Broadway, Albany, NY 12204.

THE VIRGINIA REGISTER INFORMATION PAGE

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

The Joint Commission 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).

October 2009 through July 2010

Volume: Issue	Material Submitted By Noon*	Will Be Published On
FINAL INDEX Volume 25		**October 2009**
26:4	October 7, 2009	October 26, 2009
26:5	October 21, 2009	November 9, 2009
26:6	November 4, 2009	November 23, 2009
26:7	November 17, 2009 **(Tuesday)**	December 7, 2009
INDEX 1 Volume 26		**January 2010**
26:8	December 2, 2009	December 21, 2009
26:9	December 15, 2009 **(Tuesday)**	January 4, 2010
26:10	December 29, 2009 **(Tuesday)**	January 18, 2010
26:11	January 13, 2010	February 1, 2010
26:12	January 27, 2010	February 15, 2010
26:13	February 10, 2010	March 1, 2010
26:14	February 24, 2010	March 15, 2010
INDEX 2 Volume 26		**April 2010**
26:15	March 10, 2010	March 29, 2010
26:16	March 24, 2010	April 12, 2010
26:17	April 7, 2010	April 26, 2010
26:18	April 21, 2010	May 10, 2010
26:19	May 5, 2010	May 24, 2010
26:20	May 19, 2010	June 7, 2010
INDEX 3 Volume 26		**July 2010**
26:21	June 2, 2010	June 21, 2010
26:22	June 16, 2010	July 5, 2010
26:23	June 30, 2010	July 19, 2010

*Filing deadlines are Wednesdays unless otherwise specified.

TITLE 2. AGRICULTURE

BOARD OF AGRICULTURE AND CONSUMER SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Agriculture and Consumer Services intends to consider repealing the following regulations: **2VAC5-420, Regulations for the Enforcement of the Virginia Gasoline and Motor Fuel Law.** The purpose of the proposed action is to seek comments regarding the possible repeal of the regulation. The current regulation prescribes basic requirements for enforcement of the Virginia Motor Fuels and Lubricating Oils Law (Chapter 12 (§ 59.1-149 et seq.) of Title 59.1 of the Code of Virginia). The 2009 session of the Virginia General Assembly amended the Motor Fuels and Lubricating Oils Law by incorporating by reference certain national specifications for the inspection and testing of motor fuels. Given that the essential elements of the regulation have been incorporated into the statute, the regulation may no longer be needed and may be repealed.

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

Statutory Authority: § 59.1-156 of the Code of Virginia.

Public Comment Deadline: November 25, 2009.

Agency Contact: Robert E. Bailey, Program Manager, Department of Agriculture and Consumer Services, P. O. Box 1163, Richmond, VA 23218, telephone (804) 786-1274, FAX (804) 786-1571, TTY 1-800-828-1120, or email robert.bailey@vdacs.virginia.gov.

VA.R. Doc. No. R10-2120; Filed October 6, 2009, 10:25 a.m.

◆ ▬▬▬▬▬▬▬▬▬▬▬▬▬▬▬▬ ◆

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Air Pollution Control Board intends to consider amending the following regulations: **9VAC5-40, Existing Stationary Sources (Rev. C09).** The purpose of the proposed action is to adopt new standards for the control of volatile organic compound (VOC) emissions from offset lithographic printing operations, and letterpress printing operations within the Northern Virginia VOC Emissions Control Area. This action is being taken to allow Virginia to meet its obligation to implement control measures in areas designated as nonattainment under the 0.08 parts per million (ppm) eight-hour ozone standard. It will contribute to the reduction of ozone air pollution, and thereby improve public health and welfare.

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

Statutory Authority: § 10.1-1308 of the Code of Virginia; federal Clean Air Act (§§ 110, 111, 123, 129, 171, 172 and 182); 40 CFR Parts 51 and 60.

Public Comment Deadline: November 30, 2009.

Agency Contact: Gary Graham, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4103, FAX (804) 698-4510, or email gary.graham@deq.virginia.gov.

VA.R. Doc. No. R10-2126; Filed October 6, 2009, 2:29 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Air Pollution Control Board intends to consider amending the following regulations: **9VAC5-40, Existing Stationary Sources (Rev. D09).** The purpose of the proposed action is to adopt new standards for the control of volatile organic compound (VOC) emissions from industrial solvent cleaning operations, and miscellaneous industrial adhesive application processes within the Northern Virginia VOC Emissions Control Area. This action is being taken to allow Virginia to meet its obligation to implement control measures in areas designated as nonattainment under the 0.08 parts per million (ppm) eight-hour ozone standard. It will contribute to the reduction of ozone air pollution, and thereby improve public health and welfare.

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

Statutory Authority: § 10.1-1308 of the Code of Virginia; federal Clean Air Act (§§ 110, 111, 123, 129, 171, 172 and 182); 40 CFR Parts 51 and 60.

Public Comment Deadline: November 30, 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 karen.sabasteanski@deq.virginia.gov.

VA.R. Doc. No. R10-2124; Filed October 6, 2009, 2:30 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Air Pollution Control Board intends to consider amending the following regulations: **9VAC5-40, Existing Stationary Sources (Rev. E09).** The purpose of the proposed action is to adopt new standards for the control of volatile organic compound (VOC) emissions from miscellaneous metal and plastic parts coating

operations within the Northern Virginia VOC Emissions Control Area. This action is being taken to allow Virginia to meet its obligation to implement control measures in areas designated as nonattainment under the 0.08 parts per million (ppm) eight-hour ozone standard. It will contribute to the reduction of ozone air pollution, and thereby improve public health and welfare.

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

Statutory Authority: § 10.1-1308 of the Code of Virginia; federal Clean Air Act (§§ 110, 111, 123, 129, 171, 172 and 182); 40 CFR Parts 51 and 60.

Public Comment Deadline: November 30, 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, FAX (804) 698-4510, or email mary.major@deq.virginia.gov.

VA.R. Doc. No. R10-2125; Filed October 6, 2009, 2:34 p.m.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Health intends to consider amending the following regulations: **12VAC5-90, Regulations for Disease Reporting and Control.** The purpose of the proposed action is to identify additional measures relating to healthcare-associated infections that acute care hospitals would have to report to the U.S. Centers for Disease Control and Prevention (CDC) and to the Department of Health.

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

Statutory Authority: § 32.1-35 of the Code of Virginia.

Public Comment Deadline: November 25, 2009.

Agency Contact: Diane Woolard, Ph.D., Director, Disease Surveillance, Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-8124, or email diane.woolard@vdh.virginia.gov.

VA.R. Doc. No. R10-2109; Filed October 5, 2009, 2:44 p.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Medical Assistance Services intends to consider promulgating the following regulations: **12VAC30-20, Administration of Medical Assistance Services.** The purpose of the proposed action is to address the factor of family coverage as an element of the cost effectiveness determination methodology for entrance into the Health Insurance Premium Payment program of Medicaid.

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

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

Public Comment Deadline: November 25, 2009.

Agency Contact: Patricia Taylor, Program Operations Division, Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219, telephone (804) 371-6333, FAX (804) 786-1680, or email patricia.taylor@dmas.virginia.gov.

VA.R. Doc. No. R10-2021; Filed October 5, 2009, 3:59 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Medical Assistance Services intends to consider amending the following regulations: **12VAC30-120, Waivered Services.** The purpose of the proposed action is to update the waiver regulations to conform to current industry standards and remove conflicting, confusing requirements.

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

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

Public Comment Deadline: November 25, 2009.

Agency Contact: William Butler, Long Term Care Division, Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219, telephone (804) 371-8886, FAX (804) 786-1680, or email william.butler@dmas.virginia.gov.

VA.R. Doc. No. R10-2177; Filed October 2, 2009, 2:23 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF DENTISTRY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Dentistry intends to consider amending the following regulations: **18VAC60-20, Regulations Governing the Practice of Dentistry and Dental Hygiene.** The purpose of the proposed action is to amend the regulation by adding a provision pursuant to Chapter 89 of the 2009 Acts of Assembly for recovery of costs associated with investigating and monitoring licensees for whom disciplinary action has been imposed.

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

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

Public Comment Deadline: November 25, 2009.

Agency Contact: Sandra Reen, Executive Director, Board of Dentistry, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4538, FAX (804) 527-4428, or email sandra.reen@dhp.virginia.gov.

VA.R. Doc. No. R10-2178; Filed October 5, 2009, 8:48 a.m.

BOARD OF MEDICINE

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Medicine intends to consider amending the following regulations: **18VAC85-130, Regulations Governing the Practice of Licensed Midwives.** The purpose of the proposed action is to amend the regulation by adding a provision pursuant to Chapter 646 of the 2009 Acts of Assembly for disclosure on options for consultation and referral and information on health risks associated with certain high-risk pregnancies.

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

Statutory Authority: §§ 54.1-2400 and 54.1-2957.9 of the Code of Virginia.

Public Comment Deadline: November 25, 2009.

Agency Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4621, FAX (804) 527-4429, or email william.harp@dhp.virginia.gov.

VA.R. Doc. No. R10-2179; Filed October 5, 2009, 8:52 a.m.

BOARD OF PHARMACY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Pharmacy intends to consider amending the following regulations: **18VAC110-20, Regulations Governing the Practice of Pharmacy.** The purpose of the proposed action is to revise the rule on signing for drugs placed in an automated dispensing device.

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

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

Public Comment Deadline: November 25, 2009.

Agency Contact: Elizabeth Scott Russell, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4456, FAX (804) 527-4472, or email scotti.russell@dhp.virginia.gov.

VA.R. Doc. No. R10-2180; Filed October 5, 2009, 8:55 a.m.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

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

Final Regulation

Title of Regulation: **4VAC20-620. Pertaining to Summer Flounder (adding 4VAC20-620-75).**

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

Effective Date: September 28, 2009.

Agency Contact: Jane Warren, 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:

The amendment provides that the possession of Summer Flounder tagged by the Virginia Institute of Marine Science shall not apply to the personal recreational possession limit of five Summer Flounder or the 19-inch minimum size limit. It further makes it unlawful for any person to remove either type of tag from any Summer Flounder.

4VAC20-620-75. Research exemptions to possession and size limits.

Nothing in this chapter shall preclude any person who is legally eligible to fish from possessing any Summer Flounder tagged by the Virginia Institute of Marine Science (VIMS) with two different types of tags in each of 260 Summer Flounder. One tag is a white data recording tag of 1/2-inch diameter and 1-1/2 inches in length that VIMS affixed to the Summer Flounder. That tag is inscribed with "VIMS $200 reward" and the VIMS telephone contact number. The second tag is a yellow "T-bar" or "spaghetti" type tag that VIMS affixed to the dorsal area of these double-tagged Summer Flounder. The yellow T-bar tag is inscribed with "reward" and the VIMS contact telephone number. Possession of these VIMS-tagged Summer Flounder shall not count towards the personal recreational possession limit of five Summer Flounder, 19 inches or greater in total length. Possession of any undersized flounder that has any affixed VIMS tag, as described above, shall not constitute a violation of the minimum size limit of 19 inches in total length. It shall be unlawful for any person to remove either type of tag from any caught or harvested Summer Flounder without having contacted VIMS. It shall be unlawful for any person to retain any of these VIMS-tagged Summer Flounder for a period of time that is longer than necessary to provide the VIMS-tagged Summer Flounder to a VIMS representative. Under no circumstances shall any VIMS-tagged flounder be stored for future use or sale or delivered to any person who is not a VIMS representative.

VA.R. Doc. No. R10-2146; Filed September 28, 2009, 10:27 a.m.

Final Regulation

Title of Regulation: **4VAC20-720. Pertaining to Restrictions on Oyster Harvest (amending 4VAC20-720-20 through 4VAC20-720-80).**

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

Effective Date: October 1, 2009.

Agency Contact: Jane Warren, 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:

These amendments establish open harvest seasons in the following areas: James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area: October 1, 2009, through April 30, 2010; Seaside of Eastern Shore: for clean cull oysters only, November 1, 2009, through February 28, 2010; Rappahannock River Area 8, Rappahannock River Area 9, the Upper Chesapeake Bay (Blackberry Hangs Hand Scrape Area), the York River and Mobjack Bay Hand Scrape Areas, and Deep Rock Patent Tong Area (Lower Chesapeake Bay): December 1, 2009, through February 28, 2010; Rappahannock River Rotation Area 3: November 1, 2009, through November 30, 2009; Rappahannock River Rotation Area 5: October 1, 2009, through October 31, 2009; Tangier - Pocomoke Sounds Rotation Area 1: December 1, 2009, through February 28, 2010; James River Hand Scrape Area and Thomas Rock Hand Scrape Area (James River): October 1, 2009, through December

31, 2009; Great Wicomico River Hand Scrape Area: November 1, 2009, through January 31, 2010.

4VAC20-720-20. Definitions.

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

"Coan River Area" means that area of the Coan River to the Virginia-Maryland state line (PRV1A to PRV1B), except for that area above a line from Walnut Point (Survey Station Walnut) to Stephens Point (Survey Station Arthur).

"Deep Rock Patent Tong Area (Lower Chesapeake Bay)" means the area described as follows: starting at Cherry Point, Gwynns Island, thence northeast to G"1P" along the south side of the channel to Piankatank River; thence east-southeast to G"1R"; thence southwest to Sandy Point, Gwynns Island, North of Hole-in the-Wall.

"Deep Water Shoal State Replenishment Seed Area (DWS)" in the James River (574.66 Acres) means the areas beginning at a point approximately 530 feet west of Deep Water Shoal Light, said point being Corner 1 as located by Virginia State Plane Coordinates, South Zone, NAD 1927, north 302,280.00, east 2,542,360.00; thence north azimuth 30°49'59", 4,506.99 feet to Corner 2, north 306,150.00, east 2,544,670.00; thence north azimuth 135°08'57", 5,430.60 feet to Corner 3, north 302,300.00, east 2,548,500.00; thence north azimuth 212°13'54", 3,487.42 feet to Corner 4, north 299,350.00, east 2,546,640.00; thence north azimuth 269°10'16", 2,765.29 feet to Corner 5, north 299,310.00, east 2,543,875.00; thence north azimuth 332°58'26", 3,334.09 feet to Corner 1, being the point of beginning.

"Great Wicomico River Hand Scrape Area" means that area east of a line drawn from Sandy Point to Cockrell Point.

"Hand scrape" means any device or instrument with a catching bar having an inside measurement of no more than 22 inches, which is used or usable for the purpose of extracting or removing shellfish from a water bottom or the bed of a body of water.

"James River Hand Scrape Area" means those public oyster grounds of the James River west of the Monitor and Merrimac Bridge Tunnel and northeast of the Mills E. Godwin/Nansemond River Bridge (Route 17) to the James River Bridge (Route 17).

"Lower Machodoc Area" means that area of the Lower Machodoc River to the Virginia-Maryland state line (PRV5A to PRV5C).

"Mobjack Bay Hand Scrape Area" shall consist of all of Public Ground No. 25, Gloucester County (Towe Stake) within these coordinates: 37° 20.59', N., 76° 23.24', W.; 37° 20.38', N., 76° 22.72', W.; 37° 19.86', N., 76° 23.59', W.; 37° 20.03', N. 76° 23.77', W.; and 37° 20.39', N., 76° 23.58', W. and that portion of Public Ground No. 2, Mathews County (Pultz Bar), within these coordinates: 37° 21.25', N., 76° 21.37', W.; 37° 21.27', N., 76° 20.96', W.; 37° 21.02', N., 76° 20.94', W.; and 37° 21.05', N., 76° 21.33', W.

"Nomini River Hand Scrape Area" means that area of the Nomini River inside of Public Ground No.1 to the Virginia-Maryland state line (PRV6A to PRV6B) (Kingscopsico), Public Ground 26 (Deans) and Public Ground 28 (Cut).

"Oyster Patent Tong" means any patent tong not exceeding 100 pounds in gross weight, including any attachment other than rope and with the teeth not to exceed four inches in length.

"Pocomoke and Tangier Sounds Management Area (PTSMA)" means the area as defined in § 28.2-524 of the Code of Virginia.

"Public oyster ground" means all those grounds defined in § 28.2-551 of the Code of Virginia, all ground set aside as public oyster ground by court order, and all ground set aside as public oyster ground by order of the Marine Resources Commission.

"Rappahannock River Rotation Area 1" shall consist of all public grounds in the Rappahannock River with a boundary defined as beginning at the MLW west of Broad Creek (37° 33.952', N., 76° 19.309', W.); thence north to a VMRC buoy on the Baylor line (37° 34.539', N., 76° 19.022', W.) to VMRC buoy (37° 34.683', N., 76° 19.100' W.); thence, northeasterly to VMRC Buoy (37° 35.017', N., 76° 19.450', W.); thence, northeasterly to Sturgeon Bar Light (7R) (37° 35.150', N., 76° 19.733', W.); thence, continuing northwest to Mosquito Point Light (8R) (37° 36.100', N., 76° 21.300', W.); thence to the house on Mosquito Point (37° 36.523, N., 76° 21.595', W.) bounded on the east by a line from Windmill Point (37° 35.793', N., 76° 14.180', W.); thence, southeast to Windmill Point Light (37° 35.793', N., 76° 14.180', W.); thence southwesterly to Stingray Point Light (37° 33.673', N., 76° 16.362', W.); thence, westerly to Stingray Point (37° 33.692', N., 76° 17.986', W.)

"Rappahannock River Rotation Area 2" shall consist of all public grounds in the Rappahannock River with a boundary on the east side defined as beginning at the house at Mosquito Point (37° 36.523', N., 76° 21.595', W.); thence, southeast to Mosquito Point Light "8R" (37° 36.100', N., 76° 21.300', W.); thence, continuing southeasterly to Sturgeon Bar Beacon "7R" (37° 35.150', N., 76° 19.733', W.); thence, southwesterly to VMRC buoy (37° 34.933', N., 76° 21.050', W.); thence, southwesterly to VMRC buoy (37° 34.883', N., 76° 21.100', W.); thence, to a pier west of Hunting Creek at Grinels (37° 34.436', N., 76° 26.288', W.). Rappahannock River Rotation Area 2 is bordered on the west by a line beginning at Mill Creek channel marker "4" (37° 35.083', N., 76° 26.950', W.); thence, northeasterly to Mill Creek channel marker "2" (37° 35.483', N., 76° 24.567', W.); thence,

northeasterly to the house at Mosquito Point (37° 36.523', N., 76° 21.595', W.).

"Rappahannock River Rotation Area 3" shall consist of all public grounds in the Rappahannock River with a boundary defined as beginning from the north channel fender at the Norris Bridge (37° 37.483', N., ~~76° 25.035'~~ 76° 25.345', W.); thence, southeast to the house on Mosquito Point (37° 36.523', N., 76° 21.595', W.); thence southwest to Mill Creek channel marker "2" (37° 35.483', N., 76° 24.567', W.); thence southwesterly to Mill Creek channel marker "4" (37° 35.083', N., 76° 24.950', W.); thence northeasterly to Parrotts Creek channel marker "1" (37° 36.033', N., 76° 25.417', W.); thence northerly to VMRC buoy (37° 36.333', N., 76° 25.200', W.); thence returning northerly to the Norris Bridge north channel fender.

"Rappahannock River Rotation Area 4" shall consist of all public grounds in the Rappahannock River with the boundary defined as beginning at the White Stone end of the Norris Bridge (37° 38.129', N., 76° 24.722', W.); thence, along the Norris Bridge to the north channel fender (37° 37.483', N., 76° 25.345', W.); thence westerly to the VMRC buoy 5-4 (36° 38.005', N., 76° 30.028', W.); thence, north to Old House Point (37° 39.139', N., 76° 29.685', W.); thence, northerly to Ball Point (37° 41.660', N., 76° 28.632', W.); thence, continuing northerly to Bar Point (37° 41.666', N., 76° 28.866', W.); thence easterly to Black Stump Point (37° 41.737', N., 76° 28.111', W.); thence, southeasterly to the western headland of Taylor Creek (37° 40.983', N., 76° 27.602', W.); thence, southwesterly to VMRC Buoy at Ferry Bar north (37° 40.300', N., 76° 28.500', W.); thence, southeasterly to VMRC Buoy at Ferry Bar South (37° 40.167', N., 76° 28.583, W.); thence, southwesterly to Corrotoman Point Duck Blind (37° 39.876', N., 76° 28.420', W.); thence, southerly to VMRC Buoy 543 (37° 39.267', N., 76° 27.850', W.); thence, southerly to VMRC Buoy at Drumming West (37° 38.883', N., 76° 27.683', W.); thence, southerly to VMRC buoy at Drumming East (37° 38.833', N., 76° 27.567', W.); thence, northeasterly to Orchard Point (37° 38.924', N., 76° 27.126', W.).

"Rappahannock River Rotation Area 5" shall consist of public grounds in the Rappahannock River with a boundary defined as beginning east of a line from the east headland of Whiting Creek (37° 36.658', N., 76° 30.312', W.); thence, north to Towles Point buoy "6" (37° 38.033', N., 76° 30.283', W.); thence, easterly to VMRC buoy 5-4 (37° 38.005', N., 76° 30.028', W.) continuing easterly to the Norris Bridge north channel fender (37° 37.483', N., 76° 25.345', W.); thence, along the Norris Bridge southwest to Grey's Point (37° 36.833', N., 76° 25.999', W.).

"Rappahannock River Rotation Area 6" shall consist of all public grounds in the Rappahannock River with a boundary defined as beginning from Balls Point (37° 39.355', N., 76° 34.444', W.); thence, northeast to the flashing red buoy "8" off Rogue Pt. (37° 40.158', N., 76° 32.939', W.); thence, southeasterly to VMRC Towles Point Area buoy (37° 38.833', N., 76° 31.536', W.); thence, southwesterly to VMRC White House Sanctuary buoy (37° 38.150', N., 76° 30.533', W.); thence, southeasterly to red buoy "6" (37° 38.033', N., 76° 30.283', W.); thence, southerly to the eastern headland of the mouth of Whiting Creek (37° 36.658', N., 76° 30.312', W.).

"Rappahannock River Area 7" shall consist of all public grounds in the Rappahannock River with a boundary defined as beginning south of a line from Punchbowl Point (37° 44.675', N., 76° 37.325', W.) to Monaskon Point (37° 44.063', N., 76° 34.108', W.) to a line from Rogue's Point (37° 40.040', N., 76° 32.253', W.); thence, northwest to flashing red buoy "8" (37° 40.158', N., 76° 32.939', W.) continuing southwest to Balls Point (37° 39.355', N., 76° 34.444', W.).

"Rappahannock River Area 8" shall consist of all public grounds in the Rappahannock River with a boundary defined as beginning east and south of a line from Jones Point (37° 46.786', N., 76° 40.835', W.) to Sharps Point (37° 49.364', N., 76° 42.087', W.) to a line from Punchbowl Point (37° 44.675', N., 76° 37.325', W.) to Monaskon Point (37° 44.063', N., 76° 34.108', W.).

"Rappahannock River Area 9" shall consist of all public grounds in the Rappahannock River with a boundary defined as beginning west of the line drawn from Sharps Pt. (37° 49.364', N., 76° 42.087', W.) to Jones Pt (37° 46.786', N., 76° 40.835', W.) to the Route 360 (Downing Bridge).

"Standard oyster dredge" means any device or instrument having a maximum weight of 150 pounds with attachments, maximum width of 50 inches and maximum tooth length of four inches.

"Tangier-Pocomoke Sounds Rotation Area 1" shall include all public and unassigned grounds within the PTSMA, in Tangier Sound, that are west and south of a line beginning at the Maryland-Virginia Line (37° 54.61360', N., 75° 53.97396', W.) continuing south on Great Fox Island (37° 53.69465', N., 75° 53.88988', W.); thence continuing west to point "Area 2-NW" (37° 53.36335', N., 75° 56.55896', W.); thence south to a point "Area 2-SW" (37° 48.44291', N., 75° 56.48836', W.); thence continuing east to the north end of Watts Island (37° 48.77578', N., 75° 53.59941', W.). Area 1 shall also include all of the public and unassigned grounds in the PTSMA in Pocomoke Sound south and west of a line beginning at the house on Great Fox Island (37° 53.69465', N., 75° 53.88988', W.); thence east southeast to Red Channel Marker # 8 (37° 52.45833', N., 75° 49.40000', W.); thence south southeast to Green Channel Marker "C – 1" (37° 52.10000', N., 75° 47.80833', W.) thence southeast to Flashing Red "2+1" (37° 50.95333', N., 75° 46.64167', W.); thence south to the northernmost tip of Russell Island (37° 48.38796', N., 75° 47.02241', W.).

"Tangier-Pocomoke Sounds Rotation Area 2" shall include all public and unassigned grounds in the PTSMA with a boundary defined as beginning at the house on Great Fox Island (37° 53.69465', N., 75° 53.88988', W.); thence south to the north end of Watts Island (37° 48.77578', N., 75° 53.59941', W.); thence west to a point "Area 2-SW" (37° 48.44291', N., 75° 56.48836', W.); thence north to point "Area 2-NW" (37° 53.36335', N., 75° 56.55896', W.); thence back east to the house on Great Fox Island. This area includes Public Ground No. 7, known as "Thoroughfare Rock" and Public Ground No. 8, known as "California Rock" in Tangier Sound. Area 2 shall also include all public and unassigned grounds in the PTSMA in Pocomoke Sound northeast of a line beginning at the house on Great Fox Island (37° 53.69465', N., 75° 53.88988', W.); thence east southeast to Red Channel Marker # 8 (37° 52.45833', N., 75° 49.40000', W.); thence south southeast to Green Channel Marker "C – 1" (37° 52.10000', N., 75° 47.80833', W.); thence southeast to Flashing Red "2+1" (37° 50.95333', N., 75° 46.64167', W.); thence south to the northernmost tip of Russell Island (37° 48.38796', N., 75° 47.02241', W.).

"Tangier Sound Hand Tong Area" means that area in the PTSMA south and west of a line from Fishbone Island thence southeast to bell buoy #5, thence south southwest to buoy #3 (such area to include all of Public Ground 3 and Flat Rock) and shall be a hand tong area only and Cod Harbor (approximately 1,124 acres) beginning at a point of East Point Marsh, said point having the Virginia state coordinates, south section, coordinates of north 555,414.89, east 2,730,388.85; thence south 79°59', east 2,260 feet to a line designating the western extent of the PTSMA as described in § 28.2-524 of the Code of Virginia; thence south 10°16', west 2,800 feet; thence south 28°46', west 8,500 feet to a point on Sand Spit, position north 545,131.78, east, 2,728,014.94; thence along the mean low water line of Cod Harbor in a west, north and northeast direction crossing Canton Creek and Mailboat Harbor from headland to headland to the point of beginning.

"Thomas Rock Hand Scrape Area" means an area in the James River with an eastern boundary being the James River, Route 17 bridge and a western boundary being a line drawn from the south side of the river at Rainbow Farm Point; thence to the channel buoy green #5; and thence to Blunt Point on the north side of the river.

"Unassigned ground" means all grounds other than public oyster ground as defined by this chapter and which have not been set aside or assigned by lease, permit, or easement by the Marine Resources Commission.

"Upper Chesapeake Bay (Blackberry Hangs Hand Scrape Area)" means the area in Public Ground Number 118, south from the Smith Point Light to the Great Wicomico Light.

"Yeocomico River Area" means that area of the Yeocomico River inside Public Grounds 102, 104, 107, 112 and 113.

"York River Hand Scrape Area" means an area above the Route 17 or Coleman Bridge in Public Ground No. 30, along the north side of the river, to just above Aberdeen Creek.

4VAC20-720-35. Public oyster ground harvest season.

The Commissioner of the Marine Resources Commission shall, when it is determined to be warranted and appropriate, be authorized to extend the public oyster harvest season in the James River Seed Area, ~~if the quota has not been caught~~ including the Deep Water Shoal State Replenishment Area, but the extension shall not be established to go beyond June 30.

4VAC20-720-40. Open season and areas.

The lawful seasons and areas for the harvest of oysters from the public oyster grounds and unassigned grounds are as follows:

1. James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area: October 1, ~~2008~~ 2009, through April 30, ~~2009~~ 2010.

2. Seaside of Eastern Shore: for clean cull oysters only, November 1, ~~2008~~ 2009, through February 28, ~~2009~~ 2010.

3. ~~The following areas shall be opened from December 1, 2008, through February 28, 2009: the Rappahannock River Area 9; the Great Wicomico River Hand Scrape Area; the Upper Chesapeake Bay (Blackberry Hangs Hand Scrape Area); the York River and Mobjack Bay Hand Scrape Areas; and Deep Rock Patent Tong Area (Lower Chesapeake Bay).~~ Rappahannock River Area 8; Rappahannock River Area 9; the Upper Chesapeake Bay (Blackberry Hangs Hand Scrape Area); the York River and Mobjack Bay Hand Scrape Areas; and Deep Rock Patent Tong Area (Lower Chesapeake Bay): December 1, 2009, through February 28, 2010.

4. ~~The Rappahannock River Rotation Area 4: October 1, 2008, through November 30, 2008, and February 1, 2009, through March 31, 2009. Rappahannock River Rotation Area 2: December 1, 2008, through January 31, 2009.~~ Rappahannock River Rotation Area 3: November 1, 2009, through November 30, 2009. The Rappahannock River Rotation Area 5: October 1, 2009, through October 31, 2009.

5. Tangier - Pocomoke Sounds Rotation Area ~~2~~ 1: December 1, ~~2008~~ 2009, through February 28, ~~2009~~ 2010.

6. The James River Hand Scrape Area and the Thomas Rock Hand Scrape Area (James River): ~~November 1, 2008~~ October 1, 2009, through ~~January 31~~ December 1, 2009.

7. The Great Wicomico River Hand Scrape area: November 1, 2009, through January 31, 2010.

4VAC20-720-50. Closed harvest season and areas.

It shall be unlawful for any person to harvest oysters from the following areas during the specified periods:

1. All public oyster grounds and unassigned grounds in the Chesapeake Bay and its tributaries, including the tributaries of the Potomac River, except those areas listed in 4VAC20-720-40, are closed: October 1, ~~2008~~ 2009, through September 30, ~~2009~~ 2010.

2. James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area: May 1, ~~2009~~ 2010, through September 30, ~~2009~~ 2010.

3. All public oyster grounds and unassigned grounds on the Seaside of Eastern Shore: for clean cull oysters, October 1, ~~2008~~ 2009, through October 31, ~~2008~~ 2009, and March 1, ~~2009~~ 2010, through September 30, ~~2009~~ 2010, and for seed oysters, all year.

4. ~~The following areas shall be closed from October 1, 2008 through November 30, 2008 and March 1, 2009, through September 30, 2009: Rappahannock River Area 9; the Great Wicomico River (Hand Scrape Area); Deep Rock Patent Tong Area (Lower Chesapeake Bay); the Upper Chesapeake Bay (Blackberry Hangs Hand Scrape Area); and the York River and Mobjack Bay Hand Scrape Areas.~~ Rappahannock River Area 8; Rappahannock River Area 9; Deep Rock Patent Tong Area (Lower Chesapeake Bay); the Upper Chesapeake Bay (Blackberry Hangs Hand Scrape Area); and the York River and Mobjack Bay Hand Scrape Areas: October 1, 2009, through November 30, 2009, and March 1, 2010, through September 30, 2010.

5. ~~The Rappahannock River Rotation Area 2: October 1, 2008, through November 30, 2008, and February 1, 2009, through September 30, 2009. Rotation Area 4: December 1, 2008, through January 31, 2009, and April 1, 2009, through September 30, 2009.~~ The Rappahannock River Rotation Area 3: October 1, 2009, through October 31, 2009, and December 1, 2009, through September 30, 2010. Rotation Area 5: November 1, 2009, through September 30, 2010.

6. Tangier - Pocomoke Sounds Rotation Area ~~2~~ 1: October 1, ~~2008~~ 2009, through November 30, ~~2008~~ 2009, and March 1, ~~2009~~ 2010, through September 30, ~~2009~~ 2010.

7. The James River Hand Scrape Area and the Thomas Rock Hand Scrape Area (James River): ~~October 1, 2008 through October 31, 2008 and February~~ January 1, ~~2009~~ 2010, through September 30, ~~2009~~ 2010.

8. The Great Wicomico River Hand Scrape Area: October 1, 2009, through October 31, 2009, and February 1, 2010, through September 30, 2010.

4VAC20-720-60. Day and time limit.

A. It shall be unlawful to take, catch or possess oysters on Saturday and Sunday from the public oyster grounds or unassigned grounds in the waters of the Commonwealth of Virginia, except that this provision shall not apply to any person harvesting no more than one bushel per day by hand or ordinary tong for household use only during the season when the public oyster grounds or unassigned grounds are legally open for harvest. The presence of any gear normally associated with the harvesting of oysters on board the boat or other vehicle used during any harvesting under this exception shall be prima facie evidence of violation of this chapter.

B. It shall be unlawful for any person to harvest or attempt to harvest oysters prior to sunrise or after 2 p.m. from the areas described in subdivisions 1, 3, 5, ~~and~~ 6, and 7 of 4VAC20-720-40, except as described in 4VAC20-720-106. In addition, it shall be unlawful for any boat with an oyster dredge aboard to leave the dock until one hour before sunrise or return to the dock after sunset, and it shall be unlawful for any boat with a hand scrape aboard to leave the dock until one-half hour before sunrise or return to the dock after sunset.

C. It shall be unlawful for any person to harvest or attempt to harvest oysters ~~in the Rappahannock River Rotation Areas 2 and 4~~ in the area as described in subdivision 4 of 4VAC20-720-40 prior to 7 a.m. and after 1 p.m.

4VAC20-720-70. Gear restrictions.

A. It shall be unlawful for any person to harvest oysters in the James River Seed Areas, including the Deep Water Shoal State Replenishment Seed Area, and the Rappahannock River Area 9, except by hand or ordinary tong. It shall be unlawful for any person to have a hand scrape on board a boat that is harvesting or attempting to harvest oysters from public grounds by hand tong.

B. It shall be unlawful to harvest oysters from the ~~seaside of the Eastern Shore,~~ area as described in subdivision 2 of 4VAC20-720-40, except by hand.

C. It shall be unlawful to harvest oysters in the Rappahannock River Rotation Areas ~~2 and 4~~ 3 and 5, the Rappahannock River Area 8, James River Hand Scrape Area, Thomas Rock Hand Scrape Area, Upper Chesapeake Bay (Blackberry Hangs Hand Scrape Area), and York River, Great Wicomico and Mobjack Bay Hand Scrape Areas, except by hand scrape.

D. It shall be unlawful for any person to have more than one hand scrape on board any boat that is harvesting oysters or attempting to harvest oysters from public grounds. It shall be unlawful for any person to have a hand tong on board a boat that is harvesting or attempting to harvest oysters from public grounds by hand scrape.

E. It shall be unlawful to harvest oysters from ~~the Tangier Pocomoke Rotation Area 2,~~ the area as described in

subdivision 5 of 4VAC20-720-40, except by a standard oyster dredge.

F. It shall be unlawful to harvest oysters from the Deep Rock Patent Tong Area, except by a standard oyster patent tong.

4VAC20-720-75. Gear license.

A. It shall be unlawful for any person to harvest shellfish, from the hand scrape areas in the Rappahannock River, James River, Upper Chesapeake Bay, York River, Mobjack Bay and Great Wicomico River, unless that person has first obtained a current hand scrape license.

B. It shall be unlawful for any person to harvest shellfish, with a dredge from the public oyster grounds in the ~~Tangier - Pocomoke Sounds Rotation Area 2,~~ area as described in subdivision 5 of 4VAC20-720-40, unless that person has first obtained a current dredge license.

C. It shall be unlawful for any person to harvest shellfish, with a patent tong from the public oyster grounds in the Deep Rock Patent Tong Area unless that person has first obtained a current patent tong license.

4VAC20-720-80. Quotas and harvest limits.

~~A. In the James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area, there shall be an oyster harvest quota of 80,000 bushels of seed oysters. It shall be unlawful for any person to harvest seed oysters from the James River Seed Area after the 80,000 bushel quota has been reached. In the James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area, there shall be an oyster harvest quota of 15,000 bushels of clean cull oysters. It shall be unlawful for any person to harvest clean cull oysters from the James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area, after the 15,000 bushel quota has been reached.~~

~~B.~~ A. The lawful daily limit of clean cull oysters harvested from the areas as described in subdivisions 3, 4, ~~and~~ 6, and 7 of 4VAC20-720-40 shall be determined by the number of registered commercial fishermen licensees on board the vessel multiplied by eight bushels. It shall be unlawful to possess on board any vessel or to land more than the daily limit of clean cull oysters.

~~C.~~ B. In the ~~Tangier - Pocomoke Sounds Rotation Area 2,~~ area as described in subdivision 5 of 4VAC20-720-40, where harvesting is allowed by dredge, there shall be a harvest limit of eight bushels per registered commercial fisherman licensee on board the vessel. It shall be unlawful for any registered commercial fisherman licensee to possess more than eight bushels per day. No blue crab bycatch is allowed. It shall be unlawful to possess on board any vessel more than 250 hard clams.

~~D.~~ C. Harvesters who export the oysters to an out-of-state market or do not sell the oysters to a licensed and Department of Health certified Virginia buyer but sell the oysters directly to the public for human consumption shall report oysters harvested on a daily basis and pay oyster taxes weekly.

VA.R. Doc. No. R10-2087; Filed September 28, 2009, 10:30 a.m.

VIRGINIA SOIL AND WATER CONSERVATION BOARD

REGISTRAR'S NOTICE: Pursuant to §§ 2.2-4007.06 and 2.2-4015 A 4 of the Code of Virginia, the Virginia Soil and Water Conservation Board is suspending the regulatory process on 4VAC5-60, Virginia Stormwater Management Program (VSMP) Permit Regulations (Parts I, II, III, and XIII), in order to solicit additional comments on those changes with substantial impact that were made to the regulations since they were published as proposed regulations. The regulations, with changes designated in brackets, are printed below. A detailed notice regarding the additional public comment period for these regulations follows later in this issue of the Virginia Register.

Final Regulation

Title of Regulation: **4VAC50-60. Virginia Stormwater Management Program (VSMP) Permit Regulations (amending 4VAC50-60-700, 4VAC50-60-720 through 4VAC50-60-830; adding 4VAC50-60-825; repealing 4VAC50-60-710).**

Statutory Authority: §§ 10.1-603.2:1 and 10.1-603.4 of the Code of Virginia.

Effective Date: Regulatory process suspended (see suspension notice following the regulations).

Agency Contact: David C. Dowling, Policy, Planning, and Budget Director, Department of Conservation and Recreation, 203 Governor Street, Suite 302, Richmond, VA 23219, telephone (804) 786-2291, FAX (804) 786-6141, or email david.dowling@dcr.virginia.gov.

Summary:

This regulatory action establishes a statewide base fee schedule for stormwater management projects and establishes the fee assessment and the collection and distribution systems for those fees. Permit fees are established for: Municipal Separate Storm Sewer Systems (new coverage); Municipal Separate Storm Sewer Systems (major modifications); Construction activity general permit coverage; Construction activity individual permits, Construction activity modifications or transfers; and MS4 and Construction activity annual permit maintenance fees.

This action is closely tied to the proposed Parts I, II, and III action as the base fees generated are necessary to fund the local stormwater management programs established

through that concurrent regulatory action. The fees have been established using estimates of the time determined to be necessary for different-sized projects, for a local stormwater management program to conduct plan review, inspections (including stormwater pollution prevention plan (SWPPP) review and reinspections), enforcement, technical assistance, and permit coverage, and for the Department of Conservation and Recreation to provide oversight of the Commonwealth's stormwater management program.

The proposed permit base fee levels were arrived at through discussions of a subcommittee of the Technical Advisory Committee and discussions with the overall TAC and through corroboration of the costs of conducting the various components of program implementation with Department of Conservation and Recreation stormwater field staff and with a number of local government program personnel.

In the proposed regulations, the qualifying local program with approval of the board was authorized to establish a lower construction fee provided that it can demonstrate its ability to fully and successfully implement a program. In the final regulations, additional authority is added to allow a qualifying local program to establish greater fees if it demonstrates to the board that greater fees are necessary to properly administer a program. Additionally, in the final regulation the permit maintenance fee for MS4s with general permit coverage has been reduced from $4,000 to $3,000 and an annual increase in fees based on the CPI-U has been removed.

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 XIII
Fees

4VAC50-60-700. Purpose.

Sections 10.1-603.4 and 10.1-603.5 of the Code of Virginia authorize the establishment of a statewide fee schedule [, including administrative charges for state agencies,] for stormwater management ~~and state agency projects~~ for land-disturbing activities and for municipal separate storm sewer systems. ~~These regulations in this~~ This part ~~establish~~ establishes the fee assessment and the collection ~~system~~ and distribution systems for those fees. The fees associated with individual permits or coverage under the General Permit for Discharges of Stormwater From Construction Activities (permits for stormwater management for land-disturbing activities) issued by a qualifying local program or a department-administered local stormwater management program that has been approved by the board shall include costs associated with plan review, permit review and issuance, inspections, enforcement, program administration and oversight, and database management. Fees shall also be established for permit maintenance, modification, and transfer.

Should a qualifying local program demonstrate to the board its ability to fully and successfully implement a qualifying local program without a full implementation of the fees set out in this part, the board may authorize the administrative establishment of a lower fee for that program provided that such reduction shall not reduce the amount of fees due to the department for its program oversight and shall not affect the fee schedules set forth herein.

[A qualifying local program may establish greater fees than those base fees specified by this part should it be demonstrated to the board that such greater fees are necessary to properly administer the qualifying local program. Any fee increases established by the qualifying local program beyond those base fees established in this part shall not be subject to the fee distribution formula set out in 4VAC50-60-780. Nothing in this part shall prohibit a locality from establishing other local fees authorized by the Code of Virginia related to stormwater management within their jurisdictions.]

As part of its program oversight, the department shall periodically assess the revenue generated by both the localities and the department to ensure that the fees have been appropriately set and the fees may be adjusted through periodic regulatory actions should significant deviations become apparent. [~~The department may make such periodic adjustments in addition to the annual fee increases authorized by 4VAC50-60-840.~~]

4VAC50-60-710. ~~Definitions.~~ (Repealed.)

~~The following words and terms used in this chapter have the following meanings:~~

~~"Permit applicant" means for the purposes of this part any person submitting a permit application for issuance, reissuance, or modification, except as exempted by 4VAC50-60-740, of a permit or filing a registration statement or permit application for coverage under a general permit issued pursuant to the Act and this chapter.~~

~~"Permit application" means for the purposes of this part the forms approved by the Virginia Soil and Water Conservation Board for applying for issuance or reissuance of a permit or for filing a registration statement or application for coverage under a general permit issued in response to the Act and this chapter. In the case of modifications to an existing permit requested by the permit holder and not exempted by 4VAC50-60-740, the application shall consist of the formal written request and any accompanying documentation submitted by the permit holder to initiate the modification.~~

4VAC50-60-720. Authority.

The authority for this part is ~~pursuant to §§ 10.1-604.4~~ §§ 10.1-603.4 and 10.1-603.4:1 of the Code of Virginia and enactment clause 7 governing the transfer of the relevant provisions of Fees for Permits and Certificates Regulations, 9VAC25-20, in accordance with Chapter 372 of the 2004 Virginia Acts of Assembly.

4VAC50-60-730. Applicability.

A. This part applies to:

1. All ~~permit applicants for issuance of~~ persons seeking coverage of a MS4 under a new permit ~~or reissuance of an existing permit, except as specifically exempt under 4VAC50-60-740 A~~. The fee due shall be as specified under 4VAC50-60-800 ~~or 4VAC50-60-820~~.

2. All ~~permittees~~ operators who request that an existing MS4 individual permit be modified, except as specifically exempt under 4VAC50-60-740 ~~A 1 of this chapter~~. The fee due shall be as specified under 4VAC50-60-810.

3. All persons seeking coverage under the General Permit for Discharges of Stormwater From Construction Activities or a person seeking an Individual Permit for Discharges of Stormwater From Construction Activities. The fee due shall be as specified under 4VAC50-60-820.

4. All permittees who request modifications to or transfers of their existing registration statement for coverage under a General Permit for Discharges of Stormwater From Construction Activities or of an Individual Permit for Discharges of Stormwater From Construction Activities. The fee due shall be as specified under 4VAC50-60-825 in addition to any additional fees necessary pursuant to 4VAC50-60-820 due to an increase in acreage.

B. ~~An applicant for a permit involving a permit that is to be revoked and reissued~~ Persons who are applicants for an individual VSMP Municipal Separate Stormwater Sewer System permit as a result of existing permit revocation shall be considered an applicant for a new permit. The fee due shall be as specified under 4VAC50-60-800.

Persons whose coverage under the General Permit for Discharges of Stormwater From Construction Activities has been revoked shall reapply for an Individual Permit for Discharges of Stormwater From Construction Activities. The fee due shall be as specified under 4VAC50-60-820.

C. Permit and permit coverage maintenance fees may apply to each Virginia Stormwater Management [~~Permit~~ Program] (VSMP) permit holder. The fee due shall be as specified under 4VAC50-60-830.

4VAC50-60-740. Exemptions.

A. No permit application fees will be assessed to:

1. Permittees who request minor modifications ~~or minor amendments~~ to permits as defined in 4VAC50-60-10 or other minor amendments at the discretion of the local stormwater management program.

2. Permittees whose permits are modified or amended at the initiative of the permit-issuing authority. This does not include errors in the registration statement identified by the local stormwater management program or errors related to the acreage of the site.

B. Permit modifications at the request of the permittee resulting in changes to stormwater management plans that require additional review by the local stormwater management program shall not be exempt pursuant to this section and shall be subject to fees specified under 4VAC50-60-825.

4VAC50-60-750. Due dates for Virginia Stormwater Management Program (VSMP) Permits.

A. ~~Permit application fees for all new permit applications are due on the day a permit application is submitted and shall be~~ Requests for a permit, permit modification, or general permit coverage shall not be processed until the fees required pursuant to this part are paid in accordance with 4VAC50-60-760. ~~Applications will not be processed without payment of the required fee.~~

~~B. A permit application fee is due on the day a permit application is submitted for a major modification that occurs (and becomes effective) before the stated permit expiration date. There is no application fee for a major modification or amendment that is made at the permit issuing authority's initiative.~~

~~C. Permit~~ B. Individual permit or general permit coverage maintenance fees shall be paid annually to the ~~permit issuing authority by October 1 of each year~~ department or the qualifying local program, as applicable, by the anniversary date of individual permit issuance or general permit coverage. No permit will be reissued or automatically continued without payment of the required fee. Individual permit or general permit coverage maintenance fees shall be applied until a Notice of Termination is effective.

MS4 individual operators who currently pay a permit maintenance fee that is due by October 1 of each year shall continue to pay the maintenance fee by October 1 until their current permit expires. Upon reissuance of the MS4 individual permit, maintenance fees shall be paid on the anniversary date of the reissued permit.

~~Effective April 1, 2005, any permit holder whose permit is effective as of April 1 of a given year (including permits that have been administratively continued) shall pay the permit maintenance fee or fees to the permit-issuing authority by October 1 of that same year.~~

4VAC50-60-760. Method of payment.

A. Fees, as applicable, shall be, at the discretion of the department, submitted electronically or be paid by check, draft or postal money order payable to:

~~the~~ 1. The Treasurer of Virginia, for a MS4 individual or general permit or for a coverage issued by the department under the General Permit for Discharges of Stormwater From Construction Activities or Individual Permit for Discharges of Stormwater From Construction Activities, ~~to the permit issuing authority,~~ and must be in U.S. currency, except that agencies and institutions of the Commonwealth of Virginia may submit Interagency Transfers for the amount of the fee. ~~To pay electronically, go to the Department of Conservation and Recreation's stormwater management section of the Department's public website at http://www.dcr.virginia.gov.~~ The Department of Conservation and Recreation may provide a means to pay fees electronically. Fees not submitted electronically shall be sent to the following address: ~~Virginia Department of Conservation and Recreation, Division of Finance, Accounts Payable, 203 Governor Street, Richmond, VA 23219.~~

Virginia Department of Conservation and Recreation
Division of Finance, Accounts Payable
203 Governor Street
Richmond, VA 23219

2. The qualifying local program, for coverage authorized by the qualifying local program under the General Permit for Discharges of Stormwater From Construction Activities, and must be in U.S. currency.

B. Required information ~~.~~ for permits or permit coverage: All applicants ~~for new permit issuance, permit reissuance, or permit modification~~, unless otherwise specified by the department, shall submit the following information along with the fee payment or utilize the Department of Conservation and Recreation Permit Application Fee Form:

1. Applicant name, address and daytime phone number.

2. Applicant Federal Identification Number (FIN), if applicable.

3. The name of the facility/activity, and the facility/activity location.

4. The type of permit applied for.

5. Whether the application is for a new permit issuance, permit reissuance, permit maintenance, or permit modification.

6. The amount of fee submitted.

7. The existing permit number, if applicable.

8. Other information as required by the local stormwater management program.

4VAC50-60-770. Incomplete payments and late payments.

All incomplete payments will be deemed as nonpayments. The department or the qualifying local program, as applicable, shall provide notification to the applicant of any incomplete payments.

Interest may be charged for late payments at the underpayment rate [~~set out by the U.S. Internal Revenue Service established pursuant to § 6621(a)(2) of the Internal Revenue Code. This rate is~~] ~~prescribed~~ set forth in § 58.1-15 of the Code of Virginia and is calculated on a monthly basis at the applicable periodic rate.

A 10% late payment fee ~~may~~ shall be charged to any delinquent (over 90 days past due) account.

The ~~permit issuing authority is~~ department and the qualifying local program are entitled to all remedies available under the Code of Virginia in collecting any past due amount ~~and may recover any attorney's fees and/or other administrative costs incurred in pursuing and collecting any past due amount~~.

4VAC50-60-780. Deposit and use of fees.

A. All fees collected by the ~~board~~ department or ~~department~~ board ~~in response~~ pursuant to this chapter shall be deposited into ~~a special nonreverting fund known as~~ the Virginia Stormwater Management Fund ~~established by,~~ and shall be used and accounted for as specified in § 10.1-603.4:1 of the Code of Virginia. Fees collected by the department or board shall be exempt from statewide indirect costs charged and collected by the Department of Accounts.

B. All fees collected by a qualifying local program pursuant to this chapter shall be subject to accounting review and shall be used solely to carry out the qualifying local program's responsibilities pursuant to Part II and Part III A of this chapter.

~~Whenever~~ Pursuant to subdivision 5 a of § 10.1-603.4 of the Code of Virginia, whenever the board has ~~delegated~~ authorized the administration of a stormwater management program ~~to~~ by a ~~locality or is required to do so by the Act~~ qualifying local program, ~~no more than 30%~~ 28% of the total revenue generated by the statewide stormwater management fees collected within the locality in accordance with 4VAC50-60-820 shall be remitted on a monthly basis to the State Treasurer for deposit in the Virginia Stormwater Management Fund unless otherwise collected electronically. If the qualifying local program waives or reduces any fee due in accordance with 4VAC50-60-820, the qualifying local program shall remit the 28% portion that would be due to the Virginia Stormwater Management Fund if such fee were charged in full. [Any fee increases established by the qualifying local program beyond the base fees established in this part shall not be subject to the fee distribution formula.]

4VAC50-60-790. General.

~~Each permit application for a new permit each permit application for reissuance of a permit, each permit application for major modification of a permit, and each revocation and reissuance of a permit is a~~ The fees for individual permits, general permit coverage, permit or registration statement modification, or permit transfers are considered separate ~~action~~ actions and shall be assessed a separate fee, as applicable. ~~The fees for each type of permit that the permit-issuing authority has the authority to issue, reissue or modify will be as specified in this part.~~

4VAC50-60-800. Fee schedules for VSMP Municipal Separate Storm Sewer System new permit issuance.

The following fee schedule applies to permit applications for issuance of a new individual VSMP Municipal Separate Storm Sewer System permit or coverage under a MS4 General Permit. All regulated MS4s that apply for joint coverage under an individual permit or general permit registration shall each pay the appropriate fees set out below.

VSMP Municipal Stormwater / MS4 Individual (Large and Medium)	~~$21,300~~ $16,000
VSMP Municipal Stormwater / MS4 Individual (Small)	~~$2,000~~ $8,000
VSMP Municipal Stormwater / MS4 General Permit (Small)	~~$600~~ $4,000

4VAC50-60-810. Fee schedules for major modification of MS4 individual permits ~~or certificates~~ requested by the ~~permitee~~ operator.

The following fee ~~schedules apply~~ schedule applies to applications for major modification of an individual MS4 permit requested by the permittee:

~~The permit application fees listed in the table below apply to a major modification of a VSMP Municipal Separate Storm Sewer Systems Permit that occurs (and becomes effective) before the stated permit expiration date.~~

VSMP Municipal Stormwater / MS4 Individual (Large and Medium)	~~$10,650~~ $5,000
VSMP Municipal Stormwater / MS4 Individual (Small)	~~$1,000~~ $2,500

4VAC50-60-820. Fees for ~~filing permit applications (registration statements) for general permits issued by the permit-issuing authority~~ an individual permit or coverage under the General Permit for Discharges of Stormwater from Construction Activities.

The following fees apply to ~~filing of permit applications (registration statements) for all general permits issued by the permit-issuing authority, except VSMP Stormwater Construction General Permits~~ coverage under the General Permit for Discharges of Stormwater from Construction Activities issued by the department prior to a qualifying local program or a department-administered local stormwater management program being approved by the board in the area where the applicable land-disturbing activity is located, or where the department has issued an individual permit or coverage under the General Permit for Discharges of Stormwater from Construction Activities for a state [or federal] agency for which it has approved annual standards and specifications.

~~The fee for filing a permit application (registration statement) for coverage under a VSMP stormwater general permit issued by the permit-issuing authority shall be:~~

VSMP General / Stormwater Management - Phase I Land Clearing ("Large" Construction Activity - Sites or common plans of development equal to or greater than ~~5~~ five acres)	$500
VSMP General / Stormwater Management - Phase II Land Clearing ("Small" Construction Activity - Sites or common plans of development equal to or greater than ~~1~~ one acre and less than ~~5~~ five acres	$300
VSMP General / Stormwater Management - Small Construction Activity/Land Clearing (Sites within designated areas of Chesapeake Bay Act localities with land disturbance acreage equal to or greater than 2,500 square feet and less than one acre)	$200

The following fees apply to coverage under the General Permit for Discharges of Stormwater from Construction Activities for a state [or federal] agency that does not file annual standards and specifications, an individual permit issued by the board or coverage under the General Permit for Discharges of Stormwater from Construction Activities issued by a qualifying local program, or a department-administered local stormwater management program that has been approved by the board. For coverage under the General Permit for Discharges of Stormwater from Construction Activities, [no more than] 50% of the [base] fee [set out in this part] shall be due at the time that a stormwater management plan or an initial stormwater management plan is submitted for review in accordance with 4VAC50-60-108. The remaining [~~50%~~ base fee balance] shall be due prior to the issuance of coverage under the General Permit for Discharges of Stormwater from Construction Activities.

When a site or sites are purchased for development within a previously permitted common plan of development or sale, the applicant shall be subject to fees in accordance with the disturbed acreage of their site or sites according to the following table.

VSMP General / Stormwater Management - Small Construction Activity/Land Clearing (Sites within designated areas of Chesapeake Bay Act localities with land-disturbance acreage equal to or greater than 2,500 square feet and less than 0.5 acre)	$290
VSMP General / Stormwater Management - Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land-disturbance acreage less than one acre)	$290
VSMP General / Stormwater Management - Small Construction Activity/Land Clearing (Sites within designated areas of Chesapeake Bay Act localities with land-disturbance acreage equal to or greater than 0.5 acre and less than one acre)	$1,500
VSMP General / Stormwater Management - Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than one acre and less than five acres)	$2,700
VSMP General / Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than five acres and less than 10 acres)	$3,400
VSMP General / Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 10 acres and less than 50 acres)	$4,500
VSMP General / Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 50 acres and less than 100 acres)	$6,100
VSMP General / Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 100 acres)	$9,600
VSMP Individual Permit for Discharges of Stormwater From Construction Activities	$15,000

4VAC50-60-825. Fees for the modification or transfer of individual permits or of registration statements for the General Permit for Discharges of Stormwater from Construction Activities.

The following fees apply to modification or transfer of individual permits or of registration statements for the General Permit for Discharges of Stormwater from Construction Activities issued by a qualifying local program or a department-administered local stormwater management program that has been approved by the board. If the permit modifications result in changes to stormwater management plans that require additional review by the local stormwater management program, such reviews shall be subject to the fees set out in this section. The fee assessed shall be based on the total disturbed acreage of the site. [In addition to the permit modification fee, modifications resulting in an increase in total disturbed acreage shall pay the difference in the initial permit fee paid and the permit fee that would have applied for the total disturbed acreage in 4VAC50-60-820.] No modification or transfer fee shall be required until such board-approved programs exist. No modification fee shall be required for the General Permit for Discharges of Stormwater from Construction Activities for a state [or federal] agency that is administering a project in accordance with approved annual standards and specifications but shall apply to all other state [or federal] agency projects.

VSMP General / Stormwater Management – Small Construction Activity/Land Clearing (Sites within designated areas of Chesapeake Bay Act localities with land-disturbance acreage equal to or greater than 2,500 square feet and less than 0.5 acre)	$20
VSMP General / Stormwater Management – Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land disturbance acreage less than one acre)	$20
VSMP General / Stormwater Management – Small Construction Activity/Land Clearing (Sites within designated areas of Chesapeake Bay Act localities with land-disturbance acreage equal to or greater than 0.5 acre and less than one acre)	$100

VSMP General / Stormwater Management – Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than one and less than five acres)	$200
VSMP General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than five acres and less than 10 acres)	$250
VSMP General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 10 acres and less than 50 acres)	$300
VSMP General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 50 acres and less than 100 acres)	$450
VSMP General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 100 acres)	$700
VSMP Individual Permit for Discharges of Stormwater From Construction Activities	$5,000

4VAC50-60-830. Permit maintenance fees.

~~A.~~ The following annual permit maintenance fees apply to each VSMP permit identified below, including expired permits that have been administratively continued~~:~~. With respect to the General Permit for Discharges of Stormwater from Construction Activities, these fees shall apply until the permit coverage is terminated, and shall only be effective when assessed by a qualifying local program or a department-administered local stormwater management program that has been approved by the board. No maintenance fee shall be required for a General Permit for Discharges of Stormwater from Construction Activities until such board approved programs exist. No maintenance fee shall be required for the General Permit for Discharges of Stormwater from Construction Activities for a state [or federal] agency that is administering a project in accordance with approved annual standards and specifications but shall apply to all other state [or federal] agency projects. All regulated MS4s who are issued joint coverage under an individual permit or general permit registration shall each pay the appropriate fees set out below:

VSMP Municipal Stormwater / MS4 Individual (Large and Medium)	~~$3,800~~ $8,800
VSMP Municipal Stormwater / MS4 Individual (Small)	~~$400~~ $6,000
VSMP Municipal Stormwater / MS4 General Permit (Small)	[~~$4,000~~ $3,000]
~~VSMP General / Stormwater Management - Phase I Land Clearing ("Large" Construction Activity - Sites or common plans of development equal to or greater than 5 acres)~~	~~$0~~
~~VSMP General / Stormwater Management - Phase II Land Clearing ("Small" Construction Activity - Sites or common plans of development equal to or greater than 1 acre and less than 5 Acres)~~	~~$0~~
VSMP General / Stormwater Management – Small Construction Activity/Land Clearing (Sites within designated areas of Chesapeake Bay Act localities with land-disturbance acreage equal to or greater than 2,500 square feet and less than 0.5 acre)	$50
VSMP General / Stormwater Management – Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land-disturbance acreage less than one acre)	$50
VSMP General / Stormwater Management – Small Construction Activity/Land Clearing (Sites within designated areas of Chesapeake Bay Act localities with land-disturbance acreage equal to or greater than 0.5 acre and less than one acre)	$200

VSMP General / Stormwater Management – Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance equal to or greater than one acre and less than five acres)	$400
VSMP General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than five acres and less than 10 acres)	$500
VSMP General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 10 acres and less than 50 acres)	$650
VSMP General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 50 acres and less than 100 acres)	$900
VSMP General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater 100 acres)	$1,400
VSMP Individual Permit for Discharges [~~From~~ from] Construction Activities	$3,000

~~B. An additional permit maintenance fee of $1,000 shall be paid annually by permittees in a toxics management program. Any facility that performs acute or chronic biological testing for compliance with a limit or special condition requiring monitoring in a VPDES permit is included in the toxics management program.~~

4VAC50-60-840. [[Reserved.] ~~Annual increase in fees.~~]

~~The fees set out in 4VAC50-60-800 through 4VAC50-60-830 shall be increased each July 1 by multiplying the fee by the percentage by which the consumer price index for all urban consumers published by the United States Department of Labor (CPI-U) for the 12-month period ending May 31 of the preceding year exceeds the CPI-U for the 12-month period ending May 31, 2007, and the result shall be rounded to the nearest $1 increment. The fee schedule shall be posted to the department's website and distributed to each qualified local program in advance of each fiscal year. Notwithstanding the foregoing, in no event shall the permit fee be decreased and in no event shall any increase exceed 4.0% per annum without formal action by the board.~~]

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

FORMS (4VAC50-60)

Application Form 1-General Information, Consolidated Permits Program, EPA Form 3510-1, DCR 199-149 (August 1990).

Department of Conservation and Recreation Permit Fee Form, DCR 199-145 ~~(03/09)~~ [~~(9/08)~~ (10/09)] .

VSMP General Permit for Discharges of Stormwater from Construction Activities (VAR10) - Registration Statement, DCR 199-146 (03/09).

VSMP General Permit Notice of Termination - Construction Activity Stormwater Discharges (VAR10), DCR 199-147 (03/09).

VSMP General Permit for Discharges of Stormwater from Construction Activities (VAR10) - Transfer Agreement, DCR199-191 (03/09).

VSMP General Permit Registration Statement for Stormwater Discharges From Small Municipal Separate Storm Sewer Systems (VAR04), DCR 199-148 (07/08).

DCR
Department of Conservation & Recreation
CONSERVING VIRGINIA'S NATURAL & RECREATIONAL RESOURCES

DEPARTMENT OF CONSERVATION AND RECREATION PERMIT FEE FORM

Instructions:
Applicants for an individual Virginia Stormwater Management Program (VSMP) Permit are required to pay permit application fees. Fees are also required for registration coverage under General Permits. Fees must be paid when applications for permit issuance or modification are submitted. Applications will be considered incomplete if the proper fee is not paid and will not be processed until the fee is received.

The permit fee schedule is included with this form. Fees for permit issuance, reissuance, modification and maintenance are included. Once you have determined the fee for the type of application you are submitting, complete this form. The original copy of the form and your check or money order payable to "Treasurer of Virginia" should be mailed to:

Department of Conservation and Recreation
Division of Finance, Accounts Payable
203 Governor Street, 4th Floor
Richmond, Virginia 23219

A copy of the form and a copy of your check or money order should accompany the permit registration statement (application). You should retain a copy for your records. Please direct any questions regarding this form or fee payment to SWMESquestions@dcr.virginia.gov.

Construction Activity Operator:

Name:_____ FIN:_____

Mailing Address:_____

City:_____ State:_____ Zip:_____ Phone:_____

Daytime Phone Number: (_____) _____ - _____

Name and Location of Construction Activity:

Name:_____

Town, City, or County:_____

Type of VSMP Permit (from Fee Schedule):

_____ MS4 Individual Permit _____ MS4 General Permit

_____ Construction Individual Permit _____ Construction General Permit

Type of Action: _____ New Issuance _____ Reissuance

_____ Modification _____ Maintenance

Amount of Fee Submitted (from Fee Schedule): _____

Existing Permit Number (if applicable): _____

FOR DCR USE ONLY

Date: _____ DC #: _____

(DCR 199-145) (10/09)

DCR
Department of Conservation & Recreation
CONSERVING VIRGINIA'S NATURAL & RECREATIONAL RESOURCES

Virginia Stormwater Management Program (VSMP) Permit Fee Schedule

A. VSMP Individual Permits. Applications for issuance of new individual VSMP permits, and for permittee initiated major modifications that occur (and become effective) before the stated permit expiration date. [NOTE: Individual VSMP permittees pay an Annual Permit Maintenance Fee instead of a reapplication fee. The permittee is billed separately by DCR for the Annual Permit Maintenance Fee.]

TYPE OF VSMP PERMIT	ISSUANCE	MODIFICATION
Municipal Stormwater / MS4 Individual (Large and Medium)	$16,000	$5,000
Municipal Stormwater / MS4 Individual (Small)	$8,000	$2,500
Construction Stormwater Individual	$15,000	$0

B. Registration Statements for VSMP MS4 General Permit Coverage. The fee for filing a permit application (registration statement) for coverage under a VSMP MS4 stormwater general permit issued by the permit issuing authority is as follows:

TYPE OF VSMP PERMIT	ISSUANCE
Municipal Stormwater / MS4 General Permit (Small)	$4,000

C. Registration Statements for VSMP Construction General Permit Coverage. The fee for filing a permit application (registration statement) for coverage under a VSMP Construction stormwater general permit issued by the permit issuing authority is as follows:

TYPE OF VSMP PERMIT	ISSUANCE
Construction General / Stormwater Management - Phase I Land Clearing ("Large" Construction Activity - Sites or common plans of development or sale equal to or greater than five acres)	$500
Construction General / Stormwater Management - Phase II Land Clearing ("Small" Construction Activity - Sites or common plans of development or sale equal to or greater than one acre and less than five acres)	$300
Construction General / Stormwater Management – Small Construction Activity/Land Clearing (Sites within designated areas of Chesapeake Bay Act localities with land disturbance acreage equal to or greater than 2,500 square feet and less than one acre)	$200

D. Permit Maintenance Fees. The annual permit maintenance fees apply to each VSMP permit identified below, including expired permits that have been administratively continued.

TYPE OF PERMIT	MAINTENANCE
VSMP Municipal Stormwater / MS4 Individual (Large and Medium)	$8,800
VSMP Municipal Stormwater / MS4 Individual (Small)	$6,000
VSMP Municipal Stormwater / MS4 General Permit (Small)	$3,000
VSMP General / Stormwater Management - Phase I Land Clearing ("Large" Construction Activity - Sites or common plans of development equal to or greater than 5 acres)	$0
VSMP General / Stormwater Management - Phase II Land Clearing ("Small" Construction Activity - Sites or common plans of development equal to or greater than 1 acre and less than 5 Acres)	$0
Construction General / Stormwater Management – Small Construction Activity/Land Clearing (Sites within designated areas of Chesapeake Bay Act localities with land disturbance acreage equal to or greater than 2,500 square feet and less than one acre)	$0

(DCR 199-145) (10/09)

VA.R. Doc. No. R06-129; Filed October 7, 2009, 10:12 a.m.

Final Regulation

Title of Regulation: **4VAC50-60. Virginia Stormwater Management Program (VSMP) Permit Regulations (amending 4VAC50-60-10, 4VAC50-60-20, 4VAC50-60-30, 4VAC50-60-40; adding 4VAC50-60-45, 4VAC50-60-48, 4VAC50-60-53, 4VAC50-60-56, 4VAC50-60-63, 4VAC50-60-65, 4VAC50-60-66, 4VAC50-60-69, 4VAC50-60-72, 4VAC50-60-74, 4VAC50-60-76, 4VAC50-60-85, 4VAC50-60-92, 4VAC50-60-93, 4VAC50-60-94, 4VAC50-60-95, 4VAC50-60-96, 4VAC50-60-97, 4VAC50-60-98, 4VAC50-60-99, 4VAC50-60-102, 4VAC50-60-104, 4VAC50-60-106, 4VAC50-60-108, 4VAC50-60-112, 4VAC50-60-114, 4VAC50-60-116, 4VAC50-60-118, 4VAC50-60-122, 4VAC50-60-124, 4VAC50-60-126, 4VAC50-60-128, 4VAC50-60-132, 4VAC50-60-134, 4VAC50-60-136, 4VAC50-60-138, 4VAC50-60-142, 4VAC50-60-154, 4VAC50-60-156, 4VAC50-60-157, 4VAC50-60-158, 4VAC50-60-159; repealing 4VAC50-60-50, 4VAC50-60-60, 4VAC50-60-70, 4VAC50-60-80, 4VAC50-60-90, 4VAC50-60-100, 4VAC50-60-110, 4VAC50-60-120, 4VAC50-60-130, 4VAC50-60-140, 4VAC50-60-150).**

Statutory Authority: §§ 10.1-107 and 10.1-603.4 of the Code of Virginia.

Effective Date: Regulatory process suspended (see suspension notice following the regulations).

Agency Contact: David C. Dowling, Policy, Planning, and Budget Director, Department of Conservation and Recreation, 203 Governor Street, Suite 302, Richmond, VA 23219, telephone (804) 786-2291, FAX (804) 786-6141, or email david.dowling@dcr.virginia.gov.

Summary:

This final regulatory action amends the technical criteria applicable to stormwater discharges from construction activities, establishes minimum criteria for locality-administered stormwater management programs (qualifying local programs) and Department of Conservation and Recreation (Department) administered local stormwater management programs, as well as authorization procedures and review procedures for qualifying local programs, and amends the definitions section applicable to all of the Virginia Stormwater Management Program (VSMP) regulations.

The proposed version of the regulations established consistent statewide water quality requirements that included a 0.28 lbs/acre/year phosphorus standard for new development and a requirement that total phosphorus loads be reduced to an amount at least 20% below the predevelopment phosphorus load on prior developed lands. Concerning water quantity, the proposed version specified that stormwater discharged from a site to an unstable channel must be released at or below a "forested" peak flow rate condition. No exceptions to the standard were provided. As described below, the final regulations change these technical standards and provide additional flexibility for small infill sites, redevelopment sites, or sites within urban development areas that was not present in the proposed regulations.

In the final action, with regard to technical criteria applicable to stormwater discharges from construction activities, revised water quality and water quantity requirements are included in Part II A of the regulations (existing technical criteria will now be maintained in a new Part II B that applies to grandfathered projects). These revised technical requirements in Part II A include:

1. A 0.28 lbs/acre/year phosphorus standard for new development greater than or equal to an acre in the Chesapeake Bay watershed and a 0.45 lbs/acre/year phosphorus standard for new development less than one acre (where applicable) and for projects outside of the Chesapeake Bay watershed;

2. A requirement that total phosphorus loads be reduced to an amount at least 20% below the predevelopment phosphorus load on prior developed lands for land-disturbing activities greater than or equal to an acre and 10% for redevelopment sites disturbing less than one acre;

3. Authority for a qualifying local program to establish a phosphorus standard between 0.28 and 0.45 pounds per acre per year within an urban development area designated pursuant to § 15.2-2223.1 of the Code of Virginia in the Chesapeake Bay watershed for projects greater than or equal to one acre in order to encourage smarter growth in accordance with specified factors;

4. A requirement that control measures be installed on a site to meet any applicable wasteload allocation; and

5. Water quantity requirements that include both channel protection and flood protection criteria. In the final version, stormwater that is discharged from a site to an unstable channel must be released at or below a "good pasture" peak flow rate condition unless the pre-developed condition for the site is forest, in which case, the runoff shall be held to the forested condition. Exceptions to the "good pasture" standard are provided to a land-disturbing activity that is less than five acres on prior developed lands; or less than one acre for new development. Under the exceptions, the sites are expected to improve upon the predeveloped runoff condition.

The final regulations also provide five offsite options organized in a new section that may be utilized as specified in the regulation for a developer to achieve the required onsite water quality and where allowed water quantity requirements. One of the new provisions includes a state buy-down option that would be available should local options not be available, where the locality establishes a

phosphorus removal fee in excess of the specified state standard, or where allowed by the locality. The proposed regulations only contained three local options.

The proposed regulations did not contain grandfathering provisions. The final regulations contain a new section on grandfathering that specifies that if the operator of a project has met the three listed local vesting criteria related to significant affirmative governmental acts and has received general permit coverage by July 1, 2010, then the project is grandfathered under today's water quality and quantity technical standards (Part II B) until June 30, 2014. If permit coverage is maintained by the operator, then the project will remain grandfathered until June 30, 2019. It also notes that past June 30, 2019, or if a project's general permit coverage is not maintained, portions of the project not yet completed shall become subject to the new technical criteria set out in Part II A.

This final action would also establish the minimum criteria and ordinance requirements (where applicable) for a Virginia Soil and Water Conservation Board (board) authorized qualifying local program (Part III A) or for a board-authorized, department-administered local stormwater management program (Part III B,) which include but are not limited to, administration, plan review, issuance of coverage under the General Virginia Stormwater Management Program (VSMP) Permit for Discharges of Stormwater from Construction Activities, inspection, enforcement, reporting, and recordkeeping. Part III D establishes the procedures the board will utilize in authorizing a locality to administer a qualifying local program. Part III C establishes the criteria the department will utilize in reviewing a locality's administration of a qualifying local program.

The primary issue in Part III that changed between the proposed and final regulations is that, in the final regulations, language was added that specified that stormwater management facilities designed to treat stormwater runoff solely from an individual lot, at the qualifying program's discretion, are not subject to the locality inspection requirements (once every five years), homeowner inspection requirements, maintenance agreement requirements, or construction record drawing requirements. Instead a qualifying local program is authorized to develop a strategy for addressing maintenance of stormwater management facilities located on and designed to treat stormwater runoff from an individual residential lot. Such a strategy may include periodic inspections, public outreach and education, or other method targeted at promoting the long-term maintenance of such facilities.

Finally, this action would make changes to definitions in Part I, which is applicable to the full body of the VSMP regulations. Unnecessary definitions are deleted, needed definitions are added, and many existing definitions are updated. In the final action, several additional definitions were added and other minor refinements made to address comments received.

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 I
Definitions, Purpose, and Applicability

4VAC50-60-10. Definitions.

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

"Act" means the Virginia Stormwater Management Act, Article 1.1 (§ 10.1-603.1 et seq.) of Chapter 6 of Title 10.1 of the Code of Virginia.

"Adequate channel" means a ~~channel~~ watercourse [~~or wetland~~] that will convey the designated frequency storm event without overtopping ~~the channel bank nor~~ its banks or causing erosive damage to the ~~channel~~ bed ~~or~~, banks, or overbank sections of the same. [A wetland may be considered an adequate channel provided the discharge from the designated frequency storm event does not cause erosion in the wetland.]

"Administrator" means the Administrator of the United States Environmental Protection Agency or an authorized representative.

"Applicable standards and limitations" means all state, interstate, and federal standards and limitations to which a discharge or a related activity is subject under the Clean Water Act (CWA) (33 USC § 1251 et seq.) and the Act, including effluent limitations, water quality standards, standards of performance, toxic effluent standards or prohibitions, best management practices, and standards for sewage sludge use or disposal under §§ 301, 302, 303, 304, 306, 307, 308, 403 and 405 of CWA.

"Approval authority" means the Virginia Soil and Water Conservation Board or [~~their~~ its] designee.

"Approved program" or "approved state" means a state or interstate program that has been approved or authorized by EPA under 40 CFR Part 123 (2000).

~~"Aquatic bench" means a 10- to 15-foot wide bench around the inside perimeter of a permanent pool that ranges in depth from zero to 12 inches. Vegetated with emergent plants, the bench augments pollutant removal, provides habitats, conceals trash and water level fluctuations, and enhances safety.~~

~~"Average land cover condition" means a measure of the average amount of impervious surfaces within a watershed, assumed to be 16%. Note that a locality may opt to calculate actual watershed specific values for the average land cover condition based upon 4VAC50-60-110.~~

"Average monthly discharge limitation" means the highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.

"Average weekly discharge limitation" means the highest allowable average of daily discharges over a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week.

"Best management practice ~~(BMP)~~" or "BMP" means schedules of activities, prohibitions of practices, including both structural and nonstructural practices, maintenance procedures, and other management practices to prevent or reduce the pollution of surface waters and groundwater systems from the impacts of land-disturbing activities.

~~"Bioretention basin" means a water quality BMP engineered to filter the water quality volume through an engineered planting bed, consisting of a vegetated surface layer (vegetation, mulch, ground cover), planting soil, and sand bed, and into the in situ material.~~

~~"Bioretention filter" means a bioretention basin with the addition of a sand filter collector pipe system beneath the planting bed.~~

"Board" means the Virginia Soil and Water Conservation Board.

"Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

"Channel" means a natural stream or manmade ~~waterway~~ watercourse with defined bed and banks that conducts continuously or periodically flowing water.

["Chesapeake Bay watershed" means all land areas draining to the following Virginia river basins: Potomac River Basin, James River Basin, Rappahannock River Basin, Chesapeake Bay and small coastal basins, and York River Basin.]

"Common plan of development or sale" means a contiguous area where separate and distinct construction activities may be taking place at different times on different schedules.

~~"Constructed wetlands" means areas intentionally designed and created to emulate the water quality improvement function of wetlands for the primary purpose of removing pollutants from stormwater.~~

"Comprehensive stormwater management plan" means a plan, which may be integrated with other land use plans or regulations, that specifies how the water quality [~~and~~ components,] quantity components [, or both] of stormwater are to be managed on the basis of an entire watershed or a portion thereof. The plan may also provide for the remediation of erosion, flooding, and water quality and quantity problems caused by prior development.

"Construction activity" means any clearing, grading or excavation associated with large construction activity or associated with small construction activity.

"Contiguous zone" means the entire zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone (37 FR 11906 June 15, 1972).

"Continuous discharge" means a discharge which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

"Control measure" means any BMP, stormwater facility, or other method used to minimize the discharge of pollutants to state waters.

"Co-operator" means an operator ~~to~~ of a VSMP permit that is only responsible for permit conditions relating to the discharge for which it is the operator.

"Clean Water Act" or "CWA" means the federal Clean Water Act (33 USC § 1251 et seq.), formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 96-483, and Public Law 97-117, or any subsequent revisions thereto.

"CWA and regulations" means the Clean Water Act (CWA) and applicable regulations published in the Code of Federal Regulations promulgated thereunder. For the purposes of this chapter, it includes state program requirements.

"Daily discharge" means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.

"Department" means the Department of Conservation and Recreation.

"Development" means ~~a tract of land developed or to be developed as a unit under single ownership or unified control which is to be used for any business or industrial purpose or is to contain three or more residential dwelling units~~ land disturbance and the resulting landform associated with the

construction of residential, commercial, industrial, institutional, recreation, transportation, or utility facilities or structures [or the clearing of land for nonagricultural or nonsilvicultural purposes].

"Direct discharge" means the discharge of a pollutant.

"Director" means the Director of the Department of Conservation and Recreation or his designee.

"Discharge," when used without qualification, means the discharge of a pollutant.

"Discharge of a pollutant" means:

1. Any addition of any pollutant or combination of pollutants to state waters from any point source; or

2. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.

This definition includes additions of pollutants into surface waters from: surface runoff that is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other person that do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any indirect discharger.

"Discharge Monitoring Report" or "DMR" means the form supplied by the department, or an equivalent form developed by the operator and approved by the board, for the reporting of self-monitoring results by operators.

"Draft permit" means a document indicating the board's tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a permit. A notice of intent to terminate a permit, and a notice of intent to deny a permit are types of draft permits. A denial of a request for modification, revocation and reissuance, or termination is not a draft permit. A proposed permit is not a draft permit.

"Drainage area" means a land [~~and~~ area,] water area [~~on a land-disturbing site~~, or both] from which runoff flows to a common [~~outlet~~] point.

"Effluent limitation" means any restriction imposed by the board on quantities, discharge rates, and concentrations of pollutants which are discharged from point sources into surface waters, the waters of the contiguous zone, or the ocean.

"Effluent limitations guidelines" means a regulation published by the administrator under § 304(b) of the CWA to adopt or revise effluent limitations.

"Environmental Protection Agency ~~(EPA)~~" or "EPA" means the United States Environmental Protection Agency.

"Existing permit" means for the purposes of this chapter a permit issued by the permit-issuing authority and currently held by a permit applicant.

"Existing source" means any source that is not a new source or a new discharger.

"Facilities or equipment" means buildings, structures, process or production equipment or machinery that form a permanent part of a new source and that will be used in its operation, if these facilities or equipment are of such value as to represent a substantial commitment to construct. It excludes facilities or equipment used in connection with feasibility, engineering, and design studies regarding the new source or water pollution treatment for the new source.

"Facility or activity" means any VSMP point source or treatment works treating domestic sewage or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the VSMP ~~program~~.

"Flood fringe" is the portion of the floodplain outside the floodway [~~, usually associated with standing rather than flowing water, which is covered by floodwater during the 100-year discharge~~].

"Flooding" means a volume of water that is too great to be confined within the banks or walls of the stream, water body or conveyance system and that overflows onto adjacent lands, thereby causing or threatening damage.

"Floodplain" means any land area adjoining a channel, river, stream, or other water body that is susceptible to being inundated by water. It includes the floodway and flood fringe areas.

"Floodway" means the channel of a river or other watercourse and the adjacent land areas, usually associated with flowing water, that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot or as otherwise designated by the Federal Emergency Management Agency.

"General permit" means a VSMP permit authorizing a category of discharges under the CWA and the Act within a geographical area of the Commonwealth of Virginia.

~~"Grassed swale" means an earthen conveyance system which is broad and shallow with erosion resistant grasses and check dams, engineered to remove pollutants from stormwater runoff by filtration through grass and infiltration into the soil.~~

"Hazardous substance" means any substance designated under the Code of Virginia or 40 CFR Part 116 (2000) pursuant to § 311 of the CWA.

"Hydrologic Unit Code" or "HUC" means a watershed unit established in the most recent version of Virginia's 6th Order National Watershed Boundary Dataset.

"Illicit discharge" means any discharge to a municipal separate storm sewer that is not composed entirely of stormwater, except discharges pursuant to a VPDES or VSMP permit (other than the VSMP permit for discharges from the municipal separate storm sewer), discharges resulting from fire fighting activities, and discharges identified by and in compliance with 4VAC50-60-1220 C 2.

"Impervious cover" means a surface composed of any material that significantly impedes or prevents natural infiltration of water into soil. Impervious surfaces include, but are not limited to, conventional roofs, buildings, streets, parking areas, and any conventional concrete, asphalt, or ~~compacted~~ gravel surface that is or may become compacted.

"Incorporated place" means a city, town, township, or village that is incorporated under the Code of Virginia.

"Indian country" means (i) all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; (ii) all dependent Indian communities with the borders of the United States whether within the originally or subsequently acquired territory thereof, and whether within or without the limits of a state; and (iii) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

"Indirect discharger" means a nondomestic discharger introducing "pollutants" to a "publicly owned treatment works (POTW)."

~~"Infiltration facility" means a stormwater management facility that temporarily impounds runoff and discharges it via infiltration through the surrounding soil. While an infiltration facility may also be equipped with an outlet structure to discharge impounded runoff, such discharge is normally reserved for overflow and other emergency conditions. Since an infiltration facility impounds runoff only temporarily, it is normally dry during nonrainfall periods. Infiltration basin, infiltration trench, infiltration dry well, and porous pavement shall be considered infiltration facilities.~~

"Inspection" means an on-site review of the project's compliance with the permit, the local stormwater management program, and any applicable design criteria, or an on-site review to obtain information or conduct surveys or investigations necessary in the enforcement of the Act and this chapter.

"Interstate agency" means an agency of two or more states established by or under an agreement or compact approved by Congress, or any other agency of two or more states having substantial powers or duties pertaining to the control of pollution as determined and approved by the administrator under the CWA and regulations.

["Karst area" means any land area predominantly underlain at the surface or shallow subsurface by limestone, dolomite, or other soluble bedrock regardless of any obvious surface karst features.]

"Karst features" means sinkholes, sinking and losing streams, caves, large flow springs, and other such landscape features found in karst areas.

"Land disturbance" or "land-disturbing activity" means a manmade change to the land surface that potentially changes its runoff characteristics including any clearing, grading, or excavation associated with a construction activity regulated pursuant to the ~~federal Clean Water Act~~ CWA, the Act, and this chapter.

"Large construction activity" means construction activity including clearing, grading and excavation, except operations that result in the disturbance of less than five acres of total land area. Large construction activity also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more.

"Large municipal separate storm sewer system" means all municipal separate storm sewers that are either:

1. Located in an incorporated place with a population of 250,000 or more as determined by the 1990 decennial census by the Bureau of Census (40 CFR Part 122 Appendix F (2000));

2. Located in the counties listed in 40 CFR Part 122 Appendix H (2000), except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties;

3. Owned or operated by a municipality other than those described in subdivision 1 or 2 of this definition and that are designated by the board as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under subdivision 1 or 2 of this definition. In making this determination the board may consider the following factors:

a. Physical interconnections between the municipal separate storm sewers;

b. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in subdivision 1 of this definition;

c. The quantity and nature of pollutants discharged to surface waters;

d. The nature of the receiving surface waters; and

e. Other relevant factors.

4. The board may, upon petition, designate as a large municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a stormwater management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in this definition.

"Linear development project" means a land-disturbing activity that is linear in nature such as, but not limited to, (i) the construction of electric and telephone utility lines, and natural gas pipelines; (ii) construction of tracks, rights-of-way, bridges, communication facilities and other related structures of a railroad company; (iii) highway construction projects [~~and~~ ~~;~~] (iv) construction of stormwater channels and stream restoration activities [; and (v) water and sewer lines]. Private subdivision roads or streets shall not be considered linear development projects.

"Local stormwater management program" or "local program" means ~~a statement of~~ the various methods employed by a locality or the department to manage the quality and quantity of runoff resulting from land-disturbing activities and shall include such items as local ordinances, permit requirements, policies and guidelines, technical materials, plan review, inspection, enforcement, and evaluation consistent with the Act and this chapter. ~~The ordinance shall include provisions to require the control of after-development stormwater runoff rate of flow, the proper maintenance of stormwater management facilities, and minimum administrative procedures.~~

"Locality" means a county, city, or town.

"Major facility" means any VSMP facility or activity classified as such by the regional administrator in conjunction with the board.

"Major modification" means, for the purposes of this chapter, the modification or amendment of an existing permit before its expiration that is not a minor modification as defined in this regulation.

"Major municipal separate storm sewer outfall ~~(or major outfall)~~" or "major outfall" means a municipal separate storm sewer outfall that discharges from a single pipe with an inside diameter of 36 inches or more or its equivalent (discharge from a single conveyance other than circular pipe which is associated with a drainage area of more than 50 acres); or for municipal separate storm sewers that receive stormwater from lands zoned for industrial activity (based on comprehensive zoning plans or the equivalent), with an outfall that discharges from a single pipe with an inside diameter of 12 inches or more or from its equivalent (discharge from other than a circular pipe associated with a drainage area of two acres or more).

"Manmade" means constructed by man.

"Manmade stormwater conveyance system" means a pipe, ditch, vegetated swale, or other conveyance constructed by man.

"Maximum daily discharge limitation" means the highest allowable daily discharge.

"Maximum extent practicable" or "MEP" means the technology-based discharge standard for municipal separate storm sewer systems established by CWA § 402(p). MEP is achieved, in part, by selecting and implementing effective structural and nonstructural best management practices (BMPs) and rejecting ineffective BMPs and replacing them with effective best management practices (BMPs). MEP is an iterative standard, which evolves over time as urban runoff management knowledge increases. As such, the operator's MS4 program must continually be assessed and modified to incorporate improved programs, control measures, BMPs, etc., to attain compliance with water quality standards.

"Medium municipal separate storm sewer system" means all municipal separate storm sewers that are either:

1. Located in an incorporated place with a population of 100,000 or more but less than 250,000 as determined by the 1990 decennial census by the Bureau of Census (40 CFR Part 122 Appendix G (2000));

2. Located in the counties listed in 40 CFR Part 122 Appendix I (2000), except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties;

3. Owned or operated by a municipality other than those described in subdivision 1 or 2 of this definition and that are designated by the board as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under subdivision 1 or 2 of this definition. In making this determination the board may consider the following factors:

a. Physical interconnections between the municipal separate storm sewers;

b. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in subdivision 1 of this definition;

c. The quantity and nature of pollutants discharged to surface waters;

d. The nature of the receiving surface waters; or

e. Other relevant factors.

4. The board may, upon petition, designate as a medium municipal separate storm sewer system, municipal separate

storm sewers located within the boundaries of a region defined by a stormwater management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in subdivisions 1, 2 and 3 of this definition.

"Minor modification" means, for the purposes of this chapter, minor modification or amendment of an existing permit before its expiration for the reasons listed at 40 CFR 122.63 and as specified in 4VAC50-60-640. Minor modification for the purposes of this chapter also means other modifications and amendments not requiring extensive review and evaluation including, but not limited to, changes in EPA promulgated test protocols, increasing monitoring frequency requirements, changes in sampling locations, and changes to compliance dates within the overall compliance schedules. A minor permit modification or amendment does not substantially alter permit conditions, substantially increase or decrease the amount of surface water impacts, increase the size of the operation, or reduce the capacity of the facility to protect human health or the environment.

"Municipal separate storm sewer" means a conveyance or system of conveyances otherwise known as a municipal separate storm sewer system, including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains:

1. Owned or operated by a federal, state, city, town, county, district, association, or other public body, created by or pursuant to state law, having jurisdiction or delegated authority for erosion and sediment control and stormwater management, or a designated and approved management agency under § 208 of the CWA that discharges to surface waters;

2. Designed or used for collecting or conveying stormwater;

3. That is not a combined sewer; and

4. That is not part of a publicly owned treatment works.

"Municipal separate storm sewer system" or "MS4" means all separate storm sewers that are defined as "large" or "medium" or "small" municipal separate storm sewer systems or designated under 4VAC50-60-380 A 1.

"Municipal Separate Storm Sewer System Management Program" or "MS4 Program" means a management program covering the duration of a permit for a municipal separate storm sewer system that includes a comprehensive planning process that involves public participation and intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the CWA and regulations and the ~~Virginia Stormwater Management~~ Act and attendant regulations, using management practices, control techniques, and system, design and engineering methods, and such other provisions that are appropriate.

"Municipality" means a city, town, county, district, association, or other public body created by or under state law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under § 208 of the CWA.

"National Pollutant Discharge Elimination System ~~(NPDES)~~" or "NPDES" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements under §§ 307, 402, 318, and 405 of the CWA. The term includes an approved program.

"Natural channel design concepts" means the utilization of engineering analysis and fluvial geomorphic processes to create, rehabilitate, restore, or stabilize an open conveyance system for the purpose of creating or recreating a stream that conveys its bankfull storm event within its banks and allows larger flows to access its floodplain.

"Natural stormwater conveyance system" means the main channel of a natural stream, in combination with the floodway and flood fringe, which compose the floodplain.

"Natural stream" means a tidal or nontidal watercourse that is part of the natural topography. It usually maintains a continuous or seasonal flow during the year and is characterized as being irregular in cross-section with a meandering course. Constructed channels such as drainage ditches or swales shall not be considered natural streams [; however, channels designed utilizing natural channel design concepts may be considered natural streams].

"New discharger" means any building, structure, facility, or installation:

1. From which there is or may be a discharge of pollutants;

2. That did not commence the discharge of pollutants at a particular site prior to August 13, 1979;

3. Which is not a new source; and

4. Which has never received a finally effective VPDES or VSMP permit for discharges at that site.

This definition includes an indirect discharger that commences discharging into surface waters after August 13, 1979. It also includes any existing mobile point source (other than an offshore or coastal oil and gas exploratory drilling rig or a coastal oil and gas developmental drilling rig) such as a seafood processing rig, seafood processing vessel, or aggregate plant, that begins discharging at a site for which it does not have a permit; and any offshore or coastal mobile oil and gas exploratory drilling rig or coastal mobile oil and gas

developmental drilling rig that commences the discharge of pollutants after August 13, 1979.

"New permit" means, for the purposes of this chapter, a permit issued by the permit-issuing authority to a permit applicant that does not currently hold and has never held a permit of that type, for that activity, at that location.

"New source," means any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

1. After promulgation of standards of performance under § 306 of the CWA that are applicable to such source; or

2. After proposal of standards of performance in accordance with § 306 of the CWA that are applicable to such source, but only if the standards are promulgated in accordance with § 306 of the CWA within 120 days of their proposal.

"Nonpoint source pollution" means pollution such as sediment, nitrogen and phosphorous, hydrocarbons, heavy metals, and toxics whose sources cannot be pinpointed but rather are washed from the land surface in a diffuse manner by stormwater runoff.

~~"Nonpoint source pollutant runoff load" or "pollutant discharge" means the average amount of a particular pollutant measured in pounds per year, delivered in a diffuse manner by stormwater runoff.~~

"Operator" means the owner or operator of any facility or activity subject to the VSMP permit regulation. In the context of stormwater associated with a large or small construction activity, operator means any person associated with a construction project that meets either of the following two criteria: (i) the person has direct operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications or (ii) the person has day-to-day operational control of those activities at a project that are necessary to ensure compliance with a stormwater pollution prevention plan for the site or other permit conditions (i.e., they are authorized to direct workers at a site to carry out activities required by the stormwater pollution prevention plan or comply with other permit conditions). In the context of stormwater discharges from Municipal Separate Storm Sewer Systems (MS4s), operator means the operator of the regulated MS4 system.

"Outfall" means, when used in reference to municipal separate storm sewers, a point source at the point where a municipal separate storm sewer discharges to surface waters and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other surface waters and are used to convey surface waters.

"Overburden" means any material of any nature, consolidated or unconsolidated, that overlies a mineral deposit, excluding topsoil or similar naturally occurring surface materials that are not disturbed by mining operations.

"Owner" means the Commonwealth or any of its political subdivisions including, but not limited to, sanitation district commissions and authorities, and any public or private institution, corporation, association, firm or company organized or existing under the laws of this or any other state or country, or any officer or agency of the United States, or any person or group of persons acting individually or as a group that owns, operates, charters, rents, or otherwise exercises control over or is responsible for any actual or potential discharge of sewage, industrial wastes, or other wastes or pollutants to state waters, or any facility or operation that has the capability to alter the physical, chemical, or biological properties of state waters in contravention of § 62.1-44.5 of the Code of Virginia, the Act and this chapter.

"Peak flow rate" means the maximum instantaneous flow from a prescribed design storm at a particular location.

"Percent impervious" means the impervious area within the site divided by the area of the site multiplied by 100.

"Permit" means an approval issued by the permit-issuing authority for the initiation of a land-disturbing activity or for stormwater discharges from an MS4. Permit does not include any permit that has not yet been the subject of final permit-issuing authority action, such as a draft permit or a proposed permit.

"Permit-issuing authority" means the board, the department, or a locality ~~that is delegated authority by the board to issue, deny, revoke, terminate, or amend stormwater permits under the provisions of the Act and this chapter~~ with a qualifying local program.

"Permittee" means the person or locality to which the permit is issued, including any owner or operator whose construction site is covered under a construction general permit.

"Person" means any individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, governmental body (including but not limited to a federal, state, or local entity), any interstate body or any other legal entity.

"Planning area" means a designated portion of the parcel on which the land development project is located. Planning areas shall be established by delineation on a master plan. Once established, planning areas shall be applied consistently for all future projects.

"Point of discharge" means a location at which [concentrated] stormwater runoff is released.

"Point source" means any discernible, confined, and discrete conveyance including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container,

rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel, or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural stormwater runoff.

"Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean:

1. Sewage from vessels; or

2. Water, gas, or other material that is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well if the well used either to facilitate production or for disposal purposes is approved by the board and if the board determines that the injection or disposal will not result in the degradation of ground or surface water resources.

"Pollutant discharge" means the average amount of a particular pollutant measured in pounds per year or other standard reportable unit as appropriate, delivered [~~in a diffuse manner~~] by stormwater runoff.

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

~~"Post-development"~~ "Postdevelopment" refers to conditions that reasonably may be expected or anticipated to exist after completion of the land development activity on a specific site or tract of land.

~~"Pre-development"~~ "Predevelopment" refers to the conditions that exist at the time that plans for the land development of a tract of land are ~~approved by~~ submitted to the plan approval authority. Where phased development or plan approval occurs (preliminary grading, [demolition of existing structures,] roads and utilities, etc.), the existing conditions at the time prior to the first item being ~~approved or permitted~~ submitted shall establish ~~pre-development~~ predevelopment conditions.

"Prior developed lands" means land that has been previously utilized for residential, commercial, industrial, institutional, recreation, transportation or utility facilities or structures, and that will have the impervious areas associated with those uses altered during a land-disturbing activity.

"Privately owned treatment works ~~(PVOTW)~~" or "PVOTW" means any device or system that is (i) used to treat wastes from any facility whose operator is not the operator of the treatment works and (ii) not a POTW.

"Proposed permit" means a VSMP permit prepared after the close of the public comment period (and, when applicable, any public hearing and administrative appeals) that is sent to EPA for review before final issuance. A proposed permit is not a draft permit.

"Publicly owned treatment works ~~(POTW)~~" or "POTW" means a treatment works as defined by § 212 of the CWA that is owned by a state or municipality (as defined by § 502(4) of the CWA). This definition includes any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes, and other conveyances only if they convey wastewater to a POTW treatment plant. The term also means the municipality as defined in § 502(4) of the CWA, that has jurisdiction over the indirect discharges to and the discharges from such a treatment works.

"Qualified personnel" means a licensed professional engineer, responsible land disturber, or other person who holds a certificate of competency from the board in the area of project inspection or combined administrator.

"Qualifying local stormwater management program" or "qualifying local program" means a local program that is administered by a locality that has been authorized by the board to issue coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities (4VAC50-60-1170).

"Recommencing discharger" means a source that recommences discharge after terminating operations.

"Regional administrator" means the Regional Administrator of Region III of the Environmental Protection Agency or the authorized representative of the regional administrator.

~~"Regional (watershed wide) stormwater management facility" or "regional facility" means a facility or series of facilities designed to control stormwater runoff from a~~

~~specific watershed, although only portions of the watershed may experience land development.~~

~~"Regional (watershed wide) stormwater management plan" or "regional plan" means a document containing material describing how runoff from open space, existing development and future planned development areas within a watershed will be controlled by coordinated design and implementation of regional stormwater management facilities.~~

"Restored stormwater conveyance system" means a stormwater conveyance system that has been designed and constructed using natural channel design concepts, including the main channel, floodway, and flood fringe.

"Revoked permit" means, for the purposes of this chapter, an existing permit that is terminated by the board before its expiration.

"Runoff coefficient" means the fraction of total rainfall that will appear at a conveyance as runoff.

"Runoff" or "stormwater runoff" means that portion of precipitation that is discharged across the land surface or through conveyances to one or more waterways.

~~"Sand filter" means a contained bed of sand that acts to filter the first flush of runoff. The runoff is then collected beneath the sand bed and conveyed to an adequate discharge point or infiltrated into the in situ soils.~~

"Runoff characteristics" include [~~, but are not limited to,~~] velocity, peak flow rate, volume, time of concentration, and flow duration, and their influence on channel morphology including sinuosity, channel cross-sectional area, and channel slope.

"Runoff volume" means the volume of water that runs off the site of a land-disturbing activity from a prescribed design storm.

"Schedule of compliance" means a schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with the Act, the CWA and regulations.

"Secretary" means the Secretary of the Army, acting through the Chief of Engineers.

"Severe property damage" means substantial physical damage to property, damage to the treatment facilities that causes them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

~~"Shallow marsh" means a zone within a stormwater extended detention basin that exists from the surface of the normal pool to a depth of six to 18 inches, and has a large surface area and, therefore, requires a reliable source of baseflow, groundwater supply, or a sizeable drainage area, to maintain the desired water surface elevations to support emergent vegetation.~~

"Significant materials" means, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under § 101(14) of CERCLA (42 USC § 9601(14)); any chemical the facility is required to report pursuant to § 313 of Title III of SARA (42 USC § 11023); fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with stormwater discharges.

"Single jurisdiction" means, for the purposes of this chapter, a single county or city. The term county includes incorporated towns which are part of the county.

"Site" means the land or water area where any facility or activity is physically located or conducted, a parcel of land being developed, or a designated ~~planning~~ area of a parcel in which the land development project is located. Areas channelward of mean low water in tidal Virginia shall not be considered part of a site.

"Site hydrology" means the movement of water on, across, through and off the site as determined by parameters including, but not limited to, soil types, soil permeability, vegetative cover, seasonal water tables, slopes, land cover, and impervious cover.

"Small construction activity" means:

1. Construction activities including clearing, grading, and excavating that results in land disturbance of equal to or greater than one acre, or equal to or greater than 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations adopted pursuant to the Chesapeake Bay Preservation Act, and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. The board may waive the otherwise applicable requirements in a general permit for a stormwater discharge from construction activities that disturb less than five acres where stormwater controls are not needed based on a "total maximum daily load" (TMDL) approved or established by EPA that addresses the pollutant(s) of concern or, for nonimpaired waters that do not require TMDLs, an equivalent analysis that determines allocations for small

construction sites for the pollutant(s) of concern or that determines that such allocations are not needed to protect water quality based on consideration of existing in-stream concentrations, expected growth in pollutant contributions from all sources, and a margin of safety. For the purpose of this subdivision, the pollutant(s) of concern include sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the construction activity. The operator must certify to the board that the construction activity will take place, and stormwater discharges will occur, within the drainage area addressed by the TMDL or equivalent analysis.

2. Any other construction activity designated by the either the board or the EPA regional administrator, based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to surface waters.

"Small municipal separate storm sewer system" or "small MS4" means all separate storm sewers that are (i) owned or operated by the United States, a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under § 208 of the CWA that discharges to surface waters and (ii) not defined as "large" or "medium" municipal separate storm sewer systems or designated under 4VAC50-60-380 A 1. This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highway and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

"Source" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants.

"Stable" means, in the context of channels, a channel that has developed an established dimension, pattern, and profile such that over time, these features are maintained.

"State" means the Commonwealth of Virginia.

"State/EPA agreement" means an agreement between the regional administrator and the state that coordinates EPA and state activities, responsibilities and programs including those under the CWA and the Act.

"State project" means any land development project that is undertaken by any state agency, board, commission, authority or any branch of state government, including state-supported institutions of higher learning.

"State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Code of Virginia.

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

"Stormwater" means precipitation that is discharged across the land surface or through conveyances to one or more waterways and that may include stormwater runoff, snow melt runoff, and surface runoff and drainage.

"Stormwater conveyance system" means any of the following, either within or downstream of the land-disturbing activity: (i) a manmade stormwater conveyance system, (ii) a natural stormwater conveyance system, or (iii) a restored stormwater conveyance system.

~~"Stormwater detention basin" or "detention basin" means a stormwater management facility that temporarily impounds runoff and discharges it through a hydraulic outlet structure to a downstream conveyance system. While a certain amount of outflow may also occur via infiltration through the surrounding soil, such amounts are negligible when compared to the outlet structure discharge rates and are, therefore, not considered in the facility's design. Since a detention facility impounds runoff only temporarily, it is normally dry during nonrainfall periods.~~

"Stormwater discharge associated with construction activity" means a discharge of pollutants in stormwater runoff from areas where land-disturbing activities (e.g., clearing, grading, or excavation); construction materials or equipment storage or maintenance (e.g., fill piles, borrow area, concrete truck washout, fueling); or other industrial stormwater directly related to the construction process (e.g., concrete or asphalt batch plants) are located.

"Stormwater discharge associated with large construction activity" means the discharge of stormwater from large construction activities.

"Stormwater discharge associated with small construction activity" means the discharge of stormwater from small construction activities.

~~"Stormwater extended detention basin" or "extended detention basin" means a stormwater management facility that temporarily impounds runoff and discharges it through a hydraulic outlet structure over a specified period of time to a downstream conveyance system for the purpose of water quality enhancement or stream channel erosion control. While a certain amount of outflow may also occur via infiltration through the surrounding soil, such amounts are negligible when compared to the outlet structure discharge rates and, therefore, are not considered in the facility's design. Since an~~

~~extended detention basin impounds runoff only temporarily, it is normally dry during nonrainfall periods.~~

~~"Stormwater extended detention basin enhanced" or "extended detention basin enhanced" means an extended detention basin modified to increase pollutant removal by providing a shallow marsh in the lower stage of the basin.~~

"Stormwater management facility" means a device that controls stormwater runoff and changes the characteristics of that runoff including, but not limited to, the quantity and quality, the period of release or the velocity of flow.

"Stormwater management plan" means a document(s) containing material for describing how existing runoff characteristics will be maintained by a land-disturbing activity and methods for complying with the requirements of the local program or this chapter.

"Stormwater Management Program" means a program established by a locality that is consistent with the requirements of the ~~Virginia Stormwater Management~~ Act, this chapter and associated guidance documents.

"Stormwater management standards" means the minimum criteria for stormwater management programs and land-disturbing activities as set out in Part II (4VAC50-60-40 et seq.) of this chapter.

"Stormwater Pollution Prevention Plan" or "SWPPP" means a document that is prepared in accordance with good engineering practices and that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges from the construction site or its associated land-disturbing activities. In addition the document shall identify and require the implementation of control measures, and shall include, but not be limited to the inclusion of, or the incorporation by reference of, an erosion and sediment control plan, a post-construction stormwater management plan, a spill prevention control and countermeasure (SPCC) plan, and other practices that will be used to minimize pollutants in stormwater discharges from land-disturbing activities in compliance with the terms and conditions of this chapter. All plans incorporated by reference into the SWPPP shall be enforceable under the permit issued or general permit coverage authorized.

~~"Stormwater retention basin" or "retention basin" means a stormwater management facility that includes a permanent impoundment, or normal pool of water, for the purpose of enhancing water quality and, therefore, is normally wet, even during nonrainfall periods. Storm runoff inflows may be temporarily stored above this permanent impoundment for the purpose of reducing flooding, or stream channel erosion.~~

~~"Stormwater retention basin I" or "retention basin I" means a retention basin with the volume of the permanent pool equal to three times the water quality volume.~~

~~"Stormwater retention basin II" or "retention basin II" means a retention basin with the volume of the permanent pool equal to four times the water quality volume.~~

~~"Stormwater retention basin III" or "retention basin III" means a retention basin with the volume of the permanent pool equal to four times the water quality volume with the addition of an aquatic bench.~~

"Subdivision" means the same as defined in § 15.2-2201 of the Code of Virginia.

"Surface waters" means:

1. All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide;

2. All interstate waters, including interstate wetlands;

3. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

a. That are or could be used by interstate or foreign travelers for recreational or other purposes;

b. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

c. That are used or could be used for industrial purposes by industries in interstate commerce.

4. All impoundments of waters otherwise defined as surface waters under this definition;

5. Tributaries of waters identified in subdivisions 1 through 4 of this definition;

6. The territorial sea; and

7. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in subdivisions 1 through 6 of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA and the law, are not surface waters. Surface waters do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other agency, for the purposes of the Clean Water Act, the final authority regarding the Clean Water Act jurisdiction remains with the EPA.

"Total dissolved solids" means the total dissolved (filterable) solids as determined by use of the method specified in 40 CFR Part 136 (2000).

"Total maximum daily load" or "TMDL" means the sum of the individual wasteload allocations for point sources, load allocations (LAs) for nonpoint sources, natural background loading and a margin of safety. TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate measure. The TMDL process provides for point versus nonpoint source trade-offs.

"Toxic pollutant" means any pollutant listed as toxic under § 307(a)(1) of the CWA or, in the case of sludge use or disposal practices, any pollutant identified in regulations implementing § 405(d) of the CWA.

"Unstable" means, in the context of channels, a channel that is not stable.

"Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the operator. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

["Urban development area" or "UDA" means, as defined by § 15.2-2223.1 of the Code of Virginia, an area designated by a locality that is appropriate for higher density development due to proximity to transportation facilities, the availability of a public or community water and sewer system, or proximity to a city, town, or other developed area.]

"Variance" means any mechanism or provision under § 301 or § 316 of the CWA or under 40 CFR Part 125 (2000), or in the applicable federal effluent limitations guidelines that allows modification to or waiver of the generally applicable effluent limitation requirements or time deadlines of the CWA. This includes provisions that allow the establishment of alternative limitations based on fundamentally different factors or on § 301(c), § 301(g), § 301(h), § 301(i), or § 316(a) of the CWA.

~~"Vegetated filter strip" means a densely vegetated section of land engineered to accept runoff as overland sheet flow from upstream development. It shall adopt any natural vegetated form, from grassy meadow to small forest. The vegetative cover facilitates pollutant removal through filtration, sediment deposition, infiltration and absorption, and is dedicated for that purpose.~~

"Virginia Pollutant Discharge Elimination System (VPDES) permit" or "VPDES permit" means a document issued by the State Water Control Board pursuant to the State Water Control Law authorizing, under prescribed conditions, the potential or actual discharge of pollutants from a point source to surface waters and the use or disposal of sewage sludge.

"Virginia Stormwater Management Act" means Article 1.1 (§ 10.1-603.1 et seq.) of Chapter 6 of Title 10.1 of the Code of Virginia.

"Virginia Stormwater BMP Clearinghouse website" means a website that contains detailed design standards and specifications for control measures that may be used in Virginia to comply with the requirements of the Virginia Stormwater Management Act and associated regulations and that is jointly created by the department and the Virginia Water Resources Research Center subject to advice to the director from a permanent stakeholder advisory committee.

"Virginia Stormwater Management Handbook" means a collection of pertinent information that provides general guidance for compliance with the Act and associated regulations and is developed by the department with advice from a stakeholder advisory committee.

"Virginia Stormwater Management Program ~~(VSMP)~~" or "VSMP" means the Virginia program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing requirements pursuant to the ~~federal Clean Water Act~~ CWA, the ~~Virginia Stormwater Management~~ Act, this chapter, and associated guidance documents.

"Virginia Stormwater Management Program ~~(VSMP)~~ permit" or "VSMP permit" means a document issued by the permit-issuing authority pursuant to the Virginia Stormwater Management Act and this chapter authorizing, under prescribed conditions, the potential or actual discharge of pollutants from a point source to surface waters. Under the approved state program, a VSMP permit is equivalent to a NPDES permit.

"VSMP application" or "application" means the standard form or forms, including any additions, revisions or modifications to the forms, approved by the administrator and the board for applying for a VSMP permit.

"Wasteload allocation" or "wasteload" or "WLA" means the portion of a receiving surface water's loading or assimilative capacity allocated to one of its existing or future point sources of pollution. WLAs are a type of water quality-based effluent limitation.

"Water quality standards" or "WQS" means provisions of state or federal law that consist of a designated use or uses for the waters of the Commonwealth and water quality criteria for such waters based on such uses. Water quality standards are to protect the public health or welfare, enhance the quality of water, and serve the purposes of the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia), the ~~Virginia Stormwater Management~~ Act (§ 10.1-603.1 et seq. of the Code of Virginia), and the ~~federal Clean Water Act~~ CWA (33 USC § 1251 et seq.).

~~"Water quality volume" means the volume equal to the first 1/2 inch of runoff multiplied by the impervious surface of the land development project.~~

"Watershed" means a defined land area drained by a river or stream, karst system, or system of connecting rivers or streams such that all surface water within the area flows through a single outlet. In karst areas, the karst feature to which the water drains may be considered the single outlet for the watershed.

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

"Whole effluent toxicity" means the aggregate toxic effect of an effluent measured directly by a toxicity test.

4VAC50-60-20. Purposes.

The purposes of this chapter are to provide a framework for the administration, implementation and enforcement of the Virginia Stormwater Management Act (Act) and to delineate the procedures and requirements to be followed in connection with VSMP permits issued by the board or its designee pursuant to the Clean Water Act (CWA) and the Virginia Stormwater Management Act, while at the same time providing flexibility for innovative solutions to stormwater management issues. The chapter also establishes the board's procedures for the authorization of a qualifying local program, board and department oversight authorities for an authorized qualifying local program, the board's procedures for utilization by the department in administering a local program in localities where no qualifying local program is authorized, and the components of a stormwater management program including but not limited to stormwater management standards.

4VAC50-60-30. Applicability.

This chapter is applicable to:

1. Every private, local, state, or federal entity that establishes a stormwater management program or a MS4 program;

2. The department in its oversight of locally administered programs or in its administration of a local program;

~~2.~~ 3. Every state agency project regulated under the Act and this chapter; and

~~3.~~ 4. Every land-disturbing activity regulated under § 10.1-603.8 of the Code of Virginia unless otherwise exempted in § 10.1-603.8 B.

Part II [A]
Stormwater Management Program Technical Criteria

4VAC50-60-40. ~~Applicability~~ Authority [~~and applicability~~].

~~This part specifies technical criteria for every stormwater management program and land-disturbing activity.~~

Pursuant to the Virginia Stormwater Management Act (§ 10.1-603.2 et seq. of the Code of Virginia), the board is required to take actions ensuring the general health, safety, and welfare of the citizens of the Commonwealth as well as protecting the quality and quantity of state waters from the potential harm of unmanaged stormwater. In addition to other authority granted to the board under the Stormwater Management Act, the board is authorized pursuant to §§ 10.1-603.2:1 and 10.1-603.4 to adopt regulations that specify minimum technical criteria for stormwater management programs in Virginia, to establish statewide standards for stormwater management from land-disturbing activities, and to protect properties, the quality and quantity of state waters, the physical integrity of stream channels, and other natural resources.

[~~In accordance with the board's authority, this part establishes the minimum technical criteria and stormwater management standards that shall be employed by a state agency in accordance with an implementation schedule set by the board, or by a qualifying local program or department-administered local stormwater management program that has been approved by the board, to protect the quality and quantity of state waters from the potential harm of unmanaged stormwater runoff resulting from land-disturbing activities.~~

~~For those localities required to adopt a local stormwater management program pursuant to § 10.1-603.3 of the Code of Virginia, until a local program is approved by the board, the technical criteria required shall be that found at 4VAC50-60-1180 through 4VAC50-60-1190.~~]

[4VAC50-60-45. Applicability.

In accordance with the board's authority, this part establishes the minimum technical criteria and stormwater management standards that shall be employed by a state agency in accordance with an implementation schedule set by the board, or by a qualifying local program or department-administered local stormwater management program that has been approved by the board, to protect the quality and quantity of state waters from the potential harm of unmanaged stormwater runoff resulting from land-disturbing activities, except as provided in 4VAC50-60-48.

4VAC50-60-48. Grandfathering.

A. Land-disturbing activities that receive coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities prior to the adoption of a local

stormwater management program within their jurisdiction shall not be subject to the technical criteria of Part II A, but shall be subject to the technical criteria of Part II B, until the expiration of that permit on June 30, 2014.

B. If the operator of a project, as of July 1, 2010, (i) obtained or is the beneficiary of a significant affirmative governmental act that remains in effect allowing development of a specific project, (ii) relied in good faith on the significant affirmative governmental act, (iii) incurred extensive obligations or substantial expenses in diligent pursuit of the specific project in reliance on the significant affirmative governmental act, and (iv) obtained VSMP general permit coverage prior to July 1, 2010, then the land-disturbing activity associated with the project is grandfathered and shall remain subject to the Part II B Technical Criteria until June 30, 2014. If permit coverage continuously remains in effect for the land-disturbing activity within the entire project area, then the project shall remain subject to the Part II B Technical Criteria until June 30, 2019. Should permit coverage not be maintained or if the land-disturbing activity continues beyond June 30, 2019, portions of the project not completed shall be subject to the Part II A Technical Criteria. In the event that the qualifying significant affirmative governmental act or the VSMP permit is subsequently modified or amended in a manner such that there is no increase in the amount of phosphorus leaving the site through stormwater runoff, and such that there is no increase in the volume or rate of runoff, the grandfathering shall continue as before.

For purposes of this subsection and without limitation, the following are deemed to be significant affirmative governmental acts allowing development of a specific project: (i) the governing body has accepted proffers or proffered conditions that specify use related to a zoning amendment; (ii) the governing body has approved an application for a rezoning for a specific use or density; (iii) the governing body or board of zoning appeals has granted a special exception or use permit with conditions; (iv) the board of zoning appeals has approved a variance; (v) the governing body or its designated agent has approved a preliminary subdivision plat, site plan, or plan of development for the landowner's property and the applicant diligently pursues approval of the final plat or plan within a reasonable period of time under the circumstances; or (vi) the governing body or its designated agent has approved a final subdivision plat, site plan or plan of development for the landowner's property.

C. Where a land-disturbing activity is part of a common plan of development or sale that has obtained VSMP general permit coverage from the department prior to July 1, 2010, the land-disturbing activity will be subject to the technical criteria of Part II B. The registration statement shall include the permit coverage number for the common plan of development or sale for which association is being claimed.]

4VAC50-60-50. ~~General.~~ (Repealed.)

~~A. Determination of flooding and channel erosion impacts to receiving streams due to land disturbing activities shall be measured at each point of discharge from the land disturbance and such determination shall include any runoff from the balance of the watershed which also contributes to that point of discharge.~~

~~B. The specified design storms shall be defined as either a 24 hour storm using the rainfall distribution recommended by the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) when using NRCS methods or as the storm of critical duration that produces the greatest required storage volume at the site when using a design method such as the Modified Rational Method.~~

~~C. For purposes of computing runoff, all pervious lands in the site shall be assumed prior to development to be in good condition (if the lands are pastures, lawns, or parks), with good cover (if the lands are woods), or with conservation treatment (if the lands are cultivated); regardless of conditions existing at the time of computation.~~

~~D. Construction of stormwater management facilities or modifications to channels shall comply with all applicable laws and regulations. Evidence of approval of all necessary permits shall be presented.~~

~~E. Impounding structures that are not covered by the Impounding Structure Regulations (4VAC50-20) shall be engineered for structural integrity during the 100-year storm event.~~

~~F. Pre-development and post-development runoff rates shall be verified by calculations that are consistent with good engineering practices.~~

~~G. Outflows from a stormwater management facility or stormwater conveyance system, shall be discharged to an adequate channel.~~

~~H. Proposed residential, commercial, or industrial subdivisions shall apply these stormwater management criteria to the land disturbance as a whole. Individual lots in new subdivisions shall not be considered separate land disturbing activities, but rather the entire subdivision shall be considered a single land development project. Hydrologic parameters shall reflect the ultimate land disturbance and shall be used in all engineering calculations.~~

~~I. All stormwater management facilities shall have an inspection and maintenance plan that identifies the owner and the responsible party for carrying out the inspection and maintenance plan.~~

~~J. Construction of stormwater management impoundment structures within a Federal Emergency Management Agency (FEMA) designated 100-year floodplain shall be avoided to the extent possible. When this is unavoidable, all stormwater~~

~~management facility construction shall be in compliance with all applicable regulations under the National Flood Insurance Program, 44 CFR Part 59.~~

~~K. Natural channel characteristics shall be preserved to the maximum extent practicable.~~

~~L. Land-disturbing activities shall comply with the Virginia Erosion and Sediment Control Law (§ 10.1-560 et seq. of the Code of Virginia) and attendant regulations.~~

~~M. Flood control and stormwater management facilities that drain or treat water from multiple development projects or from a significant portion of a watershed may be allowed in Resource Protection Areas defined in the Chesapeake Bay Preservation Act, provided that (i) the local government has conclusively established that the location of the facility within the Resource Protection Area is the optimum location; (ii) the size of the facility is the minimum necessary to provide necessary flood control, stormwater treatment, or both; and, (iii) the facility must be consistent with a stormwater management program that has been approved by the board.~~

4VAC50-60-53. General requirements.

The physical, chemical, biological, and hydrologic characteristics and the water quality and quantity of the receiving state waters shall be maintained, protected, or improved in accordance with the requirements of this part. Objectives include, but are not limited to, supporting state designated uses and water quality standards. All control measures used shall be employed in a manner that minimizes impacts on receiving state waters.

4VAC50-60-56. Applicability of other laws and regulations.

Nothing in this chapter shall be construed as limiting the applicability of other laws and regulations, including, but not limited to, the CWA, Virginia Stormwater Management Act, Virginia Erosion and Sediment Control Law, and the Chesapeake Bay Preservation Act, except as provided in § 10.1-603.3 I of the Code of Virginia and all applicable regulations adopted in accordance with those laws, or the rights of other federal agencies, state agencies, or local governments to impose more stringent technical criteria or other requirements as allowed by law.

4VAC50-60-60. ~~Water quality.~~ (Repealed.)

~~A. Compliance with the water quality criteria may be achieved by applying the performance-based criteria or the technology-based criteria to either the site or a planning area.~~

~~B. Performance-based criteria. For land-disturbing activities, the calculated post-development nonpoint source pollutant runoff load shall be compared to the calculated pre-development load based upon the average land cover condition or the existing site condition. A BMP shall be located, designed, and maintained to achieve the target pollutant removal efficiencies specified in Table 1 to effectively reduce the pollutant load to the required level based upon the following four applicable land development situations for which the performance criteria apply:~~

~~1. Situation 1 consists of land-disturbing activities where the existing percent impervious cover is less than or equal to the average land cover condition and the proposed improvements will create a total percent impervious cover which is less than the average land cover condition.~~

~~Requirement: No reduction in the after disturbance pollutant discharge is required.~~

~~2. Situation 2 consists of land disturbing activities where the existing percent impervious cover is less than or equal to the average land cover condition and the proposed improvements will create a total percent impervious cover which is greater than the average land cover condition.~~

~~Requirement: The pollutant discharge after disturbance shall not exceed the existing pollutant discharge based on the average land cover condition.~~

~~3. Situation 3 consists of land disturbing activities where the existing percent impervious cover is greater than the average land cover condition.~~

~~Requirement: The pollutant discharge after disturbance shall not exceed (i) the pollutant discharge based on existing conditions less 10% or (ii) the pollutant discharge based on the average land cover condition, whichever is greater.~~

~~4. Situation 4 consists of land disturbing activities where the existing percent impervious cover is served by an existing stormwater management BMP that addresses water quality.~~

~~Requirement: The pollutant discharge after disturbance shall not exceed the existing pollutant discharge based on the existing percent impervious cover while served by the existing BMP. The existing BMP shall be shown to have been designed and constructed in accordance with proper design standards and specifications, and to be in proper functioning condition.~~

~~C. Technology based criteria. For land disturbing activities, the post-developed stormwater runoff from the impervious cover shall be treated by an appropriate BMP as required by the post developed condition percent impervious cover as specified in Table 1. The selected BMP shall be located, designed, and maintained to perform at the target pollutant removal efficiency specified in Table 1. Design standards and specifications for the BMPs in Table 1 that meet the required target pollutant removal efficiency will be available at the department.~~

~~Table 1*~~

~~Water Quality BMP*~~	~~Target Phosphorus Removal Efficiency~~	~~Percent Impervious Cover~~
~~Vegetated filter strip~~ ~~Grassed Swale~~	~~10%~~ ~~15%~~	~~16-21%~~
~~Constructed wetlands~~ ~~Extended detention (2 x WQ Vol)~~ ~~Retention basin I (3 x WQ Vol)~~	~~20%~~ ~~35%~~ ~~40%~~	~~22-37%~~
~~Bioretention basin~~ ~~Bioretention filter~~ ~~Extended detention enhanced~~ ~~Retention basin II (4 x WQ Vol)~~ ~~Infiltration (1 x WQ Vol)~~	~~50%~~ ~~50%~~ ~~50%~~ ~~50%~~ ~~50%~~	~~38-66%~~
~~Sand filter~~ ~~Infiltration (2 x WQ Vol)~~ ~~Retention basin III (4 x WQ Vol with aquatic bench)~~	~~65%~~ ~~65%~~ ~~65%~~	~~67-100%~~

~~*Innovative or alternate BMPs not included in this table may be allowed at the discretion of the local program administrator or the department. Innovative or alternate BMPs not included in this table which target appropriate nonpoint source pollution other than phosphorous may be allowed at the discretion of the local program administrator or the department.~~

4VAC50-60-63. Water quality [design] criteria requirements.

In order to protect the quality of state waters and to control [~~nonpoint source pollution~~ stormwater pollutants] , the following minimum technical criteria and statewide standards for stormwater management shall be applied to the site of a land-disturbing activity. [~~The local program shall have discretion to allow for application of the criteria to each drainage area of the site. However, where a site drains to more than one HUC, the pollutant load reduction requirements shall be applied independently within each HUC unless reductions are achieved in accordance with a comprehensive watershed stormwater management plan in accordance with 4VAC50-60-96.~~]

1. New development. The total phosphorus load of new development projects shall not exceed [~~0.28~~ 0.45] pounds per acre per year, as calculated pursuant to 4VAC50-60-65 [, except:

a. The total phosphorus load of a new development project disturbing greater than or equal to one acre in the Chesapeake Bay watershed shall not exceed 0.28 pounds per acre per year, as calculated pursuant to 4VAC50-60-65.

b. Within urban development areas designated pursuant to § 15.2-2223.1 of the Code of Virginia in the Chesapeake Bay watershed a qualifying local program may establish a phosphorus standard between 0.28 and 0.45 pounds per acre per year for projects greater than or equal to one acre in order to encourage compact development that achieves superior water quality benefits. The qualifying local program shall provide to the board for approval a justification for any standards established if greater than 0.28 and shall define the types of projects within a UDA that would qualify for the relaxed standards. The standard shall be based upon factors including, but not limited to, number of housing units per acre for residential development, floor area ratio for nonresidential development, level of imperviousness, brownfield remediation potential, mixed-use and transit oriented development potential, proximity to the Chesapeake Bay or local waters of concern, and the presence of impaired waters. This provision shall not apply to department-administered local programs.

c. Localities that have lands that drain to both the Chesapeake Bay watershed and other non-Chesapeake Bay watersheds may choose to apply the 0.28 pounds per acre per year phosphorus standard to land-disturbing activities that discharge to watersheds other than the Chesapeake Bay watershed].

2. Development on prior developed lands.

[a.] The total phosphorus load of [~~projects~~ a project] occurring on prior developed lands [and distributing greater than or equal to one acre] shall be reduced to an amount at least 20% below the predevelopment total phosphorus load.

[~~However, the~~ b. The total phosphorus load of a project occurring on prior developed lands and disturbing less than one acre shall be reduced to an amount at least 10% below the predevelopment total phosphorus load.

c. The] total phosphorus load shall not be required to be reduced to below [~~0.28 pounds per acre per year~~ the applicable standard for new development] unless a more

stringent standard has been established by a qualifying local program.

3. Compliance with [subdivisions 1 and 2 of this section shall be determined in accordance with] 4VAC50-60-65 [~~shall constitute compliance with subdivisions 1 and 2 of this section~~].

4. TMDL. In addition to the above requirements, if a specific WLA for a pollutant has been established in a TMDL and is assigned to stormwater discharges from a construction activity, necessary control measures must be implemented by the operator to meet the WLA in accordance with the requirements established in the General Permit for Discharges of Stormwater from Construction Activities or an individual permit, which address both construction and postconstruction discharges.

[5. Nothing in this section shall prohibit a qualifying local program from establishing a more stringent standard.]

4VAC50-60-65. Water quality compliance.

A. Compliance with the water quality [design] criteria set out in subdivisions 1 and 2 of 4VAC50-60-63 shall be determined by utilizing the Virginia Runoff Reduction Method or another methodology that is demonstrated by the qualifying local program to achieve equivalent or more stringent results and is approved by the board.

B. The BMPs listed in Table 1 [~~or the BMPs available on the Virginia Stormwater BMP Clearinghouse website~~] shall be utilized as necessary to effectively reduce the phosphorus load in accordance with the Virginia Runoff Reduction Method. Design specifications for the BMPs listed in Table 1 can be found [on the Virginia Stormwater BMP Clearinghouse Website] at http://www.vwrrc.vt.edu/swc. [Other approved BMPs available on this website may also be utilized.]

TABLE 1
BMP Pollutant Removal Efficiencies

Practice	Removal of Total Phosphorus by Runoff Volume Reduction (RR, as %) (based upon 1 inch of rainfall --90% storm)	Removal of Total Phosphorus by Treatment -- Pollutant Concentration Reduction (PR, as %)	Total [Mass Load] Removal of Total Phosphorus (TR, as %)
[~~Green~~ Vegetated] Roof 1	45	0	45
[~~Green~~ Vegetated] Roof 2	60	0	60
Rooftop Disconnection [~~1~~ [2]]	25 [or 50[1]]	0	25 [or 50[1]]
[~~Rooftop Disconnection 2~~]	[~~50~~]	[~~0~~]	[~~50~~]
[~~Rain Tanks/Cisterns 1~~ Rainwater Harvesting]	[~~actual volume x .75~~ up to 90[3, 5]]	0	[~~actual volume x .75~~ up to 90[3, 5]]
[~~Soil Amendments 1~~]	[~~50~~]	[~~0~~]	[~~50~~]
[~~Soil Amendments 2~~]	[~~75~~]	[~~0~~]	[~~75~~]
[Soil Amendments]	[Can be used to decrease runoff coefficient for turf cover at site. See designs for Rooftop Disconnection, Sheet Flow, and Grass Channel practices.]		
Permeable Pavement 1	45	25	59
Permeable Pavement 2	75	25	81
Grass Channel [~~1~~]	10 [or 20[1]]	15	23
[~~Grass Channel 2~~]	[~~20~~]	[~~15~~]	[~~32~~]
Bioretention 1 [(also applies to Urban Bioretention)]	40	25	55
Bioretention 2	80	50	90
Infiltration 1	50	25	63
Infiltration 2	90	25	93

Dry Swale 1	40	20	52
Dry Swale 2	60	40	76
Wet Swale 1	0	20	20
Wet Swale 2	0	40	40
Sheet Flow to [~~Conserved~~ Filter/] Open Space 1	[~~0~~ 25 or 50[1]]	[~~50~~ 0]	[25 or] 50 [[1]]
Sheet Flow to [~~Conserved~~ Filter/] Open Space 2 [[5]]	[~~0~~ 50 or 75[1]]	[~~75~~ 0]	[50 or] 75 [[1]]
Extended Detention Pond 1	0	15	15
Extended Detention Pond 2	15	15	[~~28~~ 31]
Filtering Practice 1	0	60	60
Filtering Practice 2	0	65	65
Constructed Wetland 1	0	50	50
Constructed Wetland 2	0	75	75
Wet Pond 1	0	50 [(45[4])]	50 [(45[4])]
Wet Pond 2	0	75 [(65[4])]	75 [(65[4])]

[[1] Lower rate is for Hydrologic Soil Group (HSG) class C and D soils; higher rate is for HSG class A and B soils.

[2] The removal can be increased to 50% for C and D soils by adding soil compost amendments, and may be higher yet if combined with secondary runoff reduction practices.

[3] Credit up to 90% is possible if all water from storms 1" or less is used through demand, and tank is sized such that no overflow occurs. Total credit is not to exceed 90%.

[4] Lower nutrient removals in parentheses apply to wet ponds in coastal plain terrain.

[5] See BMP design specification for an explanation of how additional pollutant removal can be achieved.]

C. BMPs differing from those listed in Table 1 shall be reviewed and approved by the director in accordance with procedures established by the BMP Clearinghouse Committee and approved by the board.

D. A qualifying local program may establish [~~use~~] limitations on [the use of] specific BMPs following the submission of the proposed [~~use~~] limitation and written justification to the department.

E. Where the land-disturbing activity only occurs on a portion of the site, the local program may review the stormwater management plan based upon the portion of the site that is proposed to be developed, provided that the local program has established guidance for such a review. Such portion shall be deemed to include any area left undeveloped pursuant to any local requirement or proffer accepted by a locality. Any such guidance shall be provided to the department.

F. [~~If a comprehensive watershed stormwater management plan has been adopted pursuant to 4VAC50-60-96 for the watershed within which a project is located, then the qualifying local program may allow offsite controls in accordance with the plan to achieve the postdevelopment pollutant load water quality technical criteria set out in subdivisions 1 and 2 of 4VAC50-60-63. Such offsite controls shall achieve the required pollutant reductions either completely offsite in accordance with the plan or in a combination of onsite and offsite controls.~~ The local program shall have the discretion to allow for application of the criteria to each drainage area of the site. However, where a site drains to more than one HUC, the pollutant load reduction requirements shall be applied independently within each HUC unless reductions are achieved in accordance with a comprehensive watershed stormwater management plan in accordance with 4VAC50-60-92.]

[~~G. Where no plan exists pursuant to subsection F of this section, offsite controls may be used to meet the~~

~~postdevelopment pollutant load water quality technical criteria set out in subdivisions 1 and 2 of 4VAC50-60-63 provided:~~

~~1. The local program allows for offsite controls;~~

~~2. The applicant demonstrates to the satisfaction of the local program that offsite reductions equal to or greater than those that would otherwise be required for the site are achieved;~~

~~3. The applicant demonstrates to the satisfaction of the local program that the development's runoff and the runoff from any offsite treatment area shall be controlled in accordance with 4VAC50-60-66;~~

~~4. Offsite controls must be located within the same HUC or the adjacent downstream HUC to the land disturbing site; and~~

~~5. The applicant demonstrates to the satisfaction of the local program that the right to utilize the offsite control area and any necessary easements has been obtained and maintenance agreements for the stormwater management facilities have been established pursuant to 4VAC50-60-124.~~

~~H. Alternatively, the local program may waive the requirements of subdivisions 1 and 2 of 4VAC50-60-63 through the granting of an exception pursuant to 4VAC50-60-122.~~ G. Offsite alternatives where allowed in accordance with 4VAC50-60-69 may be utilized to meet the design criteria of subdivisions 1 and 2 of 4VAC50-60-63.]

4VAC50-60-66. Water quantity.

A. Channel protection and flood protection shall be addressed in accordance with the minimum standards set out in this section, which are established pursuant to the requirements of subdivision 7 of § 10.1-603.4 of the Code of Virginia. [Nothing in this section shall prohibit a qualifying local program from establishing a more stringent standard.]

B. Channel protection. Concentrated stormwater flow from the site and offsite contributing areas shall be released into a stormwater conveyance system and shall meet one of the following criteria as demonstrated by use of accepted hydrologic and hydraulic methodologies:

1. Concentrated stormwater flow to manmade stormwater conveyance systems. The point of discharge releases stormwater into a manmade stormwater conveyance system that, following the land-disturbing activity, conveys the postdevelopment peak flow rate from the two-year 24-hour storm without causing erosion of the system.

2. Concentrated stormwater flow to restored stormwater conveyance systems. The point of discharge releases stormwater into a stormwater conveyance system that (i) has been restored and is functioning as designed or (ii) will be restored. The applicant must demonstrate that the runoff following the land-disturbing activity, in combination with other existing stormwater runoff, will not exceed the design of the restored stormwater conveyance system nor result in instability of the system.

3. Concentrated stormwater flow to stable natural stormwater conveyance systems. The point of discharge releases stormwater into a natural stormwater conveyance system that is stable and, following the land-disturbing activity, (i) will not become unstable as a result of the discharge from the one-year 24-hour storm, and (ii) provides a peak flow rate from the one-year 24-hour storm calculated as follows or in accordance with another methodology that is demonstrated by the local program to achieve equivalent results and is approved by the board:

$Q_{Developed} * RV_{Developed} \leq Q_{Pre\text{-}Developed} * RV_{Pre\text{-}Developed}$, where

$Q_{Developed}$ = The allowable peak flow rate of runoff from the developed site.

$Q_{Pre\text{-}Developed}$ = The peak flow rate of runoff from the site in the predeveloped condition.

$RV_{Pre\text{-}Developed}$ = The volume of runoff from the site in the predeveloped condition.

$RV_{Developed}$ = The volume of runoff from the developed site.

4. [~~Concentrated~~ Except as set out in subdivision 5 of this subsection, concentrated] stormwater flow to unstable natural stormwater conveyance systems. Where the point of discharge releases stormwater into a natural stormwater conveyance system that is unstable, stormwater runoff following a land-disturbing activity shall be released into a channel at or below a peak flow rate ($Q_{Developed}$) based on the one-year 24-hour storm, calculated as follows or in accordance with another methodology that is demonstrated by the local program to achieve equivalent or more stringent results and is approved by the board:

$Q_{Developed} * RV_{Developed} \leq Q$ [~~Forested~~ Good Pasture] $*$ RV[~~Forested~~ Good Pasture], where

$Q_{Developed}$ = The allowable peak flow rate from the developed site.

Q[~~Forested~~ Good Pasture] = The peak flow rate from the site in a [~~forested~~ good pasture] condition.

RV[~~Forested~~ Good Pasture] = The volume of runoff from the site in a [~~forested~~ good pasture] condition.

$RV_{Developed}$ = The volume of runoff from the developed site.

[However, in the case that the predeveloped condition is forested, both the peak flow rate and the volume of runoff from the developed site shall be held to the forested condition.

5. This subdivision shall apply to concentrated stormwater flow to unstable natural stormwater conveyance systems from (i) a land-disturbing activity less than five acres on prior developed lands, or (ii) a regulated land-disturbing activity less than one acre for new development. Where the point of discharge releases stormwater into a natural stormwater conveyance system that is unstable, stormwater runoff following a land-disturbing activity shall provide a peak flow rate from the one-year 24-hour storm, calculated as follows or in accordance with another methodology that is demonstrated by the local program to achieve equivalent or more stringent results and is approved by the board:

$Q_{Developed} * RV_{Developed} \leq Q_{Pre\text{-}Developed} * RV_{Pre\text{-}Developed}$, where

$Q_{Developed}$ = The allowable peak flow rate from the developed site. Such peak flow rate must be less than $Q_{Pre\text{-}Developed}$.

$Q_{Pre\text{-}Developed}$ = The peak flow rate from the site in pre-development condition.

$RV_{Pre\text{-}Developed}$ = The volume of runoff from the site in pre-development condition.

$RV_{Developed}$ = The volume of runoff from the developed site. Such volume must be less than $RV_{Pre\text{-}Developed}$.]

C. Flood protection. Concentrated stormwater flow shall be released into a stormwater conveyance system and shall meet one of the following criteria as demonstrated by use of accepted hydrologic and hydraulic methodologies:

1. Concentrated stormwater flow to manmade stormwater conveyance systems. The point of discharge releases stormwater into a manmade stormwater conveyance system that, following the land-disturbing activity, confines the postdevelopment peak flow rate from the 10-year 24-hour storm within the manmade stormwater conveyance system.

2. Concentrated stormwater flow to restored stormwater conveyance systems. The point of discharge releases stormwater into a stormwater conveyance system that (i) has been restored and is functioning as designed or (ii) will be restored. The applicant must demonstrate that the peak flow rate from the 10-year 24-hour storm following the land-disturbing activity will be confined within the system.

3. Concentrated stormwater flow to natural stormwater conveyance systems. The point of discharge releases stormwater into a natural stormwater conveyance system that currently does not flood during the 10-year 24-hour storm and, following the land-disturbing activity, confines the postdevelopment peak flow rate from the 10-year 24-hour storm within the system.

4. Concentrated stormwater flow to natural stormwater conveyance systems where localized flooding exists during the 10-year 24-hour storm. The point of discharge releases a postdevelopment peak flow rate for the 10-year 24-hour storm that shall not exceed the predevelopment peak flow rate from the 10-year 24-hour storm based on [~~forested~~ good pasture] conditions [, unless the predeveloped condition is forested, in which case the peak flow rate from the developed site shall be held to the forested condition].

5. [~~A local program may adopt alternate flood protection design criteria that (i) achieve equivalent or more stringent results, (ii) are based upon geographic, land use, topographic, geologic, or other downstream conveyance factors, and (iii) are approved by the board.~~ Subdivision C 4 of this subsection notwithstanding, this subdivision shall apply to concentrated stormwater flow to natural stormwater conveyance systems where localized flooding exists during the 10-year 24-hour storm from (i) a land-disturbing activity less than five acres on prior developed lands, or (ii) a regulated land-disturbing activity less than one acre for new development. The point of discharge releases a postdevelopment peak flow rate for the 10-year 24-hour storm that is less than the predevelopment peak flow rate from the 10-year 24-hour storm.]

D. One percent rule. If either of the following criteria are met, subsections [~~A~~ B] and [~~B~~ C] of this section do not apply [, nor is the analysis of subsection H required] :

1. Based on area. Prior to any land disturbance, the site's contributing drainage area to a point of discharge from the site is less than or equal to 1.0% of the total watershed area draining to that point of discharge; or

2. Based on peak flow rate. Based on the postdevelopment land cover conditions prior to the implementation of any stormwater quantity control measures, the development of the site results in an increase in the peak flow rate from the one-year 24-hour storm that is less than 1.0% of the existing peak flow rate from the one-year 24-hour storm generated by the total watershed area draining to that point of discharge.

E. Increased volumes of sheet flow resulting from pervious or disconnected impervious areas, or from physical spreading of concentrated flow through level spreaders, must be identified and evaluated for potential impacts on down gradient properties or resources. Increased volumes of sheet flow that will cause or contribute to erosion, sedimentation, or flooding of down gradient properties or resources shall be diverted to a [~~detention~~ stormwater management] facility or a stormwater conveyance system that conveys the runoff without causing down gradient erosion, sedimentation, or flooding. If all runoff from the site is sheet flow and the conditions of this subsection are met, no further water quantity controls are required.

F. For purposes of computing predevelopment runoff from prior developed sites, all pervious lands on the site shall be assumed to be in good hydrologic condition in accordance

with the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) standards, regardless of conditions existing at the time of computation. Predevelopment runoff calculations utilizing other hydrologic conditions may be utilized provided that it is demonstrated to and approved by the local program that actual site conditions warrant such considerations.

G. Predevelopment runoff characteristics and site hydrology shall be verified by site inspections, topographic surveys, available soil mapping or studies, and calculations consistent with good engineering practices [~~in accordance with guidance~~. Guidance] provided in the Virginia Stormwater Management Handbook [~~and by the qualifying local program~~ shall be considered appropriate standards].

H. Except where the compliance options under subdivisions B 4 [and 5] and C 4 [and 5] of this section are utilized, flooding and channel erosion impacts to stormwater conveyance systems shall be analyzed for each point of discharge in accordance with channel analysis guidance provided in Technical Bulletin # 1, Stream Channel Erosion Control, or in accordance with more stringent channel analysis guidance established by the qualifying local program and provided to the department. Such analysis shall include estimates of runoff from the developed site and the entire upstream watershed that contributes to that point of discharge. Good engineering practices and calculations in accordance with department guidance shall be used to evaluate postdevelopment runoff characteristics and site hydrology, and flooding and channel erosion impacts.

If the downstream owner or owners refuse to give permission to access the property for the collection of data, evidence of this refusal shall be given and arrangements made satisfactory to the local program to provide an alternative method for the collection of data to complete the analysis, such as through the use of photos, aerial surveys, "as built" plans, topographic maps, soils maps, and any other relevant information.

[4VAC50-60-69. Offsite compliance options.

A. A qualifying local program shall have the authority to consider the use of the following offsite compliance options:

1. If a comprehensive watershed stormwater management plan has been adopted pursuant to 4VAC50-60-92 for the local watershed within which a project is located, then the qualifying local program may allow offsite controls in accordance with the plan to achieve the water quality reductions, quantity reductions, or both required for a site by this chapter. Such offsite controls shall achieve the required reductions either completely offsite in accordance with the plan or by a combination of on site and offsite controls.

2. A pro rata fee in accordance with § 15.2-2243 of the Code of Virginia or similar funding mechanism through which the water quality and quantity reductions required for a site by this chapter may be achieved by the payment of a fee sufficient to fund improvements necessary to adequately achieve offsite reductions equal to or greater than those that would otherwise be required for the site.

3. The nonpoint nutrient offset program established by § 10.1-603.8:1 of the Code of Virginia.

4. Where no comprehensive watershed stormwater management plan or pro rata fee exists, or where a qualifying local program otherwise elects to allow the use of this subdivision, offsite stormwater management facilities may be used by the operator of a land-disturbing activity to meet the water quality reductions required for a site by this chapter provided:

a. The operator demonstrates to the satisfaction of the local program that offsite reductions equal to or greater than those that would otherwise be required for the site are achieved;

b. The operator demonstrates to the satisfaction of the local program that the development's runoff and the runoff from any offsite treatment area shall be controlled in accordance with 4VAC50-60-66;

c. Offsite stormwater management facilities must be located within the HUC or within the upstream HUCs in the local watershed that the land-disturbing activity directly discharges to or within the same watershed, as determined by the local program; and

d. The operator demonstrates to the satisfaction of the local program that the right to utilize the offsite area and any necessary easements have been obtained and maintenance agreements for the stormwater management facilities have been established pursuant to 4VAC50-60-124.

B. Where the offsite options of subsection A of this section are not available for use, where the fee established by a qualifying local program to offset a pound of phosphorus removal onsite pursuant to subdivision A 2 exceeds $23,900, or where a qualifying local program otherwise elects to allow the use of this subsection, offsite compliance may be achieved through a payment in accordance with the following:

1. When the land-disturbing activity is in an urban development area the payment shall be $15,000 per pound of phosphorus and shall be calculated based on the poundage not treated on site. In all other cases the payment shall be $23,900 per pound of phosphorus. Payment amounts shall be determined based upon the nearest 0.01 of a pound of phosphorus.

2. All payments shall be deposited and utilized in accordance with the following:

a. Payments shall be made prior to commencement of the land-disturbing activity and shall be deposited to the Virginia Stormwater Management Fund and held in a subaccount.

b. The board shall establish priorities for the use of these funds by December 1 of each year. Payments held in the fund shall be promptly applied to ensure that nutrient reduction practices are being implemented. Priorities for the funds shall be established in accordance with the following:

(1) At least 50% of the funds shall be utilized for projects to address local stormwater quality issues related to the impacts of development activities including but not limited to urban retrofits, urban stream restorations, and reduction of impervious areas.

(2) Priority use for the remaining funds shall be for the acquisition of certified nonpoint nutrient offsets at a rate not to exceed $23,900 per pound of phosphorus. Any remaining funds shall be utilized to fund long-term contracts for agricultural best management practices no less than 20 years in duration or long-term best management practices including but not limited to stream fencing, alternative water supplies, and riparian buffers in accordance with practice standards established within the Virginia Agricultural BMP Cost Share Program administered by the department.

(3) In establishing priorities, the board shall consider targeting equivalent reductions in the same local watershed as where the payment came from; implementing urban practices/retrofits that address TMDLs; securing permanent practices; and achieving measurable reductions. When purchasing agricultural best management practices, the board shall consider purchasing practices beyond the baseline established under the Chesapeake Bay Watershed Nutrient Credit Exchange Program (§ 62.1-44.19:12 et seq. of the Code of Virginia).

c. The department shall track the payment amount, the associated poundage of phosphorus purchased, the jurisdiction where the payment originated, the regulated MS4 name, if any, and the HUC for the land-disturbing activity. The department shall additionally track the annual expenditure of the funds including the locality and regulated MS4 name, if any, where the moneys are expended, the associated poundage of phosphorus reduced, and the cost per pound for phosphorus reductions associated with the nutrient reduction practices.

d. The department may annually utilize up to 6.0% of the payments to administer the stormwater management program.

e. The board shall periodically review the payment amount, at least every five years or in conjunction with the development of a new construction general permit, and shall evaluate the performance of the fund and the sufficiency of the payment rate in achieving the needed offsite pollution reductions. The board shall adjust the payment amount based upon this analysis.

3. Utilization of a payment to achieve compliance with the water quality technical criteria shall be subject to the following limitations:

a. A new development project disturbing greater than or equal to one acre in the Chesapeake Bay watershed must reduce its phosphorus discharge to a level of 0.45 pounds per acre per year of phosphorus on site, or less, and then may achieve all or a portion of the remaining required phosphorus reductions through a payment.

b. A new development project disturbing less than one acre in the Chesapeake Bay watershed may achieve all necessary phosphorus reductions through a payment.

c. A new development project outside of the Chesapeake Bay watershed must achieve all necessary phosphorus reductions on site.

d. Development on prior developed lands disturbing greater than or equal to one acre must achieve at least a 10% reduction from the predevelopment total phosphorus load on site and then may achieve the remaining required phosphorus reductions through a payment.

e. Development on prior developed lands disturbing less than one acre may achieve all necessary phosphorus reductions through a payment.

4. Nitrogen or other pollutant reductions achieved through payments into the fund must be retired and shall not be made available to other parties.

C. Where the department is administering a local program, only offsite options set out in subdivisions A 3 and A 4, and subsection B of this section shall be available.]

4VAC50-60-70. ~~Stream channel erosion.~~ (Repealed.)

~~A. Properties and receiving waterways downstream of any land-disturbing activity shall be protected from erosion and damage due to changes in runoff rate of flow and hydrologic characteristics, including but not limited to, changes in volume, velocity, frequency, duration, and peak flow rate of stormwater runoff in accordance with the minimum design standards set out in this section.~~

~~B. The permit-issuing authority shall require compliance with subdivision 19 of 4VAC50-30-40 of the Erosion and Sediment Control Regulations, promulgated pursuant to Article 4 (§ 10.1-560 et seq.) of Chapter 5 of Title 10.1 of the Code of Virginia.~~

~~C. The permit issuing authority may determine that some watersheds or receiving stream systems require enhanced criteria in order to address the increased frequency of bankfull flow conditions (top of bank) brought on by land disturbing activities. Therefore, in lieu of the reduction of the two-year post developed peak rate of runoff as required in subsection B of this section, the land development project being considered shall provide 24-hour extended detention of the runoff generated by the one-year, 24-hour duration storm.~~

~~D. In addition to subsections B and C of this section permit issuing authorities, by local ordinance may, or the board by state regulation may, adopt more stringent channel analysis criteria or design standards to ensure that the natural level of channel erosion, to the maximum extent practicable, will not increase due to the land disturbing activities. These criteria may include, but are not limited to, the following:~~

~~1. Criteria and procedures for channel analysis and classification.~~

~~2. Procedures for channel data collection.~~

~~3. Criteria and procedures for the determination of the magnitude and frequency of natural sediment transport loads.~~

~~4. Criteria for the selection of proposed natural or man-made channel linings.~~

4VAC50-60-72. Design storms and hydrologic methods.

A. Unless otherwise specified, the prescribed design storms are the one-year, two-year, and 10-year 24-hour storms using the site-specific rainfall precipitation frequency data recommended by the U.S. National Oceanic and Atmospheric Administration (NOAA) Atlas 14. Partial duration time series shall be used for the precipitation data.

B. [~~All~~ Unless otherwise specified, all] hydrologic analyses shall be based on the existing watershed characteristics and the ultimate development condition of the subject project.

C. The U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) synthetic 24-hour rainfall distribution and models, including, but not limited to TR-55 and TR-20; hydrologic and hydraulic methods developed by the U.S. Army Corps of Engineers; or other standard hydrologic and hydraulic methods, shall be used to conduct the analyses described in this part.

D. The local program may allow for the use of the Rational Method for evaluating peak discharges or the Modified Rational Method for evaluating volumetric flows to stormwater conveyances with drainage areas of 200 acres or less.

4VAC50-60-74. Stormwater harvesting.

In accordance with § 10.1-603.4 of the Code of Virginia, stormwater harvesting is encouraged for the purposes of landscape irrigation systems, fire protection systems, flushing water closets and urinals, and other water handling systems to the extent such systems are consistent with federal, state, and local regulatory authorities.

4VAC50-60-76. Linear development projects.

Unless exempt pursuant to § 10.1-603.8 B of the Code of Virginia, linear development projects shall control postdevelopment stormwater runoff in accordance with a site-specific stormwater management plan or a comprehensive watershed stormwater management plan developed in accordance with these regulations.

4VAC50-60-80. ~~Flooding.~~ (Repealed.)

~~A. Downstream properties and waterways shall be protected from damages from localized flooding due to changes in runoff rate of flow and hydrologic characteristics, including but not limited to, changes in volume, velocity, frequency, duration, and peak flow rate of stormwater runoff in accordance with the minimum design standards set out in this section.~~

~~B. The 10-year post developed peak rate of runoff from the development site shall not exceed the 10-year pre-developed peak rate of runoff.~~

~~C. In lieu of subsection B of this section, localities may, by ordinance, adopt alternate design criteria based upon geographic, land use, topographic, geologic factors or other downstream conveyance factors as appropriate.~~

~~D. Linear development projects shall not be required to control post-developed stormwater runoff for flooding, except in accordance with a watershed or regional stormwater management plan.~~

4VAC50-60-85. Stormwater management impoundment structures or facilities.

A. Construction of stormwater management impoundment structures or facilities within tidal or nontidal wetlands and perennial streams is not recommended.

B. Construction of stormwater management impoundment structures or facilities within a Federal Emergency Management Agency (FEMA) designated 100-year floodplain is not recommended.

C. Stormwater management wet ponds and extended detention ponds that are not covered by the Impounding Structure Regulations (4VAC50-20) shall [, at a minimum,] be engineered for structural integrity [~~and spillway design~~] for the 100-year storm event.

D. Construction of stormwater management impoundment structures or facilities may occur in karst areas only after a [~~geological~~] study [of the geology and hydrology] of the area has been conducted to determine the presence or absence

of karst features that may be impacted by stormwater runoff and BMP placement.

E. Discharge of stormwater runoff to a karst feature shall meet the water quality criteria set out in 4VAC50-60-63 and the water quantity criteria set out in 4VAC50-60-66. Permanent stormwater management impoundment structures or facilities shall only be constructed in karst features after completion of a geotechnical investigation that identifies any necessary modifications to the BMP to ensure its structural integrity and maintain its water quality and quantity efficiencies. The person responsible for the land-disturbing activity is encouraged to screen for known existence of heritage resources in the karst features. Any Class V Underground Injection Control Well registration statements for stormwater discharges to improved sinkholes shall be included in the SWPPP.

4VAC50-60-90. ~~Regional (watershed-wide) stormwater management plans.~~ (Repealed.)

~~This section enables localities to develop regional stormwater management plans. State agencies intending to develop large tracts of land such as campuses or prison compounds are encouraged to develop regional plans where practical.~~

~~The objective of a regional stormwater management plan is to address the stormwater management concerns in a given watershed with greater economy and efficiency by installing regional stormwater management facilities versus individual, site-specific facilities. The result will be fewer stormwater management facilities to design, build and maintain in the affected watershed. It is also anticipated that regional stormwater management facilities will not only help mitigate the impacts of new development, but may also provide for the remediation of erosion, flooding or water quality problems caused by existing development within the given watershed.~~

~~If developed, a regional plan shall, at a minimum, address the following:~~

~~1. The specific stormwater management issues within the targeted watersheds.~~

~~2. The technical criteria in 4VAC50-60-40 through 4VAC50-60-80 as needed based on subdivision 1 of this section.~~

~~3. The implications of any local comprehensive plans, zoning requirements, local ordinances pursuant to the Chesapeake Bay Preservation Area Designation and Management Regulations adopted pursuant to the Chesapeake Bay Preservation Act, and other planning documents.~~

~~4. Opportunities for financing a watershed plan through cost sharing with neighboring agencies or localities, implementation of regional stormwater utility fees, etc.~~

~~5. Maintenance of the selected stormwater management facilities.~~

~~6. Future expansion of the selected stormwater management facilities in the event that development exceeds the anticipated level.~~

[4VAC50-60-92. Comprehensive watershed stormwater management plans.

A. Qualifying local programs may develop comprehensive watershed stormwater management plans to be approved by the department that meet the water quality objectives, quantity objectives, or both of this chapter:

1. Such plans shall ensure that offsite reductions equal to or greater than those that would be required on each contributing land-disturbing site are achieved within the same HUC or within another locally designated watershed. Pertaining to water quantity objectives, the plan may provide for implementation of a combination of channel improvement, stormwater detention, or other measures that are satisfactory to the qualifying local program to prevent downstream erosion and flooding.

2. If the land use assumptions upon which the plan was based change or if any other amendments are deemed necessary by the qualifying local program, the qualifying local program shall provide plan amendments to the board for review and approval.

3. During the plan's implementation, the qualifying local program shall account for nutrient reductions accredited to the BMPs specified in the plan.

4. State and federal agencies may develop comprehensive stormwater management plans, and may participate in locality-developed comprehensive watershed stormwater management plans where practicable and permitted by the qualifying local program.]

4VAC50-60-93. [~~Stormwater management plan development.~~ (Reserved.)]

[~~A. A stormwater management plan for a land-disturbing activity shall apply these stormwater management technical criteria to the entire land-disturbing activity.~~

~~B. Individual lots or planned phases of developments shall not be considered separate land-disturbing activities, but rather the entire development shall be considered a single land-disturbing activity.~~

~~C. The stormwater management plan shall consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to surface runoff.~~]

[Part II B
Stormwater Management Program Technical Criteria:
Grandfathered Projects

4VAC50-60-94. Applicability.

This part specifies the technical criteria for regulated land-disturbing activities that are not subject to the technical criteria of Part II A in accordance with 4VAC 50-60-48.

4VAC50-60-95. General.

A. Determination of flooding and channel erosion impacts to receiving streams due to land-disturbing activities shall be measured at each point of discharge from the land disturbance and such determination shall include any runoff from the balance of the watershed that also contributes to that point of discharge.

B. The specified design storms shall be defined as either a 24-hour storm using the rainfall distribution recommended by the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) when using NRCS methods or as the storm of critical duration that produces the greatest required storage volume at the site when using a design method such as the Modified Rational Method.

C. For purposes of computing runoff, all pervious lands in the site shall be assumed prior to development to be in good condition (if the lands are pastures, lawns, or parks), with good cover (if the lands are woods), or with conservation treatment (if the lands are cultivated); regardless of conditions existing at the time of computation.

D. Construction of stormwater management facilities or modifications to channels shall comply with all applicable laws and regulations. Evidence of approval of all necessary permits shall be presented.

E. Impounding structures that are not covered by the Impounding Structure Regulations (4VAC50-20) shall be engineered for structural integrity during the 100-year storm event.

F. Predevelopment and postdevelopment runoff rates shall be verified by calculations that are consistent with good engineering practices.

G. Outflows from a stormwater management facility or stormwater conveyance system shall be discharged to an adequate channel.

H. Proposed residential, commercial, or industrial subdivisions shall apply these stormwater management criteria to the land disturbance as a whole. Individual lots in new subdivisions shall not be considered separate land-disturbing activities, but rather the entire subdivision shall be considered a single land development project. Hydrologic parameters shall reflect the ultimate land disturbance and shall be used in all engineering calculations.

I. All stormwater management facilities shall have an inspection and maintenance plan that identifies the owner and the responsible party for carrying out the inspection and maintenance plan.

J. Construction of stormwater management impoundment structures within a Federal Emergency Management Agency (FEMA) designated 100-year floodplain shall be avoided to the extent possible. When this is unavoidable, all stormwater management facility construction shall be in compliance with all applicable regulations under the National Flood Insurance Program, 44 CFR Part 59.

K. Natural channel characteristics shall be preserved to the maximum extent practicable.

L. Land-disturbing activities shall comply with the Virginia Erosion and Sediment Control Law (§ 10.1-560 et seq. of the Code of Virginia) and attendant regulations.

M. Flood control and stormwater management facilities that drain or treat water from multiple development projects or from a significant portion of a watershed may be allowed in resource protection areas defined in the Chesapeake Bay Preservation Act, provided that (i) the local government has conclusively established that the location of the facility within the resource protection area is the optimum location; (ii) the size of the facility is the minimum necessary to provide necessary flood control, stormwater treatment, or both; and (iii) the facility must be consistent with a stormwater management program that has been approved by the board, the Chesapeake Bay Local Assistance Board, or the Board of Conservation and Recreation.]

4VAC50-60-96. [~~Comprehensive watershed stormwater management plans~~ Water quality].

[~~A. Local programs may develop comprehensive watershed stormwater management plans to be approved by the department that meet the water quality objectives, quantity objectives, or both of this chapter.~~

~~1. Such plans shall ensure that offsite reductions equal to or greater than those that would be required on each contributing land disturbing site are achieved within the same HUC or within another locally designated watershed. Pertaining to water quantity objectives, the plan may provide for implementation of a combination of channel improvement, stormwater detention, or other measures that are satisfactory to the local program to prevent downstream erosion and flooding.~~

~~2. If the land use assumptions upon which the plan was based change or if any other amendments are deemed necessary by the local program, the local program shall provide plan amendments to the board for review and approval.~~

~~3. During the plan's implementation, the local program shall account for nutrient reductions accredited to the BMPs specified in the plan.~~

~~4. State and federal agencies may participate in comprehensive watershed stormwater management plans where practicable and permitted by the local program.~~ A. Compliance with the water quality criteria may be achieved by applying the performance-based criteria or the technology-based criteria to either the site or a planning area.]

B. [~~If the qualifying local program allows for a pro rata fee in accordance with § 15.2-2243 of the Code of Virginia, then the reductions required for a site by this chapter may be achieved by the payment of a pro rata fee sufficient to fund improvements necessary to adequately achieve those requirements in accordance with that section of the Code of Virginia and this chapter.~~ Performance-based criteria. For land-disturbing activities, the calculated postdevelopment nonpoint source pollutant runoff load shall be compared to the calculated predevelopment load based upon the average land cover condition or the existing site condition. A BMP shall be located, designed, and maintained to achieve the target pollutant removal efficiencies specified in Table 2 of this section to effectively reduce the pollutant load to the required level based upon the following four applicable land development situations for which the performance criteria apply:

1. Situation 1 consists of land-disturbing activities where the existing percent impervious cover is less than or equal to the average land cover condition and the proposed improvements will create a total percent impervious cover that is less than the average land cover condition.

Requirement: No reduction in the after disturbance pollutant discharge is required.

2. Situation 2 consists of land-disturbing activities where the existing percent impervious cover is less than or equal to the average land cover condition and the proposed improvements will create a total percent impervious cover that is greater than the average land cover condition.

Requirement: The pollutant discharge after disturbance shall not exceed the existing pollutant discharge based on the average land cover condition.

3. Situation 3 consists of land-disturbing activities where the existing percent impervious cover is greater than the average land cover condition.

Requirement: The pollutant discharge after disturbance shall not exceed (i) the pollutant discharge based on existing conditions less 10% or (ii) the pollutant discharge based on the average land cover condition, whichever is greater.

4. Situation 4 consists of land-disturbing activities where the existing percent impervious cover is served by an existing stormwater management BMP that addresses water quality.

Requirement: The pollutant discharge after disturbance shall not exceed the existing pollutant discharge based on the existing percent impervious cover while served by the existing BMP. The existing BMP shall be shown to have been designed and constructed in accordance with proper design standards and specifications, and to be in proper functioning condition.

C. Technology-based criteria. For land-disturbing activities, the postdeveloped stormwater runoff from the impervious cover shall be treated by an appropriate BMP as required by the postdeveloped condition percent impervious cover as specified in Table 2 of this section. The selected BMP shall be located, designed, and maintained to perform at the target pollutant removal efficiency specified in Table 2 or those found in 4VAC50-60-65. Design standards and specifications for the BMPs in Table 2 that meet the required target pollutant removal efficiency are available in the 1990 Virginia Stormwater Management Handbook. Other approved BMPs available on the Virginia Stormwater BMP Clearinghouse website at http://www.vwrrc.vt.edu/swc may also be utilized.

Table 2*

Water Quality BMP*	Target Phosphorus Removal Efficiency	Percent Impervious Cover
Vegetated filter strip	10%	16-21%
Grassed Swale	15%	
Constructed wetlands	20%	22-37%
Extended detention (2 x WQ Vol)	35%	
Retention basin I (3 x WQ Vol)	40%	
Bioretention basin	50%	38-66%
Bioretention filter	50%	
Extended detention-enhanced	50%	
Retention basin II (4 x WQ Vol)	50%	
Infiltration (1 x WQ Vol)	50%	
Sand filter	65%	67-100%
Infiltration (2 x WQ Vol)	65%	

Retention basin III (4 x WQ Vol with aquatic bench)	65%	

*Innovative or alternate BMPs not included in this table may be allowed at the discretion of the local program administrator or the department. Innovative or alternate BMPs not included in this table that target appropriate nonpoint source pollution other than phosphorous may be allowed at the discretion of the local program administrator or the department.

4VAC50-60-97. Stream channel erosion.

A. Properties and receiving waterways downstream of any land-disturbing activity shall be protected from erosion and damage due to changes in runoff rate of flow and hydrologic characteristics, including, but not limited to, changes in volume, velocity, frequency, duration, and peak flow rate of stormwater runoff in accordance with the minimum design standards set out in this section.

B. The permit-issuing authority shall require compliance with subdivision 19 of 4VAC50-30-40 of the Erosion and Sediment Control Regulations, promulgated pursuant to Article 4 (§ 10.1-560 et seq.) of Chapter 5 of Title 10.1 of the Code of Virginia.

C. The permit-issuing authority may determine that some watersheds or receiving stream systems require enhanced criteria in order to address the increased frequency of bankfull flow conditions (top of bank) brought on by land-disturbing activities. Therefore, in lieu of the reduction of the two-year postdeveloped peak rate of runoff as required in subsection B of this section, the land development project being considered shall provide 24-hour extended detention of the runoff generated by the one-year, 24-hour duration storm.

D. In addition to subsections B and C of this section, permit-issuing authorities, by local ordinance may, or the board by state regulation may, adopt more stringent channel analysis criteria or design standards to ensure that the natural level of channel erosion, to the maximum extent practicable, will not increase due to the land-disturbing activities. These criteria may include, but are not limited to, the following:

1. Criteria and procedures for channel analysis and classification.

2. Procedures for channel data collection.

3. Criteria and procedures for the determination of the magnitude and frequency of natural sediment transport loads.

4. Criteria for the selection of proposed natural or manmade channel linings.

4VAC50-60-98. Flooding.

A. Downstream properties and waterways shall be protected from damages from localized flooding due to changes in runoff rate of flow and hydrologic characteristics, including, but not limited to, changes in volume, velocity, frequency, duration, and peak flow rate of stormwater runoff in accordance with the minimum design standards set out in this section.

B. The 10-year postdeveloped peak rate of runoff from the development site shall not exceed the 10-year predeveloped peak rate of runoff.

C. In lieu of subsection B of this section, localities may, by ordinance, adopt alternate design criteria based upon geographic, land use, topographic, geologic factors, or other downstream conveyance factors as appropriate.

D. Linear development projects shall not be required to control postdeveloped stormwater runoff for flooding, except in accordance with a watershed or regional stormwater management plan.

4VAC50-60-99. Regional (watershedwide) stormwater management plans.

Water quality and where allowed, water quantity, may be achieved in accordance with sections 4VAC50-60-69 and 4VAC50-60-92.]

~~Part III~~
~~Local Programs~~

4VAC50-60-100. ~~Applicability.~~ (Repealed.)

~~This part specifies technical criteria, minimum ordinance requirements, and administrative procedures for all localities operating local stormwater management programs.~~

Part III A
Local Programs

4VAC50-60-102. Authority and applicability.

If a locality has adopted a local stormwater management program in accordance with the Virginia Stormwater Management Act (§ 10.1-603.2 et seq. of the Code of Virginia) and the board has deemed such program adoption consistent with the Virginia Stormwater Management Act and these regulations in accordance with § 10.1-603.3 F of the Code of Virginia, the board may authorize a locality to administer a qualifying local program. Pursuant to § 10.1-603.4, the board is required to establish standards and procedures for such an authorization.

This part specifies the minimum technical criteria and the local government ordinance requirements for a local program to be considered a qualifying local program. Such criteria include but are not limited to administration, plan review, issuance of coverage under the Virginia Stormwater Management Program (VSMP) General Permit for

Discharges of Stormwater from Construction Activities, inspection, and enforcement.

4VAC50-60-104. Technical criteria for qualifying local programs.

A. All qualifying local programs shall require compliance with the provisions of [~~Part II~~ Part II A and Part II B as applicable] (4VAC50-60-40 et seq.) of this chapter unless an exception is granted pursuant to 4VAC50-60-122 and shall comply with the requirements of 4VAC50-60-460 L.

B. When a locality operating a qualifying local program has adopted requirements more stringent than those imposed by this chapter in accordance with § 10.1-603.7 of the Code of Virginia or implemented a comprehensive stormwater management plan, the department shall consider such requirements in its review of state projects within that locality in accordance with Part IV (4VAC50-60-160 et seq.) of this chapter.

C. Nothing in this part shall be construed as authorizing a locality to regulate, or to require prior approval by the locality for, a state project.

4VAC50-60-106. Qualifying local program administrative requirements.

A. A qualifying local program shall provide for the following:

1. Identification of the authority authorizing coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities, the plan reviewing authority, the plan approving authority, the inspection authority, and the enforcement authority;

2. Technical criteria to be used in the qualifying local program;

3. Procedures for the submission and approval of plans;

4. Inspection and monitoring of land-disturbing activities covered by a permit for compliance;

5. [~~Procedures or policies for long-term inspection and maintenance of stormwater management facilities~~ Enforcement]; and

6. [~~Enforcement~~ Procedures or policies for long-term inspection and maintenance of stormwater management facilities].

B. A [~~locality~~ qualifying local program] shall adopt an ordinance(s) that incorporates the components set out in [subdivisions 1 through 5 of] subsection A of this section and consent to follow procedures provided by the department for the issuance, denial, revocation, termination, reissuance, transfer, or modifications of coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities.

C. A qualifying local program shall report to the department information related to the administration and implementation of the qualifying local program in accordance with 4VAC50-60-126.

D. A qualifying local program may require the submission of a reasonable performance bond or other financial surety and provide for the release of such sureties in accordance with the criteria set forth in § 10.1-603.8 of the Code of Virginia.

4VAC50-60-108. Qualifying local program stormwater management plan review.

A. A qualifying local program shall require stormwater management plans to be submitted for review and be approved prior to commencement of land-disturbing activities. [In addition to the other requirements of this chapter, a stormwater management plan must be developed in accordance with the following:

1. A stormwater management plan for a land-disturbing activity shall apply the stormwater management technical criteria to the entire land-disturbing activity.

2. At the discretion of the qualifying local program, individual lots or planned phases of developments shall not be considered separate land-disturbing activities, but rather the entire development shall be considered a single land-disturbing activity.

3. The stormwater management plan shall consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to surface runoff.]

B. A qualifying local program shall approve or disapprove a stormwater management plan and required accompanying information according to the following:

1. Stormwater management plan review shall begin upon submission of a complete plan. A complete plan shall include the following elements:

a. The location of all points of stormwater discharge, receiving surface waters or karst features into which the stormwater discharges, and predevelopment and postdevelopment conditions for drainage areas, including final drainage patterns and changes to existing contours;

b. Contact information including the name, address, and telephone number of the property owner and the tax reference number and parcel number of the property or properties affected;

c. A narrative that includes a description of current site conditions and proposed development and final site conditions, including proposed stormwater management facilities and the mechanism, including an identification of financially responsible parties, through which the facilities will be operated and maintained during and after construction activity;

d. The location and the design of the proposed stormwater management facilities;

e. Information identifying the hydrologic characteristics and structural properties of soils utilized with the installation of stormwater management facilities;

f. Hydrologic and hydraulic computations of the predevelopment and postdevelopment runoff conditions for the required design storms;

g. Good engineering practices and calculations verifying compliance with the water quality and quantity requirements of this chapter;

h. A map or maps of the site that depicts the topography of the site and includes:

(1) All contributing drainage areas;

(2) Receiving surface waters or karst features into which stormwater will be discharged;

(3) Existing streams, ponds, culverts, ditches, wetlands, and other water bodies;

(4) Soil types, geologic formations, forest cover, and other vegetative areas;

(5) Current land use including existing structures, roads, and locations of known utilities and easements;

(6) Sufficient information on adjoining parcels to assess the impacts of stormwater from the site;

(7) The limits of clearing and grading, and the proposed drainage patterns on the site;

(8) Proposed buildings, roads, parking areas, utilities, and stormwater management facilities; and

(9) Proposed land use with tabulation of the percentage of surface area to be adapted to various uses, including but not limited to planned locations of utilities, roads, and easements.

i. [No more than] 50% of the required [base] fee in accordance with 4VAC50-60-820, and the required fee form must have been submitted.

2. Elements of the stormwater management plans shall be appropriately sealed and signed by a professional in adherence to all minimum standards and requirements pertaining to the practice of that profession in accordance with Chapter 4 (§ 54.1-400 et seq.) of Title 54.1 of the Code of Virginia and attendant regulations.

3. Completeness of a plan and required accompanying information shall be determined by the qualifying local program, and the applicant shall be notified of any determination, within 15 calendar days of receipt.

a. If within those 15 days the plan is deemed to be incomplete based on the criteria set out in this subsection, the applicant shall be notified in writing of the reasons the plan is deemed incomplete.

b. If a determination of completeness is made and communicated to the applicant within the 15 calendar days, an additional 60 calendar days from the date of the communication will be allowed for the review of the plan.

c. If a determination of completeness is not made and communicated to the applicant within the 15 calendar days, the plan shall be deemed complete as of the date of submission and a total of 60 calendar days from the date of submission will be allowed for the review of the plan.

d. The qualifying local program shall act within 45 days on any plan that has been previously disapproved and resubmitted.

4. During the review period, the plan shall be approved or disapproved and the decision communicated in writing to the person responsible for the land-disturbing activity or his designated agent. If the plan is not approved, the reasons for not approving the plan shall be provided in writing. Approval or denial shall be based on the plan's compliance with the requirements of this chapter and of the qualifying local program. [Where available to the applicant, electronic communication may be considered communication in writing.]

5. If a plan meeting all requirements of this chapter and of the qualifying local program is submitted and no action is taken within the time specified above, the plan shall be deemed approved.

C. Notwithstanding the requirements of subsection A of this section, if allowed by the qualifying local program, an initial stormwater management plan may be submitted for review and approval when it is accompanied by an erosion and sediment control plan, preliminary stormwater design for the current and future site work, fee form, and [no more than] 50% of the [base] fee required by 4VAC50-60-820. Such plans shall be limited to the initial clearing and grading of the site unless otherwise allowed by the qualifying local program. Approval by the qualifying local program of an initial plan does not supersede the need for the submittal and approval of a complete stormwater management plan and the updating of the SWPPP prior to the commencement of activities beyond initial clearing and grading and other activities approved by the local program. The initial plan shall include information detailed in subsection B of this section to the extent required by the qualifying local program and such other information as may be required by the qualifying local program.

D. Each approved plan may be modified in accordance with the following:

1. Modifications to an approved stormwater management plan shall be allowed only after review and written

approval by the qualifying local program. The qualifying local program shall have 60 calendar days to respond in writing either approving or disapproving such requests.

2. Based on an inspection, the qualifying local program may require amendments to the approved stormwater management plan to address the noted deficiencies and notify the permittee of the required modifications.

4VAC50-60-110. ~~Technical criteria for local programs.~~ (Repealed.)

~~A. All local stormwater management programs shall comply with the general technical criteria as outlined in 4VAC50-60-50.~~

~~B. All local stormwater management programs which contain provisions for stormwater runoff quality shall comply with 4VAC50-60-60. A locality may establish criteria for selecting either the site or a planning area on which to apply the water quality criteria. A locality may opt to calculate actual watershed specific or locality wide values for the average land cover condition based upon:~~

~~1. Existing land use data at time of local Chesapeake Bay Preservation Act Program or department stormwater management program adoption, whichever was adopted first;~~

~~2. Watershed or locality size; and~~

~~3. Determination of equivalent values of impervious cover for nonurban land uses which contribute nonpoint source pollution, such as agriculture, forest, etc.~~

~~C. All local stormwater management programs which contain provisions for stream channel erosion shall comply with 4VAC50-60-70.~~

~~D. All local stormwater management programs must contain provisions for flooding and shall comply with 4VAC50-60-80.~~

~~E. All local stormwater management programs which contain provisions for watershed or regional stormwater management plans shall comply with 4VAC50-60-110.~~

~~F. A locality that has adopted more stringent requirements or implemented a regional (watershed wide) stormwater management plan may request, in writing, that the department consider these requirements in its review of state projects within that locality.~~

~~G. Nothing in this part shall be construed as authorizing a locality to regulate, or to require prior approval by the locality for, a state project.~~

4VAC50-60-112. Qualifying local program authorization of coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities.

A. Coverage shall be authorized by the qualifying local program under the VSMP General Permit for Discharges of Stormwater from Construction Activities in accordance with the following:

1. The applicant must have an approved initial stormwater management plan or an approved stormwater management plan for the land-disturbing activity.

2. The applicant must have submitted proposed right-of-entry agreements or easements from the owner for purposes of inspection and maintenance and proposed maintenance agreements, including inspection schedules, [where required] in accordance with 4VAC50-60-124.

3. The applicant must have an approved registration statement for the VSMP General Permit for Discharges of Stormwater from Construction Activities.

4. The applicant must have submitted the required fee form and total fee required by 4VAC50-60-820.

5. Applicants submitting registration statements deemed to be incomplete must be notified within 15 working days of receipt by the qualifying local program that the registration statement is not complete and be notified (i) of what material needs to be submitted to complete the registration statement, and (ii) that the land-disturbing activity does not have coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities.

B. Coverage or termination of coverage shall be authorized through a standardized database or other method provided by the department. Such database shall include, at a minimum, permit number, operator name, activity name, acres disturbed, date of permit coverage, and site address and location as well as date of termination.

C. Coverage information pertaining to the VSMP General Permit for Discharges of Stormwater from Construction Activities shall be reported to the department in accordance with 4VAC50-60-126 by the qualifying local program.

D. The applicant shall be notified of authorization of permit coverage by the qualifying local program.

4VAC50-60-114. Inspections.

A. The qualifying local program or its designee shall inspect the land-disturbing activity during construction for compliance with the VSMP General Permit for Discharges of Stormwater from Construction Activities.

B. The person responsible for the development project or their designated agent shall submit to a qualifying local program a construction record drawing for permanent stormwater management facilities, appropriately sealed, and

signed by a professional in accordance with all minimum standards and requirements pertaining to the practice of that profession pursuant to Chapter 4 (§ 54.1-400 et seq.) of Title 54.1 of the Code of Virginia and attendant regulations, certifying that the stormwater management facilities have been constructed in accordance with the approved plan. The qualifying local program shall have the construction record drawing and certification on file prior to the release of the portion of [~~the~~ any] performance bond or surety associated with the stormwater management facility. [The qualifying local program may elect not to require construction record drawings for stormwater management facilities for which maintenance agreements are not required pursuant to 4VAC50-60-124.]

C. The [~~owners~~ owner] of [a] stormwater management [~~facilities~~ facility for which a maintenance agreement is required pursuant to 4VAC50-60-124] shall be required to conduct inspections in accordance with an inspection schedule in [~~a~~ the] recorded maintenance agreement, and shall submit written inspection and maintenance reports to the qualifying local program [~~upon request~~]. Such reports, if consistent with a board-approved inspection program established in subsection [~~D~~ E] of this section, may be utilized by the qualifying local program if the inspection is conducted by a person who is licensed as a professional engineer, architect, [~~certified~~] landscape architect, or land surveyor pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 or who holds a certificate of competence from the board. The reports, if so utilized, must be kept on file with the qualifying local program [.]

D. A qualifying local program shall [develop a strategy for addressing maintenance of stormwater management facilities designed to treat stormwater runoff solely from an individual residential lot on which they are located. Such a strategy may include periodic inspections, homeowner outreach and education, or other method targeted at promoting the long-term maintenance of such facilities. Such facilities shall not be subject to the requirement for an inspection to be conducted by the qualifying local program every five years contained within subsection E of this section.

E. A qualifying local program shall] establish an inspection program that ensures that the stormwater management facilities are being maintained as designed. Any inspection program shall be:

1. Approved by the board prior to implementation;

2. Established in writing;

3. Based on a system of priorities that takes into consideration the purpose and type of the facility, ownership and the existence of a recorded maintenance agreement and inspection schedule [where required] , the contributing drainage area, and downstream conditions;

4. Demonstrated to be an enforceable inspection program that meets the intent of the regulations and ensures that each stormwater management facility is inspected by the qualifying local program or its designee, not to include the owner, except as provided in [~~subsection~~ subsections] C [and D] of this section, at least every five years; and

5. Documented by inspection records.

[~~E.~~ F.] Inspection reports shall be generated and kept on file in accordance with 4VAC50-60-126 for all stormwater management facilities inspected by the qualifying local program.

4VAC50-60-116. Qualifying local program enforcement.

A. A qualifying local program may incorporate the following components:

1. Informal and formal administrative enforcement procedures including:

a. Verbal warnings and inspection reports;

b. Notices of corrective action;

c. Consent special orders and civil charges in accordance with subdivision 7 of § 10.1-603.2:1 and § 10.1-603.14 D 2 of the Code of Virginia;

d. Notices to comply in accordance with § 10.1-603.11 of the Code of Virginia;

e. Special orders in accordance with subdivision 7 of § 10.1-603.2:1 of the Code of Virginia;

f. Emergency special orders in accordance with subdivision 7 of § 10.1-603.2:1 of the Code of Virginia; and

g. Public notice and comment periods pursuant to 4VAC50-60-660.

2. Civil and criminal judicial enforcement procedures including:

a. Schedule of civil penalties set out in subsection D of this section;

b. Criminal penalties in accordance with § 10.1-603.14 B and C of the Code of Virginia; and

c. Injunctions in accordance with §§ 10.1-603.12:4, 10.1-603.2:1 and 10.1-603.14 D 1 of the Code of Virginia.

B. A qualifying local program shall develop policies and procedures that outline the steps to be taken regarding enforcement actions under the Stormwater Management Act and attendant regulations and the local ordinance.

C. A qualifying local program may utilize the department's Stormwater Management Enforcement Manual as guidance in establishing policies and procedures.

D. A court may utilize as guidance the following Schedule of Civil Penalties set by the board in accordance with § 10.1-603.14 A of the Code of Virginia. The range contained within the schedule reflects the degree of harm caused by the violation, which is site-specific and may vary greatly from case to case, as may the economic benefit of noncompliance to the violator. Each day of violation of each requirement shall constitute a separate offense. Assignment of the degree of harm is a qualitative decision subject to the court's discretion. The court has the discretion to impose a maximum penalty of $32,500 per violation per day in accordance with § 10.1-603.14 A of the Code of Virginia.

1. Gravity-based Component	Marginal	Moderate	Serious	
Violations* and Frequency of Occurrence **	$$ x occurrences	$$ x occurrences	$$ x occurrences	SUBTOTAL
No Permit Registration (each month w/o coverage = 1 occurrence)	500 x ____	1,000 x ____	2,000 x ____	
No SWPPP (No SWPPP components including E&S Plan) (each month of land-disturbing without SWPPP = 1 occurrence)	1,000 x ____	1,500 x ____	2,000 x ____	
Incomplete SWPPP	300 x ____	500 x ____	1,000 x ____	
SWPPP not on site	100 x ____	300 x ____	500 x ____	
No approved Erosion and Sediment Control Plan	500 x ____	1,000 x ____	2,000 x ____	
Failure to install stormwater BMPs or erosion and sediment ("E&S") controls	300 x ____	500 x ____	1,000 x ____	
Stormwater BMPs or E&S controls improperly installed or maintained	250 x ____	500 x ____	750 x ____	
Operational deficiencies (e.g., failure to initiate stabilization measures as soon as practicable; unauthorized discharges of stormwater; failure to implement control measures for construction debris)	1,000 x ____	2,000 x ____	5,000 x ____	
Failure to conduct required inspections	500 x ____	2,000 x ____	3,000 x ____	
Incomplete, improper or missed inspections (e.g., inspections not conducted by qualified personnel; site inspection reports do not include date, weather information, location of discharge, or are not certified, etc.)	300 x ____	500 x ___	1,000 x ____	
			Subtotal #1	
2. Estimated Economic Benefit of Noncompliance (if applicable)			Subtotal #2	
3. Recommended civil penalty			Total (#1 and #2)	

* Each stormwater BMP or E&S control that is either not installed or improperly installed or maintained is a separate violation.

** The frequency of occurrence is per event unless otherwise noted.

E. Pursuant to subdivision 2 of § 10.1-603.2:1 of the Code of Virginia, authorization to administer a qualifying local program shall not remove from the board the authority to enforce the provisions of the Virginia Stormwater Management Act and attendant regulations.

F. Pursuant to § 10.1-603.14 A of the Code of Virginia, amounts recovered by a qualifying local program shall be paid into the treasury of the locality in which the violation occurred and are to be used for the purpose of minimizing, preventing, managing, or mitigating pollution of the waters of the locality and abating environmental pollution therein in such manner as the court may, by order, direct.

4VAC50-60-118. Hearings.

A qualifying local program shall ensure that any permit applicant or permittee shall have a right to a hearing pursuant to § 10.1-603.12:6 of the Code of Virginia and shall ensure that all hearings held under this chapter shall be conducted in accordance with § 10.1-603.12:7 of the Code of Virginia or as otherwise provided by law.

4VAC50-60-120. ~~Requirements for local program and ordinance.~~ (Repealed.)

~~A. At a minimum, the local stormwater management program and implementing ordinance shall meet the following:~~

~~1. The ordinance shall identify the plan approving authority and other positions of authority within the program, and shall include the regulations and technical criteria to be used in the program.~~

~~2. The ordinance shall include procedures for submission and approval of plans, issuance of permits, monitoring and inspections of land development projects. The party responsible for conducting inspections shall be identified. The local program authority shall maintain, either on site or in local program files, a copy of the approved plan and a record of all inspections for each land development project.~~

~~B. The department shall periodically review each locality's stormwater management program, implementing ordinance, and amendments. Subsequent to this review, the department shall determine if the program and ordinance are consistent with the state stormwater management regulations and notify the locality of its findings. To the maximum extent practicable the department will coordinate the reviews with other local government program reviews to avoid redundancy. The review of a local program shall consist of the following:~~

~~1. A personal interview between department staff and the local program administrator or his designee;~~

~~2. A review of the local ordinance and other applicable documents;~~

~~3. A review of plans approved by the locality and consistency of application;~~

~~4. An inspection of regulated activities; and~~

~~5. A review of enforcement actions.~~

~~C. Nothing in this chapter shall be construed as limiting the rights of other federal and state agencies from imposing stricter technical criteria or other requirements as allowed by law.~~

4VAC50-60-122. Qualifying local program exceptions.

A. A qualifying local program may grant exceptions to the provisions of [~~Part II (4VAC50-60-40 et seq.)~~ Parts II A and II B] of this chapter through an administrative process. A request for an exception, including the reasons for making the request, shall be submitted in writing to the qualifying local program. An exception may be granted provided that (i) the exception is the minimum necessary to afford relief, (ii) reasonable and appropriate conditions shall be imposed as necessary upon any exception granted so that the intent of the Act and this chapter are preserved, (iii) granting the exception will not confer on the permittee any special privileges that are denied to other permittees who present similar circumstances, and (iv) exception requests are not based upon conditions or circumstances that are self-imposed or self-created.

B. Economic hardship alone is not sufficient reason to grant an exception from the requirements of this chapter.

C. Under no circumstance shall the qualifying local program grant an exception to the requirement that the land-disturbing activity obtain a permit.

D. [Any exception to the water quality technical criteria of subdivisions 1 and 2 of 4VAC50-60-63 shall require that all available offsite options be utilized before an exception is granted and that any necessary phosphorus reductions unable to be achieved on site or through the available offsite options of subsection A of 4VAC50-60-69 be achieved through a payment made in accordance with subsection B of 4VAC50-60-69. In the case of the granting of an exception, the minimum on site thresholds of subsection B of 4VAC50-60-69 shall not apply.

E.] A record of all exceptions [applied for and] granted shall be maintained by the qualifying local program and reported to the department in accordance with 4VAC50-60-126.

4VAC50-60-124. Qualifying local program stormwater management facility maintenance.

A. Responsibility for the operation and maintenance of stormwater management facilities in accordance with this chapter, unless assumed by a governmental agency, shall remain with the property owner or other legally established entity and shall pass to any successor.

[1.] The [~~government entity implementing the~~] qualifying local program shall [~~be a party to each~~ require a] maintenance agreement [for each stormwater management facility except as provided in subdivision 2]. Such maintenance agreement shall [~~include a schedule for~~ require the owner to (i) perform] inspections [~~by the owner, and, in addition to ensuring that each~~ on a specified schedule, (ii) maintain the] facility [~~is maintained~~] as designed, [~~shall ensure that~~ and (iii) maintain] the designed flow and drainage patterns from the site to a permanent facility [~~are maintained~~]. Such agreements may also contain provisions specifying that, where maintenance or repair of a stormwater management facility located on the owner's property is neglected, or the stormwater management facility becomes a public health or safety concern and the owner has failed to perform the necessary maintenance and repairs after receiving notice from the locality, the qualifying local program may perform the necessary maintenance and repairs and recover the costs from the owner. In the specific case of a public health or safety danger, the agreement may provide that the written notice may be waived by the locality.

[2. Maintenance agreements, at the discretion of the qualifying local program, shall not be required for stormwater management facilities designed to treat stormwater runoff solely from an individual residential lot on which they are located, provided it is demonstrated to the satisfaction of the qualifying local program that future maintenance of such facilities will be addressed through a deed restriction or other mechanism enforceable by the qualifying local program.]

B. [~~The~~ Where a maintenance agreement is required for a stormwater management facility, the] qualifying local program shall be notified of any transfer or conveyance of ownership or responsibility for maintenance of a stormwater management facility.

C. [~~The~~ Where a maintenance agreement is required for a stormwater management facility, the] qualifying local program shall require right-of-entry agreements or easements from the property owner for purposes of inspection and maintenance.

4VAC50-60-126. Qualifying local program report and recordkeeping.

A. On a fiscal year basis (July 1 to June 30), a qualifying local program shall report to the department by October 1 of each year in a format provided by the department. The information to be provided shall include the following:

1. Information on each permanent stormwater management facility completed during the fiscal year to include type of stormwater management facility, coordinates, acres treated, and the surface waters or karst features into which the stormwater management facility will discharge;

2. Number of VSMP General Permit for Discharges of Stormwater from Construction Activities projects inspected and the total number of inspections by acreage categories determined by the department during the fiscal year;

3. Number and type of enforcement actions during the fiscal year; and

4. Number of exceptions applied for and the number granted or denied during the fiscal year.

B. A qualifying local program shall make information set out in subsection A of this section available to the department upon request.

C. A qualifying local program shall keep records in accordance with the following:

1. Permit files shall be kept for three years after permit termination. After three years, the permit file shall be delivered to the department by October 1 of each year.

2. Stormwater maintenance facility inspection reports shall be kept for five years from the date of inspection.

3. Stormwater maintenance agreements, design standards and specifications, [~~postconstruction surveys~~ construction record drawings], and maintenance records shall be maintained in perpetuity [or until a stormwater management facility is removed due to redevelopment of the site].

Part III B
Department of Conservation and Recreation Administered Local Programs

4VAC50-60-128. Authority and applicability.

In the absence of a qualifying local program, the department, in accordance with an adoption and implementation schedule set by the board and upon board approval, shall administer the local stormwater management program in a locality in accordance with § 10.1-603.3 C of the Code of Virginia. This part specifies the minimum technical criteria for a department-administered local stormwater management program in accordance with the Virginia Stormwater Management Act (§ 10.1-603.2 et seq. of the Code of Virginia), and the standards and criteria established in these regulations by the board pursuant to its authority under that article. Such criteria include but are not limited to administration, plan review, issuance of coverage under the Virginia Stormwater Management Program (VSMP) General Permit for Discharges of Stormwater from Construction Activities, issuance of individual permits, inspection, enforcement, and education and outreach components.

4VAC50-60-130. ~~Administrative procedures: stormwater management plans.~~ (Repealed.)

~~A. Localities shall approve or disapprove stormwater management plans according to the following:~~

~~1. A maximum of 60 calendar days from the day a complete stormwater management plan is accepted for review will be allowed for the review of the plan. During the 60-day review period, the locality shall either approve or disapprove the plan and communicate its decision to the applicant in writing. Approval or denial shall be based on the plan's compliance with the locality's stormwater management program.~~

~~2. A disapproval of a plan shall contain the reasons for disapproval.~~

~~B. Each plan approved by a locality shall be subject to the following conditions:~~

~~1. The applicant shall comply with all applicable requirements of the approved plan, the local program, this chapter and the Act, and shall certify that all land clearing, construction, land development and drainage will be done according to the approved plan.~~

~~2. The land development project shall be conducted only within the area specified in the approved plan.~~

~~3. The locality shall be allowed, after giving notice to the owner, occupier or operator of the land development project, to conduct periodic inspections of the project.~~

~~4. The person responsible for implementing the approved plan shall conduct monitoring and submit reports as the locality may require to ensure compliance with the approved plan and to determine whether the plan provides effective stormwater management.~~

~~5. No changes may be made to an approved plan without review and written approval by the locality.~~

4VAC50-60-132. Technical criteria.

A. The department-administered local stormwater management programs shall require compliance with the provisions of [~~Part II~~ Part II A and Part II B as applicable] (4VAC50-60-40 et seq.) of this chapter unless an exception is granted pursuant to 4VAC50-60-142 D and shall comply with the requirements of 4VAC50-60-460 L.

B. When reviewing a federal project, the department shall apply the provisions of this chapter.

C. Nothing in this chapter shall be construed as limiting the rights of other federal and state agencies to impose stricter technical criteria or other requirements as allowed by law.

4VAC50-60-134. Administrative authorities.

A. The department is the permit-issuing authority, plan approving authority, and the enforcement authority.

B. The department or its designee is the plan reviewing authority and the inspection authority.

C. The department shall assess and collect fees.

D. The department may require the submission of a reasonable performance bond or other financial surety in accordance with the criteria set forth in § 10.1-603.8 of the Code of Virginia prior to the issuance of coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities and in accordance with the following:

1. The amount of the installation performance security shall be the total estimated construction cost of the stormwater management BMPs approved under the stormwater management plan, plus 25%;

2. The performance security shall contain forfeiture provisions for failure, after proper notice, to complete work within the time specified, or to initiate or maintain appropriate actions that may be required in accordance with the approved stormwater management plan;

3. Upon failure by the applicant to take such action as required, the department may act and may collect from the applicant the difference should the amount of the reasonable cost of such action exceed the amount of the security held; and

4. Within 60 days of the completion of the requirements and conditions of the VSMP General Permit for Discharges of Stormwater from Construction Activities and the department's acceptance of the Notice of Termination, such bond, cash escrow, letter of credit, or other legal arrangement shall be refunded to the applicant.

4VAC50-60-136. Stormwater management plan review.

A. Stormwater management plans shall be reviewed and approved by the department prior to commencement of land-disturbing activities.

B. The department shall approve or disapprove a stormwater management plan and required accompanying information according to the criteria set out for a qualifying local program in 4VAC50-60-108 B.

C. The department shall not [~~accept~~ review or approve] initial stormwater management plans.

D. Each approved stormwater management plan may be modified in accordance with the criteria set out for a qualifying local program in 4VAC50-60-108 D.

4VAC50-60-138. Issuance of coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities.

The department shall issue coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities in accordance with the following:

1. The applicant must have a department-approved stormwater management plan for the land-disturbing activity.

2. The applicant must have submitted a complete registration statement for the VSMP General Permit for Discharges of Stormwater from Construction Activities in accordance with Part VII (4VAC50-60-360 et seq.) of this chapter and the requirements of the VSMP General Permit for Discharges of Stormwater from Construction Activities, which acknowledges that a SWPPP has been developed and will be implemented, and the registration statement must have been reviewed and approved prior to the commencement of land disturbance.

3. The applicant must have submitted the required fee form and fee for the registration statement seeking coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities.

4. Applicants submitting registration statements deemed to be incomplete must be notified within 15 working days of receipt by the department that the registration statement is not complete and be notified (i) of what material needs to be submitted to complete the registration statement, and (ii) that the land-disturbing activity does not have coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities.

5. The applicant shall be notified of authorization of permit coverage by the department.

6. Individual permits for qualifying land-disturbing activities may be issued at the discretion of the board or its designee pursuant to 4VAC50-60-410 B 3.

4VAC50-60-140. ~~Administrative procedures: exceptions.~~ (Repealed.)

~~A. A request for an exception shall be submitted, in writing, to the locality. An exception from the stormwater management regulations may be granted, provided that: (i) exceptions to the criteria are the minimum necessary to afford relief and (ii) reasonable and appropriate conditions shall be imposed as necessary upon any exception granted so that the intent of the Act and this chapter are preserved.~~

~~B. Economic hardship is not sufficient reason to grant an exception from the requirements of this chapter.~~

4VAC50-60-142. Inspections, enforcement, hearings, exceptions, and stormwater management facility maintenance.

A. Inspections shall be conducted by the department in accordance with 4VAC50-60-114.

B. Enforcement actions shall be conducted by the department in accordance with 4VAC50-60-116. The department's Stormwater Management Enforcement Manual shall serve as guidance to be utilized in enforcement actions under the Stormwater Management Act and attendant regulations. Any amounts assessed by a court as a result of a summons issued by the board or the department shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Stormwater Management Fund established pursuant to § 10.1-603.4:1 of the Code of Virginia.

C. Hearings shall be conducted by the department in accordance with 4VAC50-60-118.

D. Exceptions may be granted by the department in accordance with 4VAC50-60-122.

E. Stormwater management facility maintenance shall be conducted in accordance with 4VAC50-60-124.

4VAC50-60-150. ~~Administrative procedures: maintenance and inspections.~~ (Repealed.)

~~A. Responsibility for the operation and maintenance of stormwater management facilities, unless assumed by a governmental agency, shall remain with the property owner and shall pass to any successor or owner. If portions of the land are to be sold, legally binding arrangements shall be made to pass the basic responsibility to successors in title. These arrangements shall designate for each project the property owner, governmental agency, or other legally established entity to be permanently responsible for maintenance.~~

~~B. In the case of developments where lots are to be sold, permanent arrangements satisfactory to the locality shall be made to ensure continued performance of this chapter.~~

~~C. A schedule of maintenance inspections shall be incorporated into the local ordinance. Ordinances shall provide that in cases where maintenance or repair is neglected, or the stormwater management facility becomes a danger to public health or safety, the locality has the authority to perform the work and to recover the costs from the owner.~~

~~D. Localities may require right-of-entry agreements or easements from the applicant for purposes of inspection and maintenance.~~

~~E. Periodic inspections are required for all stormwater management facilities. Localities shall either:~~

~~1. Provide for inspection of stormwater management facilities on an annual basis; or~~

~~2. Establish an alternative inspection program which ensures that stormwater management facilities are functioning as intended. Any alternative inspection program shall be:~~

~~a. Established in writing;~~

~~b. Based on a system of priorities that, at a minimum, considers the purpose of the facility, the contributing drainage area, and downstream conditions; and~~

~~e. Documented by inspection records.~~

~~F. During construction of the stormwater management facilities, localities shall make inspections on a regular basis.~~

~~G. Inspection reports shall be maintained as part of a land development project file.~~

4VAC50-60-154. Reporting and recordkeeping.

A. The department shall maintain a current database of permit coverage information for all projects that includes permit number, operator name, activity name, acres disturbed, date of permit coverage, and site address and location.

B. On a fiscal year basis (July 1 to June 30), [~~a local program shall report to~~] the department [shall compile a report on the local programs it administers] by October 1 in accordance with 4VAC50-60-126 A.

[~~C. On a fiscal year basis (July 1 to June 30), the department shall compile information provided by local programs.~~

~~D.~~ C.] Records shall be maintained by the department in accordance with 4VAC50-60-126 C.

Part III C
Department of Conservation and Recreation Procedures for Review of Qualifying Local Programs

4VAC50-60-156. Authority and applicability.

This part specifies the criteria that the department will utilize in reviewing a locality's administration of a qualifying local program pursuant to § 10.1-603.12 of the Code of Virginia following the board's approval of such program in accordance with the Virginia Stormwater Management Act and these regulations.

4VAC50-60-157. Stormwater management program review.

A. The department shall review each board-approved qualifying local program at least once every five years on a review schedule approved by the board. The department may review a qualifying local program on a more frequent basis if deemed necessary by the board and shall notify the local government if such review is scheduled.

B. The review of a board-approved qualifying local program shall consist of the following:

1. An interview between department staff and the qualifying local program administrator or his designee;

2. A review of the local ordinance(s) and other applicable documents;

3. A review of a subset of the plans approved by the qualifying local program and consistency of application including exceptions granted;

4. An accounting of the receipt and of the expenditure of fees received;

5. An inspection of regulated activities; and

6. A review of enforcement actions and an accounting of amounts recovered through enforcement actions.

C. To the extent practicable, the department will coordinate the reviews with other local government program reviews to avoid redundancy.

D. The department shall provide its recommendations to the board within 90 days of the completion of a review. Such recommendations shall be provided to the locality in advance of the meeting.

E. The board shall determine if the qualifying local program and ordinance are consistent with the Act and state stormwater management regulations and notify the qualifying local program of its findings.

F. If the board determines that the deficiencies noted in the review will cause the qualifying local program to be out of compliance with the Stormwater Management Act and its attendant regulations, the board shall notify the qualifying local program concerning the deficiencies and provide a reasonable period of time for corrective action to be taken. If the qualifying local program agrees to the corrective action recommended by the board, the qualifying local program will be considered to be conditionally compliant with the Stormwater Management Act and its attendant regulations until a subsequent finding is issued by the board. If the qualifying local program fails to take the corrective action within the specified time, the board may take action pursuant to § 10.1-603.12 of the Code of Virginia.

Part III D
Virginia Soil and Water Conservation Board Authorization for Qualifying Local Programs

4VAC50-60-158. Authority and applicability.

Subdivision 1 of § 10.1-603.4 of the Code of Virginia requires that the board establish standards and procedures for authorizing a locality to administer a stormwater management program. In accordance with that requirement, and with the further authority conferred upon the board by the Virginia Stormwater Management Act (§ 10.1-603.2 et seq. of the Code of Virginia), this part specifies the procedures the board will utilize in authorizing a locality to administer a qualifying local program.

4VAC50-60-159. Authorization procedures for qualifying local programs.

A. A locality required to adopt a program in accordance with § 10.1-603.3 A of the Code of Virginia or those electing to seek authorization to administer a qualifying local program must submit to the board an application package which, at a minimum, contains the following:

1. The local program ordinance(s);

2. A funding and staffing plan based on the projected permitting fees; and

3. The policies and procedures, including but not limited to, agreements with Soil and Water Conservation Districts, adjacent localities, or other entities, for the administration, plan review, permit issuance, inspection, and enforcement components of the program.

B. Upon receipt of an application package, the board or its designee shall have [~~20~~ 30] calendar days to determine the completeness of the application package. If an application package is deemed to be incomplete based on the criteria set out in subsection A of this section, the board or its designee must identify in writing the reasons the application package is deemed deficient.

C. Upon receipt of a complete application package, the board or its designee shall have 90 calendar days for the review of the application package. During the 90-day review period, the board or its designee shall either approve or disapprove the application, or notify the locality of a time extension for the review, and communicate its decision to the locality in writing. If the application is not approved, the reasons for not approving the application shall be provided to the locality in writing. Approval or denial shall be based on the application's compliance with the Virginia Stormwater Management Act and these regulations.

D. A locality required to adopt a qualifying local program in accordance with § 10.1-603.3 A of the Code of Virginia shall submit a complete application package for the board's review pursuant to a schedule set by the board in accordance with § 10.1-603.3 and shall adopt a qualifying local program consistent with the Act and this chapter within the timeframe established pursuant to § 10.1-603.3.

E. A locality not required to adopt a qualifying local program in accordance with § 10.1-603.3 A but electing to adopt a qualifying local program shall notify the board in accordance with the following:

1. A locality electing to adopt a qualifying local program may notify the board of its intention within six months of the effective date of these regulations. Such locality shall submit a complete application package for the board's review pursuant to a schedule set by the board and shall adopt a qualifying local program within the timeframe established by the board.

2. A locality electing to adopt a qualifying local program that does not notify the board within the initial six-month period of its intention may thereafter notify the board at any regular meeting of the board. Such notification shall include a proposed schedule for adoption of a qualifying local program within a timeframe agreed upon by the board.

F. The department shall administer the responsibilities of the Act and this chapter in any locality in which a qualifying local program has not been adopted. The department shall develop a schedule, to be approved by the board, for adoption and implementation of the requirements of this chapter in such localities. Such schedule may include phases of implementation and shall be based upon considerations including the typical number of permitted projects located within a locality, total number of acres disturbed by such permitted projects, and such other considerations as may be deemed necessary by the board.

DOCUMENTS INCORPORATED BY REFERENCE (4VAC50-60)

Illicit Discharge Detection and Elimination – A Guidance Manual for Program Development and Technical Assessments, EPA Cooperative Agreement X-82907801-0, October 2004, by Center for Watershed Protection and Robert Pitt, University of Alabama, available on the Internet at http://www.cwp.org/idde_verify.htm.

Getting in Step – A Guide for Conducting Watershed Outreach Campaigns, EPA-841-B-03-002, December 2003, U.S. Environmental Protection Agency, Office of Wetlands, Oceans, and Watersheds, available on the Internet at http://www.epa.gov/owow/watershed/outreach/documents/getnstep.pdf, or may be ordered from National Service Center for Environmental Publications, telephone 1-800-490-9198.

Municipal Stormwater Program Evaluation Guidance, EPA-833-R-07-003, January 2007 (field test version), U.S. Environmental Protection Agency, Office of Wastewater Management, available on the Internet at http://cfpub.epa.gov/npdes/docs.cfm?program_id=6&view=allprog&sort=name#ms4_guidance, or may be ordered from National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, telephone 1-800-553-6847 or (703) 605-6000.

Technical Bulletin #1 - Stream Channel Erosion Control, Virginia Department of Conservation and Recreation, 2000.

Technical Memorandum – The Runoff Reduction Method, April 2008, and [~~beta version addendum~~ addendums] , September [~~2008~~ 2009].

Virginia Runoff Reduction Method Worksheet, September [~~2008~~ 2009].

[Virginia Runoff Reduction Method Worksheet – Redevelopment, September 2009.]

VA.R. Doc. No. R08-587; Filed October 7, 2009, 10:12 a.m.

Notice of Suspension of Regulatory Process and Extension of Public Comment Period

Title of Regulation: **4VAC50-60. Virginia Stormwater Management Program (VSMP) Permit Regulations.**

Statutory Authority: §§ 10.1-603.2:1 and 10.1-603.4 of the Code of Virginia.

Public Comment Deadline: 5 p.m. on November 25, 2009.

Reason for Suspension: On October 5, 2009, the Virginia Soil and Water Conservation Board adopted revisions to the Virginia Stormwater Management Program (VSMP) Permit Regulations Parts I, II, and III and Part XIII (4 VAC 50-60), and then suspended the effective date of these regulatory actions under § 2.2-4015 A 4 of the Virginia Administrative Process Act to allow time for a 30-day public review and comment period on changes made since the original proposed regulations were approved on September 24, 2008. The board is receiving comment only on the changes that were made between the proposed regulations and the final regulations adopted by the board on October 5, 2009. These changes are shown in brackets "[ ]" in the final version of the regulations published in this issue of the Virginia Register.

A**. Virginia Stormwater Management Program (VSMP) Permit Regulations (Parts I, II, and III):** This final regulatory action amends the technical criteria applicable to stormwater discharges from construction activities, establishes minimum criteria for locality-administered stormwater management programs (qualifying local programs) and Department of Conservation and Recreation (department) administered local stormwater management programs, as well as authorization procedures and review procedures for qualifying local programs, and amends the definitions section applicable to all of the Virginia Stormwater Management Program (VSMP) regulations.

The proposed version of the regulations established statewide water quality requirements that included a 0.28 lbs/acre/year phosphorus standard for new development and a requirement that total phosphorus loads be reduced to an amount at least 20% below the predevelopment phosphorus load on prior developed lands. Concerning water quantity, the proposed version specified that stormwater discharged from a site to an unstable channel must be released at or below a "forested" peak flow rate condition. No exceptions to the standard were provided. As described below, the final regulations change these technical standards and provide additional flexibility for small infill sites, redevelopment sites, or sites within Urban Development Areas that was not present in the proposed regulations.

In the final action, with regard to technical criteria applicable to stormwater discharges from construction activities, revised water quality and water quantity requirements are included in Part II A of the regulations (existing technical criteria will now be maintained in a new Part II B that applies to grandfathered projects). These revised technical requirements in Part II A include:

1. A 0.28 lbs/acre/year phosphorus standard for new development greater than or equal to an acre in the Chesapeake Bay Watershed and a 0.45 lbs/acre/year phosphorus standard for new development less than one acre (where applicable) and for projects outside of the Chesapeake Bay Watershed;

2. A requirement that total phosphorus loads be reduced to an amount at least 20% below the pre-development phosphorus load on prior developed lands for land disturbing activities greater than or equal to an acre and 10% for redevelopment sites disturbing less than one acre;

3. Authority for a qualifying local program to establish a phosphorus standard between 0.28 and 0.45 pounds per acre per year within an Urban Development Area designated pursuant to § 15.2-2223.1 of the Code of Virginia in the Chesapeake Bay Watershed for projects greater than or equal to one acre in order to encourage smarter growth in accordance with specified factors;

4. A requirement that control measures be installed on a site to meet any applicable wasteload allocation; and

5. Water quantity requirements that include both channel protection and flood protection criteria. In the final version, stormwater that is discharged from a site to an unstable channel must be released at or below a "good pasture" peak flow rate condition unless the predeveloped condition for the site is forest, in which case, the runoff shall be held to the forested condition. Exceptions to the "good pasture" standard are provided to a land disturbing activity that is less than five acres on prior developed lands; or less than one acre for new development. Under the exceptions, the sites are expected to improve upon the predeveloped runoff condition.

The final regulations also provide five offsite options organized in a new section that may be utilized as specified in the regulation for a developer to achieve the required onsite water quality and where allowed water quantity requirements. One of the new provisions includes a state buy-down option that would be available should local options not be available, where the locality establishes a phosphorus removal fee in excess of the specified state standard, or where allowed by the locality. The proposed regulations only contained three local options.

The proposed regulations did not contain grandfathering provisions. The final regulations contain a new section on grandfathering that specifies that if the operator of a project has met the three listed local vesting criteria related to significant affirmative governmental acts and has received general permit coverage by July 1, 2010, then the project is grandfathered under today's water quality and quantity technical standards (Part II B) until June 30, 2014. If permit

coverage is maintained by the operator, then the project will remain grandfathered until June 30, 2019. It also notes that past June 30, 2019, or if a project's general permit coverage is not maintained, portions of the project not yet completed shall become subject to the new technical criteria set out in Part II A.

This final action would also establish the minimum criteria and ordinance requirements (where applicable) for a Virginia Soil and Water Conservation Board (board) authorized qualifying local program (Part IIIA) or for a board-authorized department-administered local stormwater management program (Part IIIB), which include, but are not limited to, administration, plan review, issuance of coverage under the General Virginia Stormwater Management Program (VSMP) Permit for Discharges of Stormwater from Construction Activities, inspection, enforcement, reporting, and recordkeeping. Part IIID establishes the procedures the board will utilize in authorizing a locality to administer a qualifying local program. Part IIIC establishes the criteria the department will utilize in reviewing a locality's administration of a qualifying local program.

The primary issue in Part III that changed between the proposed and final regulations is that in the final regulations, language was added that specified that stormwater management facilities designed to treat stormwater runoff solely from an individual lot, at the qualifying program's discretion, are not subject to the locality inspection requirements (once every five years), homeowner inspection requirements, maintenance agreement requirements, or construction record drawing requirements. Instead a qualifying local program is authorized to develop a strategy for addressing maintenance of stormwater management facilities located on and designed to treat stormwater runoff from an individual residential lot. Such a strategy may include periodic inspections, public outreach and education, or other method targeted at promoting the long-term maintenance of such facilities.

Finally, this action would make changes to definitions in Part I, which is applicable to the full body of the VSMP regulations. Unnecessary definitions are deleted, needed definitions are added, and many existing definitions are updated. In the final action, several additional definitions were added and other minor refinements made to address comments received.

B. **Virginia Stormwater Management Program (VSMP) Permit Regulations (Part XIII):** This regulatory action establishes a statewide base fee schedule for stormwater management projects and establishes the fee assessment and the collection and distribution systems for those fees. Permit fees are established for: Municipal Separate Storm Sewer Systems (new coverage); Municipal Separate Storm Sewer Systems (major modifications); Construction activity general permit coverage; Construction activity individual permits, Construction activity modifications or transfers; and MS4 and Construction activity annual permit maintenance fees.

This action is closely tied to the Parts I, II, and III action as the base fees generated are necessary to fund the local stormwater management programs established through that concurrent regulatory action. The fees have been established using estimates of the time determined to be necessary for different sized projects, for a local stormwater management program to conduct plan review, inspections [including stormwater pollution prevention plan (SWPPP) review and reinspections], enforcement, provide technical assistance, and issue permit coverage, and for the Department of Conservation and Recreation to provide oversight of the Commonwealth's stormwater management program.

The permit base fee levels were arrived at through discussions of a subcommittee of the Technical Advisory Committee and discussions with the overall TAC and through corroboration of the costs of conducting the various components of program implementation with Department of Conservation and Recreation stormwater field staff and with a number of local government program personnel.

In the regulations, a qualifying local program with approval of the board was authorized to establish a lower construction fee provided that they can demonstrate their ability to fully and successfully implement a program. In the final regulations, additional authority was added to allow a qualifying local program to establish greater fees if they demonstrate to the board that greater fees are necessary to properly administer a program. Additionally, in the final regulation the permit maintenance fee for MS4's with general permit coverage has been reduced from $4,000 to $3,000 dollars as well as the provision for an annual increase in fees based on the CPI-U has been removed from the final regulations.

Public Participation and Contact Information: In addition to comments on changes made since the original proposed regulations were approved on September 24, 2008, the board is seeking comments on the costs and benefits of the changes made to the proposed regulations at the time of final adoption.

Anyone wishing to submit written comments pertaining to these final regulations may do so by mail, facsimile, or email. Comments pertaining to the final regulations may be mailed to the Regulatory Coordinator at: Virginia Department of Conservation and Recreation, 203 Governor Street, Suite 302, Richmond, Virginia 23219. Comments may also be faxed to the Regulatory Coordinator at (804) 786-6141 or emailed to the coordinator at regcord@dcr.virginia.gov. Written comments (including email) must include the name and address of the commenter. In order to be considered, comments must be received between October 26, 2009, and November 25, 2009. Public comment will be accepted until 5 p.m. on November 25, 2009, except that written comments

hand delivered to the department office must be received by noon on the closing date.

Copies of the final regulations, summary of comments received on the original proposals and agency response, and the Town Hall final regulation discussion forms, will be available on the Department of Conservation and Recreation's webpage: http://www.dcr.virginia.gov/lawregs.shtml or from the regulatory coordinator at: regcord@dcr.virginia.gov; (804) 786-2291.

Agency Contact: Regulatory Coordinator, Department of Conservation and Recreation, 203 Governor Street, Suite 302, Richmond, VA 23219, telephone (804) 786-2291, FAX (804) 786-6141, or email regcord@dcr.virginia.gov.

VA.R. Doc. Nos. R06-129 and R08-587; Filed October 7, 2009, 10:13 a.m.

◆ ▬▬▬▬▬▬▬▬▬▬▬▬▬▬▬▬▬▬ ◆

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Emergency Regulation

Title of Regulation: **12VAC30-20. Administration of Medical Assistance Services (amending 12VAC30-20-210; adding 12VAC30-20-211).**

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

Effective Dates: October 5, 2009, through October 4, 2010.

Agency Contact: Patricia Taylor, Program Operations Division, Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219, telephone (804) 371-6333, FAX (804) 786-1680, or email patricia.taylor@dmas.virginia.gov.

Preamble:

Section 2.2-4011 of the Administrative Process Act provides that agencies may adopt emergency regulations in situations in which Virginia statutory law, the Virginia appropriation act, or federal law or regulation requires that a regulation shall be effective in 280 days or less from its enactment.

These changes were mandated by Item 306 AAA of Chapter 781 of the 2009 Acts of Assembly to clarify that existing family healthcare coverage is a factor in the determination of cost effectiveness under the Health Insurance Premium Payment program (HIPP). Cases that result in a determination that participation is not cost effective shall be denied premium assistance. This action is intended to satisfy that mandate.

12VAC30-20-210. State method on cost effectiveness of employer-based group health plans.

A. Definitions. The following words and terms when used in these regulations shall have the following meanings unless the context clearly indicates otherwise:

"Case" means all family members who are eligible for coverage under the group health plan and who are eligible for Medicaid.

"Code" means the Code of Virginia.

"Cost effective" and "cost effectiveness" mean the reduction in Title XIX expenditures, which are likely to be greater than the additional expenditures for premiums and cost-sharing items required under § 1906 of the Social Security Act (the Act), with respect to such enrollment.

"DMAS" means the Department of Medical Assistance Services consistent with Chapter 10 (§ 32.1-323 et seq.) of Title 32.1 of the Code of Virginia.

"DSS" means the Department of Social Services consistent with Chapter 1 (§ 63.2-100 et seq.) of Title 63.2 of the Code of Virginia.

"Family member" means individuals who are related by blood, marriage, or adoption.

"Group health plan" means a plan which meets § 5000(b)(1) of the Internal Revenue Code of 1986, and includes continuation coverage pursuant to Title XXII of the Public Health Service Act, § 4980B of the Internal Revenue Code of 1986, or Title VI of the Employee Retirement Income Security Act of 1974. Section 5000(b)(1) of the Internal Revenue Code provides that a group health plan is a plan, including a self-insured plan, of, or contributed to by, an employer (including a self-insured person) or employee association to provide health care (directly or otherwise) to the employees, former employees, or the families of such employees or former employees, or the employer.

"HIPP" means the Health Insurance Premium Payment Program administered by DMAS consistent with § 1906 of the Act.

"Premium" means that portion of the cost for the group health plan which is the responsibility of the person carrying the group health plan policy.

"Premium assistance" means the portion that DMAS will pay of the family's cost of participating in an employer's health plan to cover the Medicaid eligible members under the employer-sponsored plan if DMAS determines it is cost effective to do so.

"Recipient" means a person who is eligible for Medicaid as determined by the Department of Social Services.

B. Program purpose. The purpose of the HIPP Program shall be to:

1. Enroll recipients who have an available group health plan that is likely to be cost effective;

2. Provide for payment of the premiums and other cost-sharing obligations for items and services otherwise covered under the State Plan for Medical Assistance (the Plan); and

3. Treat coverage under such group health plan as a third party liability consistent with § 1906 of the Act.

C. Recipient eligibility. All family members who are eligible for coverage under the group health plan and who are eligible for Medicaid shall be eligible for consideration for HIPP, except those identified below. The agency will consider recipients in this subsection for consideration for HIPP when extraordinary circumstances indicate the group health plan might be cost effective.

1. The recipient is Medicaid eligible due to "spend-down";

2. The recipient is only retroactively eligible for Medicaid;

3. The recipient is in a nursing home or has a deduction from patient pay responsibility to cover the insurance premium; or

4. The recipient is eligible for Medicare Part B, but is not enrolled in Part B.

D. Application required. A completed HIPP application must be submitted to DMAS to be evaluated for eligibility and cost effectiveness. The HIPP application consists of the forms prescribed by DMAS and any necessary information as required by the program to evaluate eligibility and perform a cost-effectiveness evaluation.

E. Payments. When DMAS determines that a group health plan is likely to be cost effective based on the DMAS established methodology, DMAS shall provide for the payment of premiums and other cost-sharing obligations for items and services otherwise covered under the Plan, except for the nominal cost sharing amounts permitted under § 1916.

1. Effective date of premiums. Payment of premiums shall become effective on the first day of the month following the month in which DMAS makes the cost effectiveness determination or the first day of the month in which the group health plan coverage becomes effective, whichever is later. Payments shall be made to either the employer, the insurance company or to the individual who is carrying the group health plan coverage.

2. Termination date of premiums. Payment of premiums shall end:

a. On the last day of the month in which eligibility for Medicaid ends;

b. The last day of the month in which the recipient loses eligibility for coverage in the group health plan; or

c. The last day of the month in which adequate notice has been given (consistent with federal requirements) that DMAS has redetermined that the group health plan is no longer cost effective, whichever comes later.

3. Non-Medicaid eligible family members. Payment of premiums for non-Medicaid eligible family members may be made when their enrollment in the group health plan is required in order for the recipient to obtain the group health plan coverage. Such payments shall be treated as payments for Medicaid benefits for the recipient. No payments for deductibles, coinsurances and other cost-sharing obligations for non-Medicaid eligible family members shall be made by DMAS.

4. Evidence of enrollment required. A person to whom DMAS is paying the group health plan premium shall, as a condition of receiving such payment, provide to DSS or DMAS, upon request, written evidence of the payment of the group health plan premium for the group health plan which DMAS determined to be cost effective.

~~F. Guidelines for determining cost effectiveness.~~

~~1. Enrollment limitations. DMAS shall take into account that a recipient may only be eligible to enroll in the group health plan at limited times and only if other non-Medicaid eligible family members are also enrolled in the plan simultaneously.~~

~~2. Plans provided at no cost. Group health plans for which there is no premium to the person carrying the policy shall be considered to be cost effective.~~

~~3. Non-Medicaid eligible family members. When non-Medicaid eligible family members must enroll in a group health plan in order for the recipient to be enrolled, DMAS shall consider only the premiums of non-Medicaid eligible family members in determining the cost effectiveness of the group health plan.~~

~~4. DMAS shall make the cost effectiveness determination based on the following methodology:~~

~~a. Recipient and group health plan information. DMAS shall obtain demographic information on each recipient in the case, including, but not limited to: federal program designation, age, sex, geographic location. DMAS [or DSS] shall obtain specific information on all group health plans available to the recipients in the case, including, but not limited to, the effective date of coverage, the services covered by the plan, the exclusions to the plan, and the amount of the premium.~~

~~b. Average estimated Medicaid expenditures. DMAS shall estimate the average Medicaid expenditures for a 12 month period for each recipient in the case based on the expenditures for persons similar to the recipient in demographic and eligibility characteristics. Expenditures shall be adjusted accordingly for inflation and scheduled~~

~~provider reimbursement rate increases. Average estimated Medicaid expenditures shall be updated periodically.~~

~~c. Medicaid expenditures covered by the group health plan. DMAS shall compute the percentage of expenditures for group health plan services against the expenditures for the same Medicaid services and then adjust the average estimated Medicaid expenditures by this percentage for each recipient in the case. These adjusted expenditures shall be added to obtain a total for the case.~~

~~d. Group health plan allowance. DMAS shall multiply an allowance factor by the Medicaid expenditures covered by the group health plan to produce the estimated group health plan allowance. The allowance factor shall be based on a state specific factor, a national factor or a group health plan specific factor.~~

~~e. Covered expense amount. DMAS shall multiply an average group health plan payment rate by the group health plan allowance to produce an estimated covered expense amount. The average group health plan payment rate shall be based on a state specific rate, national rate or group health plan specific rate.~~

~~f. Administrative cost. DMAS shall total the administrative costs of the HIPP program and estimate an average administrative cost per recipient. DMAS shall add to the administrative cost any pre-enrollment costs required in order for the recipient to enroll in the group health plan.~~

~~G. Determination of cost effectiveness. DMAS shall determine that a group health plan is likely to be cost effective if subdivision 1 of this subsection is less than subdivision 2 of this subsection:~~

~~1. The difference between the group health plan allowance and the covered expense amount, added to the premium and the administrative cost; and~~

~~2. The Medicaid expenditures covered by the group health plan.~~

~~If subdivision 1 of this subsection is not less than subdivision 2 of this subsection, DMAS shall adjust the amount in subdivision 2 of this subsection using past medical utilization data on the recipient, provided by the Medicaid claims system or by the recipient, to account for any higher than average expected Medicaid expenditures. DMAS shall determine that a group health plan is likely to be cost effective if subdivision 1 of this subsection is less than subdivision 2 of this subsection once this adjustment has been made.~~

~~3. Redetermination. DMAS shall redetermine the cost effectiveness of the group health plan periodically, not to exceed every 12 months. DMAS shall also redetermine the cost effectiveness of the group health plan whenever there is a change to the recipient and group health plan information that was used in determining the cost effectiveness of the group health plan. When only part of the household loses Medicaid eligibility, DMAS shall redetermine the cost effectiveness to ascertain whether payment of the group health plan premiums continue to be cost effective.~~

~~4. Multiple group health plans. When a recipient is eligible for more than one group health plan, DMAS shall perform the cost effectiveness determination on the group health plan in which the recipient is enrolled. If the recipient is not enrolled in a group health plan, DMAS shall perform the cost effectiveness determination on each group health plan available to the recipient.~~

~~H.~~ F. Third party liability. When recipients are enrolled in group health plans, these plans shall become the first sources of health care benefits, up to the limits of such plans, prior to the availability of Title XIX benefits.

~~I.~~ G. Appeal rights. Recipients shall be given the opportunity to appeal adverse agency decisions consistent with agency regulations for client appeals (12VAC30-110).

~~J.~~ H. Provider requirements. Providers shall be required to accept the greater of the group health plan's reimbursement rate or the Medicaid rate as payment in full and shall be prohibited from charging the recipient or Medicaid amounts that would result in aggregate payments greater than the Medicaid rate as required by 42 CFR 447.20.

12VAC30-20-211. State method on cost effectiveness of employer-based group health plans – individual and family plans.

A. Definitions. The following words and terms, when used in these regulations, shall have the following meanings, unless the context clearly indicates otherwise:

"Average monthly Medicaid cost" means average monthly medical expenditures based upon age, gender, Medicaid enrollment covered group, and geographic region of the state.

"Average monthly wraparound cost" means the average monthly aggregate costs for services not covered by private health insurance but covered under the State Plan for Medical Assistance, also includes copayments, coinsurance, and deductibles.

"Family member" means individuals who are related by blood, marriage, adoption or legal custody.

"High deductible health plan" means a plan as defined in § 223(c)(2) of Internal Revenue Code of 1986, without regard to whether the plan is purchased in conjunction with a health savings account (as defined under § 223(d) of such Code).

"Premium" means that portion of the cost for the group health plan that is the responsibility of the employee carrying the group health plan policy.

"Premium assistance subsidy" means the portion that DMAS will pay of the employee's cost of participating in an employer's health plan to cover the Medicaid eligible members under the employer-sponsored plan if DMAS determines it is cost effective to do so.

B. Program purpose. The purpose of the HIPP program shall be:

1. To enroll recipients who have an available employer group health plan that is likely to be cost effective;

2. To provide premium assistance subsidy for payment of the premiums and other cost-sharing obligations for items and services otherwise covered under the State Plan for Medical Assistance (the Plan); and

3. To treat coverage under such employer group health plan as a third party liability consistent with § 1906 of the Act.

C. Guidelines for determining cost effectiveness.

1. Existing family healthcare coverage is a factor in the determination of cost effectiveness. Cases that result in a determination that participation is not cost effective, based upon the existence of family healthcare coverage, shall be denied premium assistance and shall not undergo further review as described in subdivision 5 e of this subsection.

2. High Deductible Health Plans (HDHPs) are defined in § 223(c)(2) of the Internal Revenue Code of 1986. HDHPs are not cost effective for the HIPP program and shall be denied premium assistance and shall not undergo further review as described in subdivision (5)(e) of this subsection. The annual deductible amount for a HDHP is defined by the Department of Treasury and is updated annually.

3. Group health plan information. DMAS shall obtain specific information on all group health plans available to the recipients in the case, including, but not limited to, the effective date of coverage, the services covered by the plan, the deductibles and copayments required by the plan, the exclusions to the plan, and the amount of the premium. Coverage that is not comprehensive is not cost effective and shall be denied premium assistance.

4. Enrollment in a group health plan. The Medicaid eligible family member(s) must be covered under the employer group health plan to be enrolled in HIPP.

5. DMAS shall make the premium cost effectiveness determination based on the following methodology:

a. Recipient information. DMAS shall obtain demographic information on each recipient in each case, including, but not limited to, federal program designation, age, gender, and geographic region of the state.

b. DMAS shall compute the average monthly Medicaid cost for each Medicaid enrollee on the group health insurance plan and compare the total cost to the employee's responsibility for the health insurance cost.

c. Wraparound Cost. DMAS shall total the average monthly wraparound cost for each Medicaid enrollee on the HIPP case and subtract the amount from the average monthly Medicaid cost for the cost effectiveness evaluation.

d. Administrative cost. DMAS shall total the administrative costs of the HIPP program and estimate an average administrative cost. DMAS shall subtract the administrative cost from the average monthly Medicaid cost for the cost effectiveness evaluation.

e. Determination of premium cost effectiveness. DMAS shall determine that a group health plan is likely to be cost effective if (i) is less than (ii) below:

(i) The employee's responsibility for the group health plan premium.

(ii) The total of the average monthly Medicaid costs less the wraparound costs for each Medicaid enrollee covered by the group health plan and the administrative cost.

f. DMAS may reimburse up to the amount determined in subdivision 5 e (ii) of this subsection, if subdivision 5 e (i) is not less than subdivision 5 e (ii).

D. Program participation requirements. Participants must comply with program requirements as prescribed by DMAS for continued enrollment in HIPP. Failure to comply shall result in termination from the program.

1. Submission of documentation of premium expense within specified time frame in accordance with DMAS established policy.

2. Changes that impact the cost effectiveness evaluation must be reported within 10 days.

3. Completion of annual redetermination.

E. Redetermination. DMAS shall redetermine the cost effectiveness of the group health plan periodically, at least every 12 months. DMAS shall also redetermine cost effectiveness when changes occur with the recipient average Medicaid cost and/or with the group health plan information that was used in determining the cost effectiveness. When only part of the household loses Medicaid eligibility, DMAS shall redetermine the cost effectiveness to ascertain whether payment of the group health plan premiums continue to be cost effective.

VA.R. Doc. No. R10-2021; Filed October 5, 2009, 3:59 p.m.

Final Regulation

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

Titles of Regulations: **12VAC30-50. Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12VAC30-50-165).**

12VAC30-60. Standards Established and Methods Used to Assure High Quality Care (amending 12VAC30-60-75).

12VAC30-120. Waivered Services (amending 12VAC30-120-195).

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

Effective Date: January 1, 2010.

Agency Contact: Brian McCormick, Regulatory Supervisor, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8856, FAX (804) 786-1680, or email brian.mccormick@dmas.virginia.gov.

Summary:

Durable medical equipment (DME) and supplies, because it is linked in 42 CFR 440.70 to home health services, is a federally mandated service. It is required to be provided to Medicaid recipients. Currently through its DME regulations, DMAS permits only physicians to sign Certificates of Medical Necessity (DMAS form 352). These documents are required in order for Medicaid payment for durable medical equipment, medical supplies, and enteral nutrition products.

Since DMAS adopted these regulations in 2002, the licensing standards for nurse practitioners have been modified by the Board of Nursing to permit these professionals to order medical services, such as drugs and medical equipment. Also, Chapter 855 of the 2004 Acts of Assembly amended § 32.1-325 A 14 of the Code of Virginia to permit nurse practitioners to sign Certificates of Medical Necessity and any supporting documentation.

DMAS is updating its regulations to permit nurse practitioners to sign DMAS' Certificates of Medical Necessity and other related supporting documentation and thereby obtain DMAS' reimbursement for the services that are ordered on it.

12VAC30-50-165. Durable medical equipment (DME) and supplies suitable for use in the home.

A. Definitions. The following word and term when used in these regulations shall have the following meaning unless the context clearly indicates otherwise:

"Practitioner" means a provider of physician services as defined in 42 CFR 440.50 or a provider of nurse practitioner services as defined in 42 CFR 440.166.

~~A.~~ B. General requirements and conditions.

1. All medically necessary supplies and equipment shall be covered. Unusual amounts, types, and duration of usage must be authorized by DMAS in accordance with published policies and procedures. When determined to be cost effective by DMAS, payment may be made for rental of the equipment in lieu of purchase.

2. DME providers shall adhere to all applicable DMAS policies, laws, and regulations for durable medical equipment and supplies. DME providers shall also comply with all other applicable Virginia laws and regulations requiring licensing, registration, or permitting. Failure to comply with such laws and regulations shall result in denial of coverage for durable medical equipment or supplies that are regulated by such licensing agency or agencies.

3. DME and supplies must be furnished pursuant to a Certificate of Medical Necessity (CMN) (DMAS-352).

4. A CMN shall contain a ~~physician's~~ practitioner's diagnosis of a recipient's medical condition and an order for the durable medical equipment and supplies that are medically necessary to treat the diagnosed condition and the recipient's functional limitation. The order for DME or supplies must be justified in the written documentation either on the CMN or attached thereto. The CMN shall be valid for a maximum period of six months for Medicaid recipients 21 years of age and younger. The maximum valid time period for Medicaid recipients older than 21 years of age is 12 months. The validity of the CMN shall terminate when the recipient's medical need for the prescribed DME or supplies ends.

5. DME must be furnished exactly as ordered by the attending ~~physician~~ practitioner on the CMN. The CMN and any supporting verifiable documentation must be complete (signed and dated by the ~~physician)~~ practitioner) and in the provider's possession within 60 days from the time the ordered DME and supplies are initially furnished by the DME provider. Each component of the DME must be specifically ordered on the CMN by the ~~physician~~ practitioner.

6. The CMN shall not be changed, altered, or amended after the attending ~~physician~~ practitioner has signed it. If changes are necessary, as indicated by the recipient's

condition, in the ordered DME or supplies, the DME provider must obtain a new CMN. New CMNs must be signed and dated by the attending ~~physician~~ practitioner within 60 days from the time the ordered supplies are furnished by the DME provider.

7. DMAS shall have the authority to determine a different (from those specified above) length of time a CMN may be valid based on medical documentation submitted on the CMN. The CMN may be completed by the DME provider or other health care professionals, but it must be signed and dated by the attending ~~physician~~ practitioner. Supporting documentation may be attached to the CMN but the attending ~~physician's~~ practitioner's entire order must be on the CMN.

8. The DME provider shall retain a copy of the CMN and all supporting verifiable documentation on file for DMAS' post payment audit review purposes. DME providers shall not create or revise CMNs or supporting documentation for this service after the initiation of the post payment review audit process. Attending ~~physicians~~ practitioners shall not complete, or sign and date, CMNs once the post payment audit review has begun.

~~B.~~ C. Preauthorization is required for incontinence supplies provided in quantities greater than two cases per month.

~~C.~~ D. Supplies, equipment, or appliances that are not covered include, but are not limited to, the following:

1. Space conditioning equipment, such as room humidifiers, air cleaners, and air conditioners;

2. Durable medical equipment and supplies for any hospital or nursing facility resident, except ventilators and associated supplies or specialty beds for the treatment of wounds consistent with DME criteria for nursing facility residents that have been approved by DMAS central office;

3. Furniture or appliances not defined as medical equipment (such as blenders, bedside tables, mattresses other than for a hospital bed, pillows, blankets or other bedding, special reading lamps, chairs with special lift seats, hand-held shower devices, exercise bicycles, and bathroom scales);

4. Items that are only for the recipient's comfort and convenience or for the convenience of those caring for the recipient (e.g., a hospital bed or mattress because the recipient does not have a decent bed; wheelchair trays used as a desk surface); mobility items used in addition to primary assistive mobility aide for caregiver's or recipient's convenience (e.g., electric wheelchair plus a manual chair); cleansing wipes;

5. Prosthesis, except for artificial arms, legs, and their supportive devices, which must be preauthorized by the DMAS central office (effective July 1, 1989);

6. Items and services that are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member (e.g., dentifrices; toilet articles; shampoos that do not require a ~~physician's~~ practitioner's prescription; dental adhesives; electric toothbrushes; cosmetic items, soaps, and lotions that do not require a ~~physician's~~ practitioner's prescription; sugar and salt substitutes; and support stockings);

7. Orthotics, including braces, splints, and supports;

8. Home or vehicle modifications;

9. Items not suitable for or not used primarily in the home setting (e.g., car seats, equipment to be used while at school, etc.); and

10. Equipment for which the primary function is vocationally or educationally related (e.g., computers, environmental control devices, speech devices, etc.).

~~D.~~ E. For coverage of blood glucose meters for pregnant women, refer to 12VAC30-50-510.

~~E.~~ F. Coverage of home infusion therapy. Home infusion therapy shall be defined as the intravenous administration of fluids, drugs, chemical agents, or nutritional substances to recipients in the home setting. DMAS shall reimburse for these services, supplies, and drugs on a service day rate methodology established in 12VAC30-80-30. The therapies to be covered under this policy shall be: hydration therapy, chemotherapy, pain management therapy, drug therapy, and total parenteral nutrition (TPN). All the therapies that meet criteria will be covered for three months. If any therapy service is required for longer than the original three months, prior authorization shall be required for the DME component for its continuation. The established service day rate shall reimburse for all services delivered in a single day. There shall be no additional reimbursement for special or extraordinary services. In the event of incompatible drug administration, a separate HCPCS code shall be used to allow for rental of a second infusion pump and purchase of an extra administration tubing. When applicable, this code may be billed in addition to the other service day rate codes. There must be documentation to support the use of this code on the I.V. Implementation Form. Proper documentation shall include the need for pump administration of the medications ordered, frequency of administration to support that they are ordered simultaneously, and indication of incompatibility. The service day rate payment methodology shall be mandatory for reimbursement of all I.V. therapy services except for the recipient who is enrolled in the Technology Assisted waiver program. The following limitations shall apply to this service:

1. This service must be medically necessary to treat a recipient's medical condition. The service must be ordered and provided in accordance with accepted medical

practice. The service must not be desired solely for the convenience of the recipient or the recipient's caregiver.

2. In order for Medicaid to reimburse for this service, the recipient must:

a. Reside in either a private home or a domiciliary care facility, such as an adult care residence. Because the reimbursement for DME is already provided under institutional reimbursement, recipients in hospitals, nursing facilities, rehabilitation centers, and other institutional settings shall not be covered for this service;

b. Be under the care of a ~~physician~~ practitioner who prescribes the home infusion therapy and monitors the progress of the therapy;

c. Have body sites available for peripheral intravenous catheter or needle placement or have a central venous access; and

d. Be capable of either self-administering such therapy or have a caregiver who can be adequately trained, is capable of administering the therapy, and is willing to safely and efficiently administer and monitor the home infusion therapy. The caregiver must be willing to and be capable of following appropriate teaching and adequate monitoring. In those cases where the recipient is incapable of administering or monitoring the prescribed therapy and there is no adequate or trained caregiver, it may be appropriate for a home health agency to administer the therapy.

~~F.~~ G. The medical equipment and supply vendor must provide the equipment and supplies as prescribed by the ~~physician~~ practitioner on the certificate of medical necessity. Orders shall not be changed unless the vendor obtains a new certificate of medical necessity prior to ordering or providing the equipment or supplies to the patient.

~~G.~~ H. Medicaid shall not provide reimbursement to the medical equipment and supply vendor for services provided prior to the date prescribed by the ~~physician~~ practitioner or prior to the date of the delivery or when services are not provided in accordance with published policies and procedures. If reimbursement is denied for one of these reasons, the medical equipment and supply vendor may not bill the Medicaid recipient for the service that was provided.

~~H.~~ I. The following criteria must be satisfied through the submission of adequate and verifiable documentation satisfactory to the department. Medically necessary DME and supplies shall be:

1. Ordered by the ~~physician~~ practitioner on the CMN;

2. A reasonable and necessary part of the recipient's treatment plan;

3. Consistent with the recipient's diagnosis and medical condition, particularly the functional limitations and symptoms exhibited by the recipient;

4. Not furnished solely for the convenience, safety, or restraint of the recipient, the family, attending ~~physician~~ practitioner, or other practitioner or supplier;

5. Consistent with generally accepted professional medical standards (i.e., not experimental or investigational); and

6. Furnished at a safe, effective, and cost-effective level suitable for use in the recipient's home environment.

~~I.~~ J. Coverage of enteral nutrition (EN) which does not include a legend drug shall be limited to when the nutritional supplement is the sole source form of nutrition, is administered orally or through a nasogastric or gastrostomy tube, and is necessary to treat a medical condition. Coverage of EN shall not include the provision of routine infant formula. A nutritional assessment shall be required for all recipients receiving nutritional supplements.

12VAC30-60-75. Durable medical equipment (DME) and supplies.

A. DME providers, as defined in 12VAC30-50-165, shall retain copies of the CMN and all applicable supporting documentation on file for post payment audit reviews. Durable medical equipment and supplies that are not ordered on the CMN for which reimbursement has been made by Medicaid will be retracted. Supporting documentation is allowed to justify the medical need for durable medical equipment and supplies. Supporting documentation does not replace the requirement for a properly completed CMN. The dates of the supporting documentation must coincide with the dates of service on the CMN and the medical practitioner providing the supporting documentation must be identified by name and title. DME providers shall not create or revise CMNs or supporting documentation for durable medical equipment and supplies provided after the post payment audit review has been initiated.

B. Persons needing only DME/supplies may obtain such services directly from the DME provider without having to consult or obtain services from a home health service or home health provider. DME/supplies must be ordered by the ~~physician~~ practitioner (physician or nurse practitioner) be related to the medical treatment of the patient, and the complete order must be on the CMN for persons receiving DME/supplies. Supplies used for treatment during the visit are included in the visit rate of the home health provider. Treatment supplies left in the home to maintain treatment after the visits shall be charged separately.

12VAC30-120-195. Enteral nutrition products.

A. General requirements and conditions.

1. Enteral nutrition products shall only be provided by enrolled durable medical equipment (DME) providers as defined in 12VAC30-50-165.

2. DME providers shall adhere to all applicable DMAS policies, laws, and regulations for enteral nutrition products. DME providers shall also comply with all other applicable Virginia laws and regulations requiring licensing, registration, or permitting. Failure to comply with such laws and regulations shall result in denial of coverage for enteral nutrition that is regulated by such licensing agency or agencies.

B. Service units and service limitations.

1. DME and supplies must be furnished pursuant to the AIDS Waiver Enteral Nutrition Evaluation Form (DMAS-116).

2. A DMAS-116 shall be required for all AIDS waiver recipients receiving enteral nutrition products. Enteral nutrition products that do not contain a legend drug may be obtained for the individual receiving waiver services for conditions of AIDS and HIV-symptomatic when the enteral nutrition product is certified by the ~~physician~~ practitioner as the primary source of nutrition, is administered orally or through a nasogastric or gastrostomy tube, and is necessary for the successful implementation of the individual's health care plan and the individual is not able to purchase enteral nutrition products through other means. Coverage of enteral nutrition products does not include the provision of routine infant formula. The amount of enteral nutrition products that shall be reimbursed by Medicaid shall be limited by medical necessity and cost effectiveness.

3. "Primary source" means that enteral nutrition products are medically indicated for the treatment of the individual's condition if the individual is unable to tolerate other forms of nutrition. The individual may either be unable to take any oral nutrition or the oral intake that can be tolerated is inadequate to sustain life. The focus must be on the maintenance of weight and strength commensurate with the individual's medical condition.

4. The DMAS-116 shall contain a ~~physician's~~ practitioner's order for the enteral nutrition products that are medically necessary to treat the diagnosed condition and the individual's functional limitation. The order for enteral nutrition products must be justified in the written documentation either on the DMAS-116 or attached thereto. The DMAS-116 shall be valid for a maximum period of six months. The validity of the DMAS-116 shall terminate when the individual's medical need for the prescribed enteral nutrition products either ends or when the enteral nutrition products are no longer the primary source of nutrition.

5. A face-to-face nutritional assessment completed by trained clinicians (e.g., physician, physician assistant, nurse practitioner, registered nurse, or a registered dietitian) must be completed as required documentation of the need for enteral nutrition products for both the initial order and every six months. The DMAS-116 is required every six months.

6. The DMAS-116 shall not be changed, altered, or amended after the ~~physician~~ practitioner has signed it. As indicated by the individual's condition, if changes are necessary in the ordered enteral nutrition products, the DME provider must obtain a new DMAS-116. New DMAS-116s must be signed and dated by the ~~physician~~ practitioner within 60 days from the time the ordered enteral nutrition products are furnished by the DME provider. The order cannot be back-dated to cover prior dispensing of enteral nutrition products. If the order is not signed within 60 days of the service initiation, then the date the order is signed becomes the effective date.

7. Preauthorization of enteral nutrition products is not required. The DME provider must assure that there is a valid DMAS-116 completed every six months in accordance with DMAS policy and on file for all Medicaid individuals for whom enteral nutrition products are provided. The DME provider is further responsible for assuring that enteral nutrition products are provided in accordance with DMAS reimbursement criteria. Upon post payment review, DMAS will deny reimbursement for any enteral nutrition products that have not been provided and billed in accordance with these regulations.

8. DMAS shall have the authority to determine that the DMAS-116 is valid for less than six months based on medical documentation submitted.

C. Provider responsibilities.

1. The DME provider must provide the enteral nutrition products as prescribed by the ~~physician~~ practitioner on the DMAS-116. Orders shall not be changed unless the DME provider obtains a new DMAS-116 prior to ordering or providing the enteral nutrition products to the individual.

2. The ~~physician's~~ practitioner's order (DMAS-116) must state that the enteral nutrition products are the primary source of nutrition for the individual and specify either a brand name of the enteral nutrition product being ordered or the category of enteral nutrition products that must be provided. If a ~~physician~~ practitioner orders a specific brand of enteral nutrition product, the DME provider must supply the brand prescribed. The ~~physician~~ practitioner order must include the daily caloric order and the route of administration for the enteral nutrition product. Supporting documentation may be attached to the DMAS-116 but the entire order must be on the DMAS-116.

3. Enteral nutrition products must be furnished exactly as ordered by the ~~physician~~ practitioner on the DMAS-116. The DMAS-116 and any supporting verifiable documentation must be complete (signed and dated by the ~~physician)~~ practitioner) and in the DME provider's possession within 60 days from the time the ordered enteral nutrition product is initially furnished by the DME provider.

4. The DMAS-116 may be completed by the registered nurse, registered dietitian, physician, physician assistant, or nurse practitioner, but it must be signed and dated by the physician.

5. The DMAS-116 must be signed and dated by the assessor and the ~~physician~~ practitioner within 60 days of the DMAS-116 begin service date. If the DMAS-116 is not signed and dated by the assessor and the ~~physician~~ practitioner within 60 days of the DMAS-116 begin service date, the DMAS-116 will not become valid until the date of the ~~physician's~~ practitioner's signature.

6. The DMAS-116 must include all of the following elements:

a. Height (or length for pediatric patients);

b. Weight. For initial assessments, indicate the individual's weight loss over time;

c. Tolerance of enteral nutrition product (e.g., is the individual experiencing diarrhea, vomiting, constipation). This element is only required if the individual is already receiving enteral nutrition products;

d. Indication of whether or not the enteral nutrition product is the primary or sole source of nutrition;

e. Route of administration;

f. The daily caloric order and the number of calories per package, can, etc.;

g. Extent to which the quantity of the enteral nutrition product is available through WIC; and

h. Title, signature, and date of the assessor and the ~~physician~~ practitioner.

7. The DME provider shall retain a copy of the DMAS-116 and all supporting verifiable documentation on file for DMAS' post payment review purposes. DME providers shall not create or revise DMAS-116s or supporting documentation for this service after the initiation of the post payment review process. ~~Physicians~~ Practitioners shall not complete, or sign and date, DMAS-116s once the post payment review has begun.

8. DME providers shall retain copies of the DMAS-116 and all applicable supporting documentation on file for post payment reviews. Enteral nutrition products that are not ordered on the DMAS-116 for which reimbursement has been made by Medicaid will be denied. Supporting documentation is allowed to justify the medical need for enteral nutrition products. Supporting documentation does not replace the requirement of a properly completed DMAS-116. The dates of the supporting documentation must coincide with the dates of service on the DMAS-116 and the medical practitioner providing the supporting documentation must be identified by name and title. DME providers shall not create or revise DMAS-116s or supporting documentation for enteral nutrition products provided after the post payment review has been initiated.

9. To receive reimbursement, the DME provider is expected to:

a. Deliver only the item or items ordered by the ~~physician~~ practitioner and approved by DMAS or the designated preauthorization contractor;

b. Deliver only the quantities ordered by the ~~physician~~ practitioner and approved by DMAS or the designated preauthorization contractor;

c. Deliver only the item or items for the periods of service covered by the ~~physician's~~ practitioner's order and approved by DMAS or the designated preauthorization contractor;

d. Maintain a copy of the ~~physician's~~ practitioner's order and all verifiable supporting documentation for all DME ordered; and

e. Document all supplies provided to an individual in accordance with the ~~physician's~~ practitioner's orders. The delivery ticket must document the individual's name and Medicaid number, the date of delivery, what was delivered, and the quantity delivered.

10. DMAS will deny payment to the DME provider if any of the following occur:

a. No presence of a current, fully completed DMAS-116 appropriately signed and dated by the ~~physician~~ practitioner;

b. Documentation does not verify that the item was provided to the individual;

c. Lack of medical documentation, signed by the ~~physician~~ practitioner to justify the enteral nutrition products; or

d. Item is noncovered or does not meet DMAS criteria for reimbursement.

11. The enteral nutrition product vendor must provide the supplies as prescribed by the ~~physician~~ practitioner on the DMAS-116. Orders shall not be changed unless the vendor obtains a new DMAS-116 prior to ordering or providing the enteral nutrition product to the individual.

12. Medicaid shall not provide reimbursement to the vendor for services provided prior to the date prescribed by the ~~physician~~ practitioner or prior to the date of the delivery or when services are not provided in accordance with published policies and procedures. If reimbursement is denied for one of these reasons, the DME provider may not bill the Medicaid recipient for the service that was provided.

13. The following criteria must be satisfied through the submission of adequate and verifiable documentation satisfactory to DMAS. Medically necessary DME and supplies shall be:

a. Ordered by the ~~physician~~ practitioner on the DMAS-116 [~~,~~ ;]

b. A reasonable and necessary part of the individual's treatment plan;

c. Consistent with the individual's diagnosis and medical condition, particularly the functional limitations and symptoms exhibited by the individual;

d. Not furnished solely for the convenience, safety, or restraint of the individual, the family, attending ~~physician~~ practitioner, or other practitioner or supplier;

e. Consistent with generally accepted professional medical standards (i.e., not experimental or investigational); and

f. Furnished at a safe, efficacious, and cost-effective level suitable for use in the individual's home environment.

VA.R. Doc. No. R10-2065; Filed October 2, 2009, 3:40 p.m.

Final Regulation

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

Title of Regulation: **12VAC30-60. Standards Established and Methods Used to Assure High Quality Care (repealing 12VAC30-60-500).**

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

Effective Date: November 26, 2009.

Agency Contact: Brian McCormick, Regulatory Supervisor, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8856, FAX (804) 786-1680, or email brian.mccormick@dmas.virginia.gov.

Summary:

The 2010 Budget Reduction Plan directed DMAS to terminate its contract with the agency's disease management program contractor in November of 2009, effectively eliminating the program. In response to this mandate, DMAS is terminating the program contract on October 31, 2009, and repealing the disease management services section of the regulation.

12VAC30-60-500. ~~Disease management services.~~ (Repealed.)

~~A. The Commonwealth elects to provide secretary-approved coverage as appropriate for the population served under § 1937 of the Social Security Act (the Act). Virginia's disease management program is designed to help patients better understand and manage their condition or conditions through prevention, education, lifestyle changes, and adherence to their physician-prescribed plans of care (POC). The purpose of the program is not to offer medical advice, but rather to support providers in reinforcing patients' POCs.~~

~~B. Populations.~~

~~1. The Commonwealth shall provide the alternative benefit package to individuals who voluntarily enroll in the program (opt in). Individuals shall be informed of the available benefit options prior to having the option to voluntarily enroll.~~

~~a. Opt in alternative coverage will be offered to the following populations of Medicaid recipients:~~

~~(1) All individuals in fee for service who have asthma or diabetes.~~

~~(2) All individuals in fee for service age 18 and over who have congestive heart failure (CHF), coronary artery disease (CAD), or chronic obstructive pulmonary disease (COPD).~~

~~b. Individuals who choose to participate in the opt in program shall maintain their eligibility for the regular Medicaid benefits at all times.~~

~~2. Persons excluded from this program shall be those:~~

~~a. Who have third-party insurance;~~

~~b. Who are enrolled in Medicaid managed care organizations;~~

~~c. Who reside in institutional settings;~~

~~d. Who are enrolled in both Medicare and Medicaid (dual eligibles); or~~

~~e. Who are children enrolled in Virginia's Title XXI program, Family Access to Medical Insurance Security~~

~~(FAMIS). Children enrolled in FAMIS receive disease management services through the FAMIS program pursuant to 12VAC30-141-200.~~

~~3. The Commonwealth shall inform each individual that such enrollment is voluntary, that such individual may opt out of such alternative benefit package at any time, and retain eligibility for the standard Medicaid program under the State Plan.~~

~~4. Individuals are to be encouraged to participate in the program through mailings and telephonic outreach by DMAS or the designated disease management program administrator.~~

~~C. Benchmark benefits. In addition to all regular Medicaid program benefits, the alternative benefit package includes at least the following disease management services:~~

~~1. Condition-specific education on an ongoing basis;~~

~~2. Access to a 24-hour nurse call line;~~

~~3. Regularly scheduled telephonic condition management, support and referrals (for individuals identified by DMAS or the designated disease management program administrator as having more acute or intensive health care needs); and~~

~~4. Patient health activity monitoring and providing information feedback to primary care physicians to help facilitate changes to patients' plans of care pursuant to the provision of disease management services (for individuals identified by DMAS or the designated disease management program administrator as having more acute or intensive health care needs).~~

~~D. Geographical classification. Services under this alternative benefit package shall be available statewide.~~

~~E. Service delivery system. Alternative benefits shall be offered through a prepaid ambulatory health plan, under contract with the Commonwealth. All other Medicaid State Plan services shall be provided on a fee-for-service basis.~~

~~F. Additional assurances.~~

~~1. The Commonwealth assures that individuals shall have access, through benchmark coverage, benchmark-equivalent coverage, or otherwise, to rural health clinic services and federally qualified health center services as defined in § 1905(a)(2)(B) and (C) of the Act.~~

~~2. The Commonwealth assures that payment for rural health clinic and federally qualified health clinic services shall be made in accordance with the requirements of § 1902(bb) of the Act.~~

~~G. Cost effectiveness of plans. Benchmark or benchmark-equivalent coverage and any additional benefits are provided in accordance with economy and efficiency principles.~~

~~H. Compliance with the law. The Commonwealth shall continue to comply with all other provisions of the Social Security Act in the administration of the Commonwealth's disease management program under this chapter.~~

VA.R. Doc. No. R10-2142; Filed October 5, 2009, 3:57 p.m.

◆ ▬▬▬▬▬▬▬▬▬▬▬▬▬▬▬▬▬▬ ◆

TITLE 14. INSURANCE

STATE CORPORATION COMMISSION

Final 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.

Effective Date: September 30, 2009.

Agency Contact: Raquel C. Pino-Moreno, Principal Insurance Analyst, Bureau of Insurance, State Corporation Commission, 1300 East Main Street, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9499, FAX (804) 371-9511, or email raquel.pino-moreno@scc.virginia.gov.

Summary:

The amendments allow the Bureau of Insurance to authorize insurance companies to use the 2001 CSO Preferred Mortality Table for policies issued on or after January 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 revisions are based on the NAIC's Life and Health Actuarial Task Force's 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 were adopted by the NAIC on September 23, 2009. The changes from the proposed revisions to the final, adopted rules include the following: (i) in 14VAC5-322-30 the date allowed for use of the 2001 CSO Preferred Mortality Tables has been changed from July 1, 2004, to January 1, 2004; (ii) in 14VAC5-322-30 a sentence has

been added allowing the Commissioner of Insurance to rely on the consent given to the insurance company by the commissioner of its state of domicile for use of the 2001 CSO Preferred Mortality Table; and (iii) in 14VAC5-322-40 D the restrictions for the use of the 2001 CSO Preferred Mortality Table for the valuation of policies issued prior to January 1, 2007, in any statutory financial statement, has been rewritten. The original language listed two accounting practices whose use precluded use of the 2001 CSO Preferred Mortality Table. The adopted provision describes the same two offending accounting practices, but does so much more precisely, thus more narrowly defining the offending practice. Also, the original language allowed a company to use the 2001 CSO Preferred Mortality Table even though it used the offending accounting practice, if it could demonstrate enough redundant reserves in another block of business. The final language provides for an aggregate accounting entry, which removes the surplus gain provided by the accounting practice in order to use the 2001 CSO Preferred Mortality Table.

AT RICHMOND, SEPTEMBER 29, 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 ADOPTING RULES

By Order To Take Notice ("Order") entered January 23, 2009, all interested persons were ordered to take notice that subsequent to February 24, 2009, the State Corporation Commission ("Commission") would consider the entry of an order adopting revisions to the rules entitled "Life Insurance Reserves" and "Use of the 2001 CSO Preferred Class Structure Mortality Table in Determining Reserve Liabilities" ("Rules"), proposed by the Bureau of Insurance ("Bureau") 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, unless on or before February 24, 2009, any person objecting to the adoption of the proposed revisions to the Rules filed a request for a hearing with the Clerk of the Commission ("Clerk").

The Order also required all interested persons to file their comments in support of or in opposition to the proposed revisions to the Rules on or before February 24, 2009.

No request for a hearing was filed with the Clerk. By letter dated February 12, 2009, Genworth Financial filed with the Clerk comments suggesting amendments to the proposed revisions to the Rules. By letter dated February 23, 2009, the American Council of Life Insurers filed with the Clerk comments suggesting amendments to the proposed revisions to the Rules. The amendments suggested by the commenting parties were substantively similar. The comments note that the proposed language in 14 VAC 5-322-40 D limits the reduction in minimal reserve requirements by only allowing the use of the 2001 CSO Preferred Class Structure Mortality Table ("Table") in those instances where the company can demonstrate that the surplus relief granted by using the Table is offset by redundant reserves in other blocks of business for which the Table is not being used. The comments also note that 14 VAC 5-322-30 precludes the application of the Table when an insurer's reserve credit exceeds the proportional direct reserve because of its reference to 14 VAC 5-322-40 D. The comments also note that the requirement proposed in 14 VAC 5-319-40 B that requires the appointed actuary who utilizes X factors in reducing deficiency reserves to disclose if assets might be insufficient to cover benefits, expenses or reserves for any policy in any one or more future interim periods.

The Bureau reviewed the comments and recommendations and filed its response with the Clerk on September 29, 2009. The Bureau does not recommend adopting the suggested amendments to the proposed revised regulations. However, the Bureau does recommend that the proposed revised regulations be amended to conform the regulation to the National Association of Insurance Commissioners' model regulation on the same subject.

THE COMMISSION, having considered the Bureau's recommendation and the comments received, is of the opinion that the attached revisions to the Rules should be adopted.

Accordingly, IT IS ORDERED THAT:

(1) The revisions to the Rules entitled "Life Insurance Reserves" and "Use of the 2001 CSO Preferred Class Structure Mortality Table in Determining Reserve Liabilities" at 14 VAC 5-319-40, 14 VAC 5-322-20, 14 VAC 5-322-30, and 14 VAC 5-322-40, which are attached hereto and made a part hereof, should be, and they are hereby, ADOPTED to be effective September 30, 2009.

(2) AN ATTESTED COPY hereof, together with a copy of the adopted Rules, shall be sent by the Clerk to the Bureau in care of Deputy Commissioner Douglas C. Stolte, who forthwith shall give further notice of the adoption of the revised Rules by mailing a copy of this Order, together with the revised 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.

(3) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, together with the attached Rules, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(4) The Commission's Division of Information Resources shall make available this Order and the adopted Rules on the Commission's website, http://www.scc.virginia.gov/case.

(5) The Bureau shall file with the Clerk an affidavit of compliance with the notice requirements of Ordering Paragraph (2) 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/~~ http://www.soa.org/research/individual-life/intl-2001-cso-preferred-class-structure-mortality-tables.aspx].

"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~~ January] 1, 2004. [In determining such consent, the commissioner may rely on the consent of the commissioner of the company's state of domicile.] 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.~~

D. The use of the 2001 CSO Preferred Class Structure Mortality Table for the valuation of policies issued prior to January 1, 2007, shall not be permitted in any statutory financial statement in which a company reports, with respect to any policy or portion of a policy coinsured, either of the following:

1. In cases where the mode of payment of the reinsurance premium is less frequent than the mode of payment of the policy premium, a reserve credit that exceeds, by more than the amount specified in this subdivision as Y, the gross reserve calculated before reinsurance. Y is the amount of the gross reinsurance premium that (i) provides coverage for the period from the next policy premium due date to the earlier of the end of the policy year and the next reinsurance premium due date, and (ii) would be refunded to the ceding entity upon the termination of the policy.

2. In cases where the mode of payment of the reinsurance premium is more frequent than the mode of payment of the policy premium, a reserve credit that is less than the gross reserve, calculated before reinsurance, by an amount that is less than the amount specified in this subdivision as Z. Z is the amount of the gross reinsurance premium that the ceding entity would need to pay the assuming company to provide reinsurance coverage from the period of the next reinsurance premium due date to the next policy premium due date minus any liability established for the proportionate amount not remitted to the reinsurer.

For purposes of this condition, both the reserve credit and the gross reserve before reinsurance (i) for the mean reserve method shall be defined as the mean reserve minus the deferred premium asset, and (ii) for the mid-terminal reserve method shall include the unearned premium reserve. A company may estimate and adjust its accounting on an aggregate basis in order to meet the conditions to use the 2001 CSO Preferred Class Structure Mortality Table.]

E. This section is effective for valuations on and after December 31, 2008.

VA.R. Doc. No. R09-1763; Filed September 30, 2009, 10:33 a.m.

◆ ▬▬▬▬▬▬▬▬▬▬▬▬▬▬▬▬▬▬▬▬ ◆

TITLE 16. LABOR AND EMPLOYMENT

DEPARTMENT OF LABOR AND INDUSTRY

Final Regulation

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

Title of Regulation: **16VAC15-30. Virginia Rules and Regulations Declaring Hazardous Occupations (repealing 16VAC15-30-40).**

Statutory Authority: § 40.1-100 of the Code of Virginia.

Effective Date: November 25, 2009.

Agency Contact: Wendy Inge, Director, Division of Labor and Employment Law, Department of Labor and Industry, Powers-Taylor Building, 13 South Thirteenth Street, Richmond, VA 23219, telephone (804) 786-3224, FAX (804) 371-2324, TTY (804) 786-2376, or email wendy.inge@doli.virginia.gov.

Summary:

This regulatory action repeals 16VAC15-30-40 because it conflicts with statutory language revised by Chapter 218 of the 2009 Acts of Assembly.

16VAC15-30-40. ~~Motor vehicle occupations.~~ (Repealed.)

~~Minors under the age of 18 shall not be employed as drivers or helpers on trucks or commercial vehicles of more than two axles.~~

VA.R. Doc. No. R10-2170; Filed September 29, 2009, 10:43 a.m.

◆ ▬▬▬▬▬▬▬▬▬▬▬▬▬▬▬▬▬▬▬▬ ◆

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

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

Final Regulation

REGISTRAR'S NOTICE: The Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects will receive, consider, and respond to petitions from any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **18VAC10-20. Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects Regulations (amending 18VAC10-20-10, 18VAC10-20-420, 18VAC10-20-440, 18VAC10-20-530, 18VAC10-20-550, 18VAC10-20-570, 18VAC10-20-590, 18VAC10-20-610, 18VAC10-20-650, 18VAC10-20-730, 18VAC10-20-760, 18VAC10-20-780).**

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

Effective Date: July 1, 2010.

Agency Contact: Kathleen R. 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 regulations reflect the change made by the 2009 General Assembly session by removing "certified" wherever it appears before landscape architect through the regulations.

Part I
General

18VAC10-20-10. Definitions.

Section 54.1-400 of the Code of Virginia provides definitions of the following terms and phrases as used in this chapter:

Architect

Board

Certified interior designer

~~Certified landscape architect~~

Interior design by a certified interior designer

Land surveyor. When used in this chapter, land surveyor shall include surveyor photogrammetrist unless stated otherwise or the context requires a different meaning.

Landscape architect

Practice of architecture

Practice of engineering

Practice of land surveying

Practice of landscape architecture

Professional engineer

The following words, terms, and phrases when used in this chapter shall have the meanings ascribed to them except where the context clearly indicates or requires different meanings:

"Application" means a completed application with the appropriate fee and any other required documentation, including, but not limited to, references, employment verification, degree verification, and verification of examination and licensure or certification.

"Certified" means an individual holding a valid certification issued by the board that has not been suspended, revoked, or surrendered, and is currently registered with the board to practice in the Commonwealth in accordance with § 54.1-405 or 54.1-414 of the Code of Virginia.

"Comity" means the recognition of licenses or certificates issued by other states, the District of Columbia, or any territory or possession of the United States as permitted by § 54.1-103 C of the Code of Virginia.

"Department" means the Department of Professional and Occupational Regulation.

"Direct control and personal supervision" shall be that degree of supervision by a person overseeing the work of another whereby the supervisor has both control over and detailed professional knowledge of the work prepared under his supervision and words and phrases of similar import mean that the professional shall have control over the decisions on technical matters of policy and design, and exercises his professional judgment in all professional matters that are embodied in the work and the drawings, specifications, or other documents involved in the work; and the professional has exercised critical examination and evaluation of an employee's, consultant's, subcontractor's, or project team members' work product, during and after preparation, for purposes of compliance with applicable laws, codes,

ordinances, regulations and usual and customary standards of care pertaining to professional practice. Further, it is that degree of control a professional is required to maintain over decisions made personally or by others over which the professional exercises direct control and personal supervision. "Direct control and personal supervision" also includes the following:

1. The degree of control necessary for a professional to be in direct control and personal supervision shall be such that the professional:

a. Personally makes professional decisions or reviews and approves proposed decisions prior to their implementation, including the consideration of alternatives, whenever professional decisions that could affect the health, safety, and welfare of the public are made; and

b. Determines the validity and applicability of recommendations prior to their incorporation into the work, including the qualifications of those making the recommendations.

2. Professional decisions that must be made by and are the responsibility of the professional in direct control and personal supervision are those decisions concerning permanent or temporary work that could affect the health, safety, and welfare of the public, and may include, but are not limited to, the following:

a. The selection of alternatives to be investigated and the comparison of alternatives for designed work; and

b. The selection or development of design standards and materials to be used.

3. A professional shall be able to clearly define the scope and degree of direct control and personal supervision and how it was exercised and to demonstrate that the professional was answerable within said scope and degree of direct control and personal supervision necessary for the work for which the professional has signed and sealed; and

4. No sole proprietorship, partnership, corporation, limited liability company, joint venture, professional corporation, professional limited liability corporation, or other entity shall practice, or offer to practice, any profession regulated under this chapter unless there is a resident professional for that service providing direct control and personal supervision of such service in each separate office in which such service is performed or offered to be performed.

"Good moral character" may be established if the applicant or regulant:

1. Has not been convicted of a felony or misdemeanor that has a reasonable relationship to the functions of the employment or category for which the license or certification is sought;

2. Has not, within 10 years of application for licensure, certification, or registration, committed any act involving dishonesty, fraud, misrepresentation, breach of fiduciary duty, negligence, or incompetence reasonably related to the applicant's proposed area of practice;

3. Has not engaged in fraud or misrepresentation in connection with the application for licensure, certification, or registration, or related examination;

4. Has not had a license, certification or registration revoked or suspended for cause by this state or by any other jurisdiction, or surrendered a license, certificate, or registration in lieu of disciplinary action;

5. Has not practiced without the required license, registration, or certification in this state or in another jurisdiction within the five years immediately preceding the filing of the application for licensure, certification, or registration by this Commonwealth; or

6. Has not, within 10 years of application for licensure, certification, or registration, committed an act that would constitute unprofessional conduct, as set forth in Part XII of this chapter.

~~"Landscape architect" means an individual who has been certified as a landscape architect pursuant to the provisions of this chapter and is in good standing with the board to practice in the Commonwealth in accordance with § 54.1-409 of the Code of Virginia.~~

"Licensed" means an individual who holds a valid license issued by the board that has not been suspended, or revoked, or surrendered and who is currently registered with the board to practice in the Commonwealth in accordance with § 54.1-405 of the Code of Virginia.

"Place of business" means any location which offers to practice or practices through licensed or certified professionals the services of architecture, engineering, land surveying, ~~certified~~ landscape architecture or certified interior design, or any combination thereof. A temporary field office established and utilized for the duration of a specific project shall not qualify as a place of business under this chapter.

"Profession" means the practice of architecture, engineering, land surveying, ~~certified~~ landscape architecture, or certified interior design.

"Professional" means an architect, professional engineer, land surveyor, landscape architect or interior designer who is licensed or certified, as appropriate, pursuant to the provisions of this chapter and is in good standing with the board to practice his profession in this Commonwealth.

"Registrant" means a business currently registered with the board to offer or provide one or more of the professions regulated by the board.

"Regulant" means a licensee, certificate holder or registrant.

"Resident" means physically present in said place of business a majority of the operating hours of the place of business.

"Responsible person" means the individual named by the entity to be responsible and have control of the regulated services offered, or rendered, or both, by the entity.

"Surveyor photogrammetrist" means a person who by reason of specialized knowledge in the area of photogrammetry has been granted a license by the board to survey land in accordance with Chapter 4 (§ 54.1-400 et seq.) of Title 54.1 of the Code of Virginia for the determination of topography, contours and/or location of planimetric features using photogrammetric methods or similar remote sensing technology.

18VAC10-20-420. Requirements for certification.

The education or experience, or both, and examination requirements for ~~certification~~ licensure as a landscape architect are as follows:

1. An applicant who has graduated from an accredited landscape architecture curriculum approved by the Landscape Architectural Accreditation Board (LAAB) must meet the following requirements for ~~certification~~ licensure as a landscape architect:

a. Passed a CLARB-prepared examination; and

b. Obtained 36 months of experience/training with a minimum of 12 months under the direct control and personal supervision of a ~~licensed or certified~~ landscape architect and the other 24 months under the direct control and personal supervision of ~~either~~ a ~~licensed or certified~~ landscape architect, architect, professional engineer, or land surveyor, in accordance with the experience credits portion of the Landscape Architect Equivalency Table. An applicant who has graduated from an accredited landscape architecture curriculum approved by the Landscape Architectural Accreditation Board shall be admitted to a CLARB-prepared examination prior to completing the 36-month experience requirement, if the applicant is otherwise qualified.

2. An applicant who has obtained eight years of combined education and experience, evaluated in accordance with the Landscape Architect Equivalency Table, shall be admitted to a CLARB-prepared examination or equivalent approved by the board. Upon passing such examination, the applicant shall be ~~certified~~ licensed as a landscape architect, if otherwise qualified.

LANDSCAPE ARCHITECT EQUIVALENCY TABLE.

TABLE OF EQUIVALENTS FOR EDUCATION AND EXPERIENCE.

DESCRIPTIONS	Education Credits			Experience Credits	
	First 2 Years	Succeeding Years	Max. Credit Allowed	Credit Allowed	Max. Credit Allowed
A-1. Degree from an LAAB-accredited landscape architectural curriculum.	100%	100%	5 years		
A-2. Credits toward a degree in landscape architecture from an accredited school of landscape architecture.	100%	100%	4 years		
A-3. Degree in landscape architecture or credits toward that degree from a nonaccredited school of landscape architecture.	100%	100%	4 years		
A-4. Degree or credits toward that degree in an allied professional discipline, i.e., architecture, civil engineering, environmental science, approved by the board.	75%	100%	3 years		
A-5. Any other bachelor degree or credits toward that degree.	50%	75%	2 years		
A-6. Qualifying experience in landscape architecture under the direct supervision of a landscape architect.				100%	no limit

A-7. Qualifying experience directly related to landscape architecture when under the direct supervision of an architect, professional engineer, or land surveyor.				50%	4 years

EXPLANATION OF REQUIREMENTS

B-1. Education Credits. Education credits shall be subject to the following conditions:

B-1.1. Applicants with a degree specified in A-1 through A-5 will be allowed the credit shown in the Maximum Credit Allowed column, regardless of the length of the degree program.

B-1.2. With a passing grade, 32 semester credit hours or 48 quarter hours is considered to be one year. Fractions greater than one-half year will be counted one-half year and smaller fractions will not be counted.

B-2. Experience Credits. Experience credits shall be subject to the following conditions:

B-2.1. Every applicant without an LAAB-accredited degree must earn at least two years of experience credit under category A-6. Every applicant with an LAAB-accredited degree must earn at least one year of experience credit under category A-6.

18VAC10-20-440. Examination.

A. All applicants for original ~~certification~~ licensure in Virginia are required to pass the CLARB-prepared examination.

B. The Virginia board is a member of the Council of Landscape Architectural Registration Boards (CLARB) and as such is authorized to administer the CLARB examinations.

C. The CLARB-prepared examination will be offered at least once per year at a time designated by the board.

D. Grading of the examination shall be in accordance with the national grading procedures established by CLARB. The board shall adopt the scoring procedures recommended by CLARB.

E. Unless otherwise stated, applicants approved to sit for an examination shall register and submit the required examination fee to be received in the board office, or by the board's designee, at a time designated by the board. Applicants not properly registered will not be allowed into the examination site.

F. Examinees will be advised only of their passing or failing score and the CLARB minimum passing or failing score.

Only the board and its staff shall have access to examination papers, scores, and answer sheets.

G. Upon written request to the board within 30 days of receiving examination results, examinees will be permitted to view the performance problems contained within the section that they failed. Examination appeals are permitted in accordance with the CLARB score verification process.

H. Should an applicant fail to pass an examination within three years after being approved to sit for an examination, the applicant must reapply and meet all current entry requirements at the time of reapplication. If the applicant has not been taking the examination on a continuous basis during the three-year eligibility period, or fails to reapply within six months after the end of the three-year eligibility period, or both, then the applicant shall meet the entry requirements current at the time of reapplication.

Part VIII
Qualifications for Registration as a Professional Corporation

18VAC10-20-530. Application requirements.

A. All applicants shall have been incorporated in the Commonwealth of Virginia or, if a foreign professional corporation, shall have obtained a certificate of authority to conduct business in Virginia from the State Corporation Commission in accordance with § 13.1-544.2 of the Code of Virginia. The corporation shall be in good standing with the State Corporation Commission at the time of application to the board office and at all times when the registration is in effect.

B. Each application shall include certified true copies of the certificate of incorporation issued by the state of incorporation (in Virginia, such certificate issued by the State Corporation Commission), articles of incorporation, bylaws and charter, and, if a foreign professional corporation, the certificate of authority issued by the State Corporation Commission.

C. Articles of incorporation and bylaws. The following statements are required:

1. The articles of incorporation or bylaws shall specifically state that cumulative voting is prohibited.

2. Pursuant to § 13.1-549 of the Code of Virginia, the bylaws of a corporation rendering the services of architects, professional engineers, ~~or~~ land surveyors, or landscape architects or using the title of ~~certified landscape architects or~~ certified interior designers, or any combination thereof, shall provide that not less than two-thirds of its capital stock shall be issued to individuals duly licensed to render the services of architect, professional engineer, ~~or~~ land surveyor, or landscape architect or to

individuals legally authorized to use the title of ~~certified landscape architect or~~ certified interior designer. Similarly, for those corporations using the title of certified interior designers and providing the services of architects, professional engineers or land surveyors, or any combination thereof, the bylaws shall provide that not less than two-thirds of the capital stock of the corporation shall be held by individuals who are duly licensed. The bylaws shall further provide that the remainder of said stock may be issued only to and held by individuals who are employees of the corporation whether or not such employees are licensed to render professional services or authorized to use a title. Notwithstanding the above limitations, the bylaws may provide that the corporation may issue its stock to a partnership each of the partners of which is duly licensed or otherwise legally authorized to render the same professional services as those for which the corporation was incorporated.

3. The bylaws shall state that nonlicensed or noncertified individuals will not have a voice or standing in any matter affecting the practice of the corporation requiring professional expertise or in any matter constituting professional practice, or both.

D. Board of directors. A corporation may elect to its board of directors not more than one-third of its members who are employees of the corporation and are not authorized to render professional services.

At least two-thirds of the board of directors shall be licensed to render the services of an architect, professional engineer ~~or~~, land surveyor, or landscape architect or be duly certified to use the title of ~~certified landscape architect or~~ certified interior designer, or any combination thereof.

At least one director currently licensed or certified in each profession offered or practiced shall be resident at the business to provide effective supervision and control of the final professional product.

E. Joint ownership of stock. Any type of joint ownership of the stock of the corporation is prohibited. Ownership of stock by nonlicensed or noncertified employees shall not entitle those employees to vote in any matter affecting the practice of the professions herein regulated.

F. The name of the business and any assumed, fictitious, trading as, or doing business as names of the firm shall be disclosed on the application.

G. Branch offices. If professional services are offered or rendered in a branch office, a separate branch office designation form shall be completed for each branch office. Responsible persons shall be designated in accordance with this chapter. At least one currently licensed or certified responsible person in each profession offered or practiced at each branch office shall be resident at each branch office to provide effective supervision and control of the final professional product.

18VAC10-20-550. Foreign corporations.

The bylaws shall state that the corporation's activities in Virginia shall be limited to rendering the services of architects, professional engineers, land surveyors, ~~certified~~ landscape architects and certified interior designers, or any combination thereof. A foreign corporation must meet every requirement of this chapter except the requirement that two-thirds of its stockholders be licensed or certified to perform the professional service in Virginia.

The corporation shall provide the name, address, and Virginia license or certificate number of each stockholder or employee of the corporation who will be providing the professional service(s) in Virginia.

Part IX
Qualifications for Registration as a Professional Limited Liability Company

18VAC10-20-570. Definitions.

Section 13.1-1102 of the Code of Virginia provides the definition of the following term:

Professional Limited Liability Company ("P.L.C.," "PLC," "P.L.L.C.," or "PLLC")

The following words, terms, and phrases when used in this part shall have the meanings ascribed to them except where the context clearly indicates or requires different meanings:

"Manager" is a person or persons designated by the members of a limited liability company to manage the professional limited liability company as provided in the articles of organization or an operating agreement, and who is duly licensed or otherwise legally authorized to render one or more of the professional services of architects, professional engineers, land surveyors, ~~certified~~ landscape architects, or certified interior designers in the Commonwealth of Virginia.

"Member" means an individual or professional business entity that owns an interest in a professional limited liability company.

18VAC10-20-590. Application requirements.

A. All applicants shall have obtained a certificate of organization in the Commonwealth of Virginia or, if a foreign professional limited liability company, shall have obtained a certificate of registration to conduct business in Virginia from the State Corporation Commission, in accordance with § 13.1-1105 of the Code of Virginia. The company shall be in good standing with the State Corporation Commission at the time of application to the board office and at all times when the registration is in effect.

B. Each application shall include a certified true copy of the certificate of organization or, if a foreign professional limited liability company, a certificate of registration issued by the State Corporation Commission. Each application must also include certified true copies of the articles of organization, operating agreement, or both.

C. Each application shall include a written affirmative affidavit that attests to the following inclusions to the articles of organization or operating agreement.

1. The articles of organization or operating agreement shall state the specific purpose of the professional limited liability company.

2. Pursuant to § 13.1-1111 of the Code of Virginia, the articles of organization or operating agreement shall provide that not less than two-thirds of the membership interests of a PLLC rendering the services of architects, professional engineers, ~~or~~ land surveyors, or landscape architects or using the title of ~~certified landscape architects or~~ certified interior designers, or any combination thereof, shall be held by individuals duly licensed or professional business entities legally authorized to render the services of architects, professional engineers, ~~or~~ land surveyors, or landscape architects or by individuals or professional business entities legally authorized to use the title of ~~certified landscape architects or~~ certified interior designers. Similarly, for those PLLCs using the title of certified interior designers and providing the services of architects, professional engineers, or land surveyors, or any combination thereof, the articles of organization or operating agreement shall provide that not less than two-thirds of the membership interests of the company shall be held by individuals who are duly licensed. The articles of organization or operating agreement shall further provide that the remainder of the membership interests of the PLLC may be held only by individuals who are employees of the PLLC whether or not those employees are licensed to render professional services or authorized to use a title.

3. The articles of organization or operating agreement shall attest that all members, managers, employees and agents who render professional services of architects, professional engineers, ~~or~~ land surveyors, or landscape architects or use the title of ~~certified landscape architects, or~~ certified interior designers are duly licensed or certified to provide those services.

The person executing the affidavit shall sign it and state beneath his signature his name and the capacity in which he signs. If the person signing the affidavit is not a manager of the PLLC, the affidavit shall also state that the individual has been authorized by the members of the PLLC to execute the affidavit for the benefit of the company.

D. Pursuant to § 13.1-1118 of the Code of Virginia, unless the articles of organization or operating agreement provides for management of the PLLC by a manager or managers, management of the PLLC shall be vested in its members.

If the articles of organization or an operating agreement provides for management of the PLLC by a manager or managers, the manager or managers must be an individual or individuals duly licensed or otherwise legally authorized to render the same professional services within the Commonwealth for which the company was formed.

Only members or managers duly licensed or otherwise legally authorized to render the same professional services within this Commonwealth shall supervise and direct the provision of professional services within this Commonwealth. At least one member or manager currently licensed or certified in each profession offered or practiced shall be resident at the business to provide effective supervision and control of the final professional product.

E. The name of the business and any assumed, fictitious, trading as, or doing business as names of the firm shall be disclosed on the application.

F. If professional services are offered or rendered in a branch office, a separate branch office designation form shall be completed for each branch office. Responsible persons shall be designated in accordance with this chapter. At least one currently licensed or certified responsible person in each profession offered or practiced at each branch office shall be resident at each branch office to provide effective supervision and control of the final professional product.

18VAC10-20-610. Foreign professional limited liability companies.

The articles of organization or operating agreement shall state that the PLLC's activities in Virginia shall be limited to rendering the professional services of architects, professional engineers, land surveyors, ~~certified~~ landscape architects, and certified interior designers, or any combination thereof. The foreign company must meet every requirement of this chapter except for the requirement that two-thirds of its members and managers be licensed or certified to perform the professional service in this Commonwealth.

The PLLC shall provide the name, address, and Virginia license or certificate number of each manager or member who will be providing the professional service(s) in Virginia.

18VAC10-20-650. Registration certification.

The application shall contain an affidavit by an authorized official in the corporation, partnership, sole proprietorship, limited liability company, or other entity unit that the practice of architecture, engineering, land surveying, ~~certified~~ landscape architecture, or certified interior design to be done by that entity shall be under the direct control and personal supervision of the licensed or certified full-time employees or licensed or certified resident principals identified in the application as responsible persons for the practice. In

addition, the licensed or certified employees or principals responsible for the practice shall sign their names indicating that they are responsible persons who are resident, and that they understand and shall comply with all statutes and regulations of the board.

18VAC10-20-730. Competency for assignments.

A. The professional shall undertake to perform professional assignments only when qualified by education or experience, or both, and licensed or certified in the profession involved. Licensed professionals may perform assignments related to ~~landscape architecture or~~ interior design provided they do not hold themselves out as certified in ~~either of these professions~~ this profession unless they are so certified by this board. The professional may accept an assignment requiring education or experience outside of the field of the professional's competence, but only to the extent that services are restricted to those phases of the project in which the professional is qualified. All other phases of such project shall be the responsibility of licensed or certified associates, consultants or employees.

B. A professional shall not misrepresent to a prospective or existing client or employer his qualifications and the scope of his responsibility in connection with work for which he is claiming credit.

C. The professional shall adhere to the minimum standards and requirements pertaining to the practice of his own profession, as well as other professions if incidental work is performed.

18VAC10-20-760. Use of seal.

A. The application of a professional seal shall indicate that the professional has exercised direct control and personal supervision over the work to which it is affixed. Therefore, no professional shall affix a name, seal or certification to a plat, design, specification or other work constituting the practice of the professions regulated which has been prepared by an unlicensed or uncertified person unless such work was performed under the direct control and personal supervision of the professional while said unlicensed or uncertified person was an employee of the same firm as the professional or was under written contract to the same firm that employs the professional. If the original professional of record is no longer employed by the regulant or is otherwise unable to seal completed professional work, such work may be sealed by another professional, but only after a thorough review of the work by the professional affixing the professional seal to verify that the work has been accomplished to the same extent that would have been exercised if the work had been done under the direct control and personal supervision of the professional affixing the professional seal.

B. An appropriately licensed or certified professional shall apply a seal to final and complete original cover sheets of plans, drawings, plats, technical reports and specifications and to each original sheet of plans, drawings or plats, prepared by the professional or someone under his direct control and personal supervision.

1. All seal imprints on the cover or first sheet of final documents shall bear an original signature and date. "Final Documents" are completed documents or copies submitted on a client's behalf for approval by authorities or recordation. In such cases, the cover sheet of the documents or copies shall contain a list of drawings or plats included in the set on which a seal, original signature and date shall be affixed for all regulated disciplines. Every page of the submission, other than the cover, may be reproduced from originals which contain the seal, original signature and date by each discipline responsible for the work.

a. An electronic seal, signature and date are permitted to be used in lieu of an original seal, signature and date when the following criteria, and all other requirements of this section, are met:

(1) It is a unique identification of the professional;

(2) It is verifiable; and

(3) It is under the professional's direct control.

b. A professional should not seal original documents made of mylar, linen, sepia, or other materials, or that are transmitted electronically, which can be changed by the person or entity with whom the documents are filed, unless the professional accompanies such documents with a signed and sealed letter making the recipient of such documents aware that copies of the original documents as designed by the professional have been retained by the professional and that the professional cannot assume responsibility for any subsequent changes to the reproducible original documents that are not made by the professional or those working under his direct control and personal supervision.

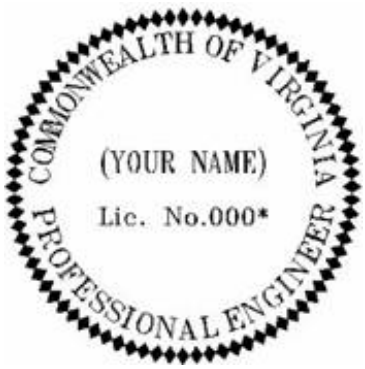
2. Incomplete plans, documents and sketches, whether advance or preliminary copies, shall be so identified on the plan, document or sketch and need not be sealed, signed or dated.

3. All plans, drawings or plats prepared by the professional shall bear the professional's name or firm name, address and project name.

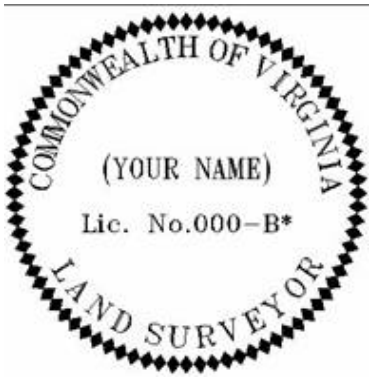
4. The seal of each professional responsible for each profession shall be used and shall be on each document that was prepared under the professional's direction and for which that professional is responsible. If one of the exemptions found in § 54.1-402 of the Code of Virginia is applicable, a professional licensed or certified by this board shall nevertheless apply his seal to the exempt work.

5. Application of the seal and signature indicates acceptance of responsibility for work shown thereon.

6. The seal shall conform in detail and size to the design illustrated below and shall be two inches in diameter. The designs below may not be shown to scale:



EDITOR'S NOTE: The seal for Certified Landscape Architect is stricken.



*The number referred to is the last six-digit number as shown on the license or certificate. The number is permanent. Leading zeros contained in the six-digit number may be omitted from the seal.

18VAC10-20-780. Professional required at each place of business.

Any legal entity or professional maintaining a place of business from which the entity or professional offers or provides architectural, engineering, land surveying, ~~certified~~ landscape architectural, or certified interior design services in Virginia shall name for each profession offered or practiced at each place of business a resident, responsible person. The named resident, responsible person must hold a current valid Virginia license or certificate in the profession being offered or practiced.

Each named professional shall exercise direct control and personal supervision of the work being offered or practiced at the place of business for which he is named. Each named professional shall be responsible for only one location at a time. A named professional may be responsible for more than one location provided that he is resident at the place of business during a majority of the hours of operation at each location.

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)~~ 6/30/09).

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)~~ 12/4/08).

Architect Client Experience Verification Form, 0401CEXP ~~v1.0~~ (rev. ~~9/5/08)~~ 12/4/08).

Architect Degree Verification Form, 0401DEG ~~v1.0~~ (rev. ~~9/5/08)~~ 12/4/08).

Architect Reference Form, 0401REF ~~v1.0~~ (rev. ~~9/5/08)~~ 12/4/08).

Architect License Reinstatement Application, 0401REI (rev. ~~4/09)~~ 4/1/09).

Architect License Renewal Form, 0401REN (rev. ~~4/09)~~ 4/1/09).

Professional Engineer License Application~~,~~ (Professional Engineer Information Sheet), 0402LIC (rev. ~~9/22/08)~~ 12/2/08).

Professional Engineer Reference Form, 0402REF ~~v.1.0~~ (rev. ~~9/5/08)~~ 12/2/08).

Professional Engineer License Reinstatement Application, 0402REI (rev. ~~4/09)~~ 4/1/09).

Professional Engineer and Engineer-in-Training Degree Verification Form, 0402_20DEG ~~v1.0~~ (rev. ~~9/5/08)~~ 12/2/08).

Professional Engineer and Engineer-in-Training Experience Verification Form, 0402_20EXP ~~v1.0~~ (rev. ~~9/5/08)~~ 4/23/09).

Engineer Verification of Examination and Licensure Form, ~~0402_20EXVER v1.0~~ 0402-20ELV (rev. ~~9/5/08)~~ 12/2/08).

Engineer-in-Training Designation Application, (Engineer-in-Training Information Sheet) 0420DES ~~v1.0~~ (rev. ~~9/5/08)~~ 12/2/08).

Engineer-in-Training Reference Form, ~~0402REF v1.0~~ 0420REF (rev. ~~9/5/08)~~ 12/2/08).

Course Requirements for Engineering Technology Program, 0402_20CREQ ~~v1.0~~ (eff. ~~9/5/08)~~ 12/2/08).

Professional Engineer License Renewal Form, 0402REN (rev. ~~4/09)~~ 4/1/09).

Land Surveyor License Application~~,~~ (Land Surveyor Information Sheet), 0403LIC (rev. ~~9/17/08)~~ 5/21/09).

Land Surveyor License Reinstatement Application, 0403REI (rev. ~~4/09)~~ 4/1/09).

Land Surveyor B License Application~~,~~ (Land Surveyor B Information Sheet), 0404LIC (rev. ~~9/17/08)~~ 12/5/08).

Land Surveyor B License Reinstatement Application, 0404REI (rev. ~~4/09)~~ 4/1/09).

Land Surveyor License Renewal Form, 0403_04REN (rev. ~~4/09)~~ 4/1/09).

Land Surveyor and Surveyor-in-Training Degree Verification Form, 0403_30DEG (rev. ~~9/17/08)~~ 12/5/08).

Land Surveyor Verification of Examination and Licensure Form, 0403_30ELV (rev. ~~07 9/17/08)~~ 12/5/08).

Land Surveyor & Surveyor-in-Training Experience Verification Form, 0403_30EXP (rev. ~~9/17/08)~~ 12/5/08).

Surveyor Photogrammetrist License Application (Surveyor Photogrammetrist Information Sheet), 0408LIC (rev. ~~4/09)~~ 3/16/09).

Surveyor Photogrammetrist License Renewal Form, 0408REN (rev. ~~4/09)~~ 4/1/09).

"Grandfather" Surveyor Photogrammetrist Reference Form, ~~0408REF (eff. 9/19/08)~~ 0408GREF (rev. 12/8/08).

Surveyor Photogrammetrist Experience Verification Form, 0408EXP ~~(eff. 9/19/08)~~ (rev. 12/8/08).

"Grandfather" Surveyor Photogrammetrist Experience Verification Form, ~~0408GXP~~ 0408GEXP ~~(eff. 9/19/08)~~ (rev. 12/8/08).

Surveyor Photogrammetrist License Reinstatement Application, 0408REI (rev.~~4/09)~~ 4/1/09).

Surveyor Photogrammetrist Degree Verification Form, 0408DEG ~~(eff. 9/19/08)~~ (rev. 12/8/08).

Surveyor Photogrammetrist Verification of Examination and Licensure Form, ~~0408ELVF~~ 0408ELV (eff. ~~9/19/08)~~ 12/8/08).

Surveyor-In-Training Designation Application~~,~~ (Surveyor-in-Training Information Sheet), 0430DES (rev. ~~9/17/08)~~ 12/5/08).

Landscape Architect ~~Certificate~~ License Application~~,~~ (Landscape Architect Information Sheet), ~~0406CERT~~ 0406LIC (rev. ~~10/6/08)~~ 7/1/10).

Verification of Landscape Architect Examination and Licensure Form, 0406ELV (rev. ~~9/17/08)~~ 6/23/09).

Landscape Architect Experience Verification Form for Examination and Comity Applicants, 0406EXP (rev. ~~9/17/08)~~ 12/8/08).

Landscape Architect Degree Verification Form, 0406DEG (rev. ~~9/17/08)~~ 12/8/08).

Landscape Architect ~~Certificate~~ License Reinstatement Application, 0406REI (rev. ~~9/17/08)~~ 7/1/10).

Landscape Architect ~~Certificate~~ License Renewal Form, 0406REN ~~(eff. 9/17/08)~~ (rev. 7/1/10).

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)~~ 9/17/08).

Interior Designer Experience Verification Form, 0412EXP ~~v1.0~~ (rev. ~~9/11/08)~~ 9/17/08).

Interior Designer Certificate Reinstatement Application, 0412REI ~~v1.0~~ (rev. ~~9/11/08)~~ 9/17/08).

Interior Designer Certificate Renewal Form, 0412REN ~~v1.0 (eff. 9/11/08)~~ (rev. 4/1/09).

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. R10-2127; Filed September 30, 2009, 3:11 p.m.

BOARD OF MEDICINE

Notice of Extension of Emergency Regulation

Title of Regulation: **18VAC85-80. Regulations Governing the Licensure of Occupational Therapists (amending 18VAC85-80-10, 18VAC85-80-26, 18VAC85-80-40, 18VAC85-80-45, 18VAC85-80-50, 18VAC85-80-65, 18VAC85-80-70, 18VAC85-80-72, 18VAC85-80-73, 18VAC85-80-80, 18VAC85-80-90, 18VAC85-80-100, 18VAC85-80-110; adding 18VAC85-80-111; repealing 18VAC85-80-61).**

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

Effective Dates: November 1, 2008, through April 26, 2010.

The Board of Medicine has requested an extension of the above-referenced emergency regulation, relating to the licensure of occupational therapy assistants. The emergency regulation was published in 25:5 VA.R. 1103-1108 November 10, 2008 (http://register.dls.virginia.gov/vol25/iss05/v25i05.pdf).

In accordance with § 2.2-4011 D of the Code of Virginia, the Governor approved the department's request to extend the expiration date of the emergency regulation through April 26, 2010.

Agency Contact: Elaine J. Yeatts, Senior Policy Analyst, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4688, FAX (804) 527-4434, or email elaine.yeatts@dhp.virginia.gov.

VA.R. Doc. No. R09-1387; Filed October 5, 2009, 4:56 p.m.

BOARD OF PSYCHOLOGY

Final Regulation

REGISTRAR'S NOTICE: The Board of Psychology is claiming an exemption from Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act pursuant to § 2.2-4007.2 of the Code of Virginia. Section 2.2-4007.2 provides that if an agency chooses to amend a regulation to provide the alternative of submitting required documents or payments by electronic means, such action shall be exempt from the operation of Article 2 provided the amended regulation is (i) adopted by December 31, 2010, and (ii) consistent with federal and state law and regulations.

Title of Regulation: **18VAC125-20. Regulations Governing the Practice of Psychology (amending 18VAC125-20-41, 18VAC125-20-42, 18VAC125-20-120).**

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

Effective Date: November 25, 2009.

Agency Contact: Evelyn B. Brown, Executive Director, Board of Psychology, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4697, FAX (804) 327-4435, or email evelyn.brown@dhp.virginia.gov.

Summary:

The amendments facilitate electronic submissions of applications and renewals. References to a contracting agent are deleted since all applications now come directly to the board and requirements for all documents to be submitted in one package are eliminated to allow the application to be submitted electronically by the applicants and other documents (licensure verification, transcripts, exam scores, etc.) to be sent directly from the source. All references to a renewal application are amended to use the term renewal form, since renewal of a license or certificate

can now be accomplished online by completion of an electronic form and submission of a fee.

18VAC125-20-41. Requirements for licensure by examination.

A. Every applicant for examination for licensure by the board shall:

1. Meet the education requirements prescribed in 18VAC125-20-54, 18VAC125-20-55, or 18VAC125-20-56 and the experience requirement prescribed in 18VAC125-20-65 as applicable for the particular license sought; and

2. Submit ~~in one package not less than 90 days prior to the date of the written examination~~ the following:

a. A completed application on forms provided by the board;

b. A completed residency agreement or documentation of having fulfilled the experience requirements of 18VAC125-20-65;

c. The application processing fee prescribed by the board;

d. Official transcripts documenting the graduate work completed and the degree awarded. Applicants who are graduates of institutions that are not regionally accredited shall submit documentation from an accrediting agency acceptable to the board that their education meets the requirements set forth in 18VAC125-20-54, 18VAC125-20-55 or 18VAC125-20-56; and

e. Verification of any other professional license or certificate ever held in another jurisdiction.

B. In addition to fulfillment of the education and experience requirements, each applicant for licensure by examination must achieve a passing score on the required examinations for each category of licensure sought:

1. Clinical psychologist: State Practice Examination for Clinical Psychology, Jurisprudence and Examination for Professional Practice in Psychology;

2. School psychologist: State Practice Examination for School Psychology, Jurisprudence and Examination for Professional Practice in Psychology; or

3. Applied psychologist: State Practice Examination in Applied Psychology, Jurisprudence and Examination for Professional Practice in Psychology.

18VAC125-20-42. Prerequisites for licensure by endorsement.

A. Every applicant for licensure by endorsement shall submit ~~in one package~~:

1. A completed application;

2. The application processing fee prescribed by the board;

3. An affidavit of having read and agreed to comply with the current Standards of Practice and laws governing the practice of psychology in Virginia;

4. Verification of all other professional licenses or certificates ever held in any jurisdiction. In order to qualify for endorsement, the applicant shall have no history of disciplinary action, shall not have surrendered a license or certificate while under investigation and shall have no unresolved action against a license or certificate; and

5. Further documentation of one of the following:

a. A current listing in the National Register of Health Services Providers in Psychology;

b. Current diplomate status in good standing with the American Board of Professional Psychology in a category comparable to the one in which licensure is sought;

c. Twenty years of active licensure in a category comparable to the one in which licensure is sought, with an appropriate degree as required in this chapter documented by an official transcript; or

d. If less than 20 years of active licensure, documentation of current psychologist licensure in good standing obtained by standards substantially equivalent to the education, experience and examination requirements set forth in this chapter for the category in which licensure is sought as verified by a certified copy of the original application submitted directly from the out-of-state licensing agency or a copy of the regulations in effect at the time of initial licensure and the following:

(1) Documentation of post-licensure active practice for at least five of the last six years immediately preceding licensure application;

(2) Verification of a passing score on the Examination for Professional Practice of Psychology as established in Virginia for the year of that administration;

(3) Verification of a passing score on other written and oral examinations or both as required by the jurisdiction which granted the license; and

(4) Official transcripts documenting the graduate work completed and the degree awarded in the category in which licensure is sought.

B. Notwithstanding the provisions of this section, the board may issue a license to any individual who qualifies for such a license pursuant to an agreement of reciprocity entered into by this board with a board of another jurisdiction or multiple jurisdictions.

Part V
Licensure Renewal; Reinstatement

18VAC125-20-120. Annual renewal of licensure.

Effective January 1, 2004, every license issued by the board shall expire each year on June 30.

1. Every licensee who intends to continue to practice shall, on or before the expiration date of the license, submit to the board a license renewal ~~application on forms~~ form supplied by the board and the renewal fee prescribed in 18VAC125-20-30.

2. Beginning with the 2004 renewal, licensees who wish to maintain an active license shall pay the appropriate fee and verify on the renewal form compliance with the continuing education requirements prescribed in 18VAC125-20-121. First-time licensees are not required to verify continuing education on the first renewal date following initial licensure.

3. A licensee who wishes to place his license in inactive status may do so upon payment of the fee prescribed in 18VAC125-20-30. No person shall practice psychology in Virginia unless he holds a current active license. An inactive licensee may activate his license by fulfilling the reactivation requirements set forth in 18VAC125-20-130.

4. Licensees shall notify the board office in writing of any change of address of record or of the public address, if different from the address of record. Failure of a licensee to receive a renewal notice and application forms from the board shall not excuse the licensee from the renewal requirement.

VA.R. Doc. No. R10-2136; Filed October 7, 2009, 10:56 a.m.

BOARD OF VETERINARY MEDICINE

Final Regulation

Title of Regulation: **18VAC150-20. Regulations Governing the Practice of Veterinary Medicine (amending 18VAC150-20-10, 18VAC150-20-15, 18VAC150-20-30, 18VAC150-20-70, 18VAC150-20-115, 18VAC150-20-120, 18VAC150-20-130, 18VAC150-20-140, 18VAC150-20-172, 18VAC150-20-180, 18VAC150-20-181, 18VAC150-20-190, 18VAC150-20-195, 18VAC150-20-200, 18VAC150-20-210; adding 18VAC150-20-121).**

Statutory Authority: § 54.1-3800 of the Code of Virginia.

Effective Date: November 25, 2009.

Agency Contact: Leslie L. Knachel, Executive Director, Board of Veterinary Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 662-4426, FAX (804) 527-4471, or email leslie.knachel@dhp.virginia.gov.

Summary:

The amendments (i) expand the criteria for cases that may be delegated to an agency subordinate for informal fact-finding; (ii) expand the courses and the provider list for approved continuing education; (iii) accept the accreditation by the Canadian Veterinary Medical Association for technician education; (iv) provide an additional alternative for meeting requirements for licensure by endorsement for veterinary technicians; (v) provide additional grounds for disciplinary action; (vi) clarify rules for delegation of veterinary tasks to unlicensed persons; (vii) establish rules for injection of microchips; (viii) allow biennial inventory to be performed by licensee other than the veterinarian-in-charge; (ix) clarify regulations for drug storage, recordkeeping, and reconstitution; (x) clarify minimal requirements for a patient record; and (xi) define companion animals to include horses.

Since the publication of the proposed regulation (i) two definitions are added to ensure that animal shelters and pounds have the same ability to care for animals in their possession as persons who have a property right in an animal; (ii) 18VAC150-20 is amended to allow licensees who do relief work to either carry the license with them or, if they prefer, to post it at the establishment; (iii) in 18VAC150-20-121, the requirement that the applicant for licensure by endorsement must have taken the examination within the past four years is eliminated; (iv) in 18VAC150-20-130, language requiring tech students to be duly enrolled and in good standing in their program was inadvertently omitted in the amended section and is inserted; (v) the provision on release of patient records was clarified to specify that the request must come from the owner, a law-enforcement entity, or a health regulatory agency (like the local health department); (vi) in 18VAC150-20-172, an amendment allows veterinarians to delegate supragingival (above the gum line) scaling but the regulation would continue to prohibit unlicensed assistants from scaling subgingivally (below the gum line); (vii) an amendment includes pounds in the establishments that may inject microchips into animals while in their possession; and (viii) the proposed requirement to include the first and last name of the client is deleted because there was confusion about its meaning.

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 I
General Provisions

18VAC150-20-10. Definitions.

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

"Animal shelter" means a facility, other than a private residential dwelling and its surrounding grounds, that is used to house or contain animals and that is owned, operated, or maintained by a nongovernmental entity including, but not limited to, a humane society, animal welfare organization, society for the prevention of cruelty to animals, or any other organization operating for the purpose of finding permanent adoptive homes for animals.

"Automatic emergency lighting" is lighting that is powered by battery, generator, or alternate power source other than electrical power, is activated automatically by electrical power failure, and provides sufficient light to complete surgery or to stabilize the animal until surgery can be continued or the animal moved to another establishment.

"AVMA" means the American Veterinary Medical Association.

"Board" means the Virginia Board of Veterinary Medicine.

"Companion animal" means any dog, cat, horse, nonhuman primate, guinea pig, hamster, rabbit not raised for human food or fiber, exotic or native animal, reptile, exotic or native bird, or any feral animal or animal under the care, custody or ownership of a person or any animal that is bought, sold, traded, or bartered by any person. Agricultural animals, game species, or any animals regulated under federal law as research animals shall not be considered companion animals for the purposes of this chapter.

"CVMA" means the Canadian Veterinary Medical Association.

"Full-service establishment" means a stationary or ambulatory facility that provides surgery and encompasses all aspects of health care for small or large animals, or both.

"Immediate and direct supervision" means that the licensed veterinarian is immediately available to the licensed veterinary technician or assistant, either electronically or in person, and provides a specific order based on observation and diagnosis of the patient within the last 36 hours.

["Owner" means any person who (i) has a right of property in an animal; (ii) keeps or harbors an animal; (iii) has an animal in his care; or (iv) acts as a custodian of an animal.

"Pound" means a facility operated by the state or a locality for the purpose of impounding or harboring seized, stray, homeless, abandoned, or unwanted animals; or a facility operated for the same purpose under a contract with a locality or an incorporated society for the prevention of cruelty to animals.]

"Preceptorship or externship" means a formal arrangement between an AVMA accredited college of veterinary medicine or an AVMA accredited veterinary technology program and a veterinarian who is licensed by the board and responsible for the practice of the preceptee. A preceptorship or externship shall be overseen by faculty of the college or program.

"Professional judgment" includes any decision or conduct in the practice of veterinary medicine, as defined by § 54.1-3800 of the Code of Virginia.

"Restricted service establishment" means a stationary or ambulatory facility which does not meet the requirements of a full-service establishment.

"Surgery" means treatment through revision, destruction, incision or other structural alteration of animal tissue. Surgery does not include ~~routine~~ dental extractions of single-rooted teeth or skin closures performed by a licensed veterinary technician upon a diagnosis and pursuant to direct orders from a veterinarian.

"Veterinarian in charge" means a veterinarian who holds an active license in Virginia and who is responsible for maintaining a veterinary establishment within the standards set by this chapter, for complying with federal and state laws and regulations, and for notifying the board of the establishment's closure.

"Veterinary establishment" means any fixed or mobile practice, veterinary hospital, animal hospital or premises wherein or out of which veterinary medicine is being conducted.

18VAC150-20-15. Criteria for delegation of informal fact-finding proceedings to an agency subordinate.

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

B. Criteria for delegation. Cases that may be delegated to an agency subordinate are those that ~~only involve failure to satisfy continuing education requirements~~ do not involve standard of care or those that may be recommended by a committee of the board.

C. Criteria for an agency subordinate. An agency subordinate authorized by the board to conduct an informal fact-finding proceeding shall include current or former board members deemed knowledgeable by virtue of their training and experience in administrative proceedings involving the regulation and discipline of health professionals.

18VAC150-20-30. Posting of licenses; accuracy of address.

A. All licenses, registrations and permits issued by the board shall be posted in a place conspicuous to the public at the establishment where veterinary services are being provided or available for inspection at the location where an equine dental technician is working. Licensees who do relief or temporary work in an establishment shall carry a license with them [or post it at the establishment]. Ambulatory veterinary practices that do not have an office accessible to the public shall carry their licenses and permits in their vehicles.

B. It shall be the duty and responsibility of each licensee, registrant and holder of a registration permit to operate a veterinary establishment to keep the board apprised at all times of his current address of record and the public address, if different from the address of record. All notices required by law or by this chapter to be mailed to any veterinarian, ~~certified~~ veterinary technician, registered equine dental technician or holder of a permit to operate a veterinary establishment, shall be validly given when mailed to the address of record furnished to the board pursuant to this regulation. All address changes shall be furnished to the board within 30 days of such change.

18VAC150-20-70. Licensure renewal requirements.

A. Every person licensed by the board shall, by January 1 of every year, submit to the board a completed renewal application and pay to the board a renewal fee as prescribed in 18VAC150-20-100. Failure to renew shall cause the license to lapse and become invalid, and practice with a lapsed license may subject the licensees to disciplinary action by the board. Failure to receive a renewal notice does not relieve the licensee of his responsibility to renew and maintain a current license.

B. ~~On and after March 1, 1997, veterinarians~~ Veterinarians shall be required to have completed a minimum of 15 hours, and veterinary technicians shall be required to have completed a minimum of six hours, of approved continuing education for each annual renewal of licensure. Continuing education credits or hours may not be transferred or credited to another year.

1. Approved continuing education credit shall be given for courses or programs related to the treatment and care of patients and shall be clinical courses in veterinary medicine or veterinary technology or courses that enhance patient safety, such as medical recordkeeping or compliance with requirements of the Occupational Health and Safety Administration (OSHA).

2. An approved continuing education course or program shall be sponsored by one of the following:

a. The AVMA or its constituent and component/branch associations, specialty organizations, and board certified specialists in good standing within their specialty board;

b. Colleges of veterinary medicine approved by the AVMA Council on Education;

c. National or regional conferences of veterinary medicine;

d. Academies or species specific interest groups of veterinary medicine;

e. State associations of veterinary technicians;

f. North American Veterinary Technicians Association;

g. Community colleges with an approved program in veterinary technology;

h. State or federal government agencies;

i. American Animal Hospital Association (AAHA) or its constituent and component/branch associations;

j. Journals or veterinary information networks recognized by the board as providing education in veterinary medicine or veterinary technology; or

k. ~~A sponsor approved by the Virginia Board of Veterinary Medicine provided the sponsor has submitted satisfactory documentation on forms provided by the board~~ An organization or entity approved by the Registry of Approved Continuing Education of the American Association of Veterinary State Boards.

3. A licensee is exempt from completing continuing education requirements and considered in compliance on the first renewal date following his initial licensure by examination.

4. The board may grant an exemption for all or part of the continuing education requirements due to circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters.

5. The board may grant an extension for good cause of up to one year for the completion of continuing education requirements upon written request from the licensee prior to the renewal date. Such an extension shall not relieve the licensee of the continuing education requirement.

6. Licensees are required to attest to compliance with continuing education requirements on their annual license renewal and are required to maintain original documents verifying the date and subject of the program or course, the number of continuing education hours or credits, and certification from an approved sponsor. Original documents must be maintained for a period of two years following renewal. The board shall periodically conduct a random audit to determine compliance. Practitioners selected for the audit shall provide all supporting documentation within 10 days of receiving notification of the audit.

7. Continuing education hours required by disciplinary order shall not be used to satisfy renewal requirements.

C. A licensee who has requested that his license be placed on inactive status is not authorized to perform acts which are considered the practice of veterinary medicine or veterinary technology and, therefore, shall not be required to have continuing education for annual renewal. To reactivate a license, the licensee is required to submit evidence of completion of continuing education hours as required by § 54.1-3805.2 of the Code of Virginia equal to the number of years in which the license has not been active for a maximum of two years.

18VAC150-20-115. Requirements for licensure by examination as a veterinary technician.

A. The applicant, in order to be licensed by the board as a veterinary technician, shall:

1. Have received a degree in veterinary technology from a college or school accredited by the AVMA or the CVMA.

2. Have filed with the board the following documents:

a. A complete and notarized application on a form obtained from the board;

b. An official copy, indicating a veterinary technology degree, of the applicant's college or school transcript; and

c. Certification that the applicant is in good standing by each board from which the applicant holds a license, certification or registration to practice veterinary technology.

3. Pass a board-approved, national board examination for veterinary technology with a score acceptable to the board.

4. Sign a statement attesting that the applicant has read, understands, and will abide by the statutes and regulations governing veterinary practice in Virginia.

B. The application for licensure shall be valid for a period of one year after the date of initial submission.

18VAC150-20-120. Requirements for licensure by endorsement as a veterinarian ~~or veterinary technician~~.

A. The board may, in its discretion, grant a license by endorsement to an applicant who is licensed to practice veterinary medicine ~~or who is licensed, certified or registered to practice as a veterinary technician~~ in another state, the District of Columbia or possessions or territories of the United States, provided that:

1. All licenses~~, certificates or registrations~~ are in good standing;

2. The applicant has been regularly engaged in clinical practice for at least two of the past four years; and

3. The applicant has met all applicable requirements of 18VAC150-20-110 ~~or 18VAC150-20-115~~, except foreign-trained veterinarians who have attained specialty recognition by a board recognized by the AVMA are exempt from the requirements of ECFVG or any other substantially equivalent credentialing body as determined by the board.

B. Provided that the applicant has met the requirements of subsection A of this section, the board may, in its discretion, waive the requirement that the applicant pass the national board exam or the clinical competency test, or both.

18VAC150-20-121. Requirements for licensure by endorsement for veterinary technicians.

In its discretion, the board may grant a license by endorsement to an applicant who is licensed, certified or registered to practice as a veterinary technician in another state, the District of Columbia or possessions or territories of the United States, provided that:

1. All licenses, certificates or registrations are in good standing;

2. The applicant has been regularly engaged in clinical practice for at least two of the past four years; and

3. The applicant has received a degree in veterinary technology from a college or school accredited by the AVMA or the CVMA or has passed a board-approved national board examination for veterinary technology with a score acceptable to the board [~~within the past four years immediately preceding application~~].

18VAC150-20-130. Requirements for practical training in a preceptorship or externship.

A. The practical training and employment of qualified students of veterinary medicine or veterinary technology shall be governed and controlled as follows:

1. No student shall be qualified to receive practical training unless such student shall be duly enrolled and in good standing in a veterinary college or school ~~or veterinary technology program~~ accredited or approved by the AVMA and in the final year of his training or after completion of an equivalent number of hours as approved by the board. The student shall be engaged in a preceptorship or externship as defined by the board and authorized by his college or school.

2. A veterinary preceptee or extern may perform duties that constitute the practice of veterinary medicine for which he has received adequate instruction by the college or school and only under the on-premises supervision of a licensed veterinarian.

3. A veterinary technician preceptee or extern [who is duly enrolled and in good standing in a veterinary technology program accredited or approved by the AVMA] may

perform duties that constitute the practice of veterinary technology for which he has received adequate instruction by the program and only under the on-premises supervision of a licensed veterinarian or licensed veterinary technician.

B. Prior to allowing a preceptee in veterinary medicine to perform surgery on a patient unassisted by a licensed veterinarian, a licensed veterinarian shall receive written approval from the client.

Part III
Unprofessional Conduct

18VAC150-20-140. Unprofessional conduct.

Unprofessional conduct as referenced in § 54.1-3807(5) of the Code of Virginia shall include the following:

1. Representing conflicting interests except by express consent of all concerned given after a full disclosure of the facts. Acceptance of a fee from both the buyer and the seller is prima facie evidence of a conflict of interest.

2. Practicing veterinary medicine or equine dentistry where an unlicensed person has the authority to control the professional judgment of the licensed veterinarian or the equine dental technician.

3. Issuing a certificate of health unless he shall know of his own knowledge by actual inspection and appropriate tests of the animals that the animals meet the requirements for the issuance of such certificate on the day issued.

4. Revealing confidences gained in the course of providing veterinary services to a client, unless required by law or necessary to protect the health, safety or welfare of other persons or animals.

5. Advertising in a manner which is false, deceptive, or misleading or which makes subjective claims of superiority.

6. Violating any state law, federal law, or board regulation pertaining to the practice of veterinary medicine, veterinary technology or equine dentistry.

7. Practicing veterinary medicine or as an equine dental technician in such a manner as to endanger the health and welfare of his patients or the public, or being unable to practice veterinary medicine or as an equine dental technician with reasonable skill and safety.

8. Performing surgery on animals in an unregistered veterinary establishment or not in accordance with the establishment permit or with accepted standards of practice.

9. Refusing the board or its agent the right to inspect an establishment at reasonable hours.

10. Allowing unlicensed persons to perform acts restricted to the practice of veterinary medicine, veterinary technology or an equine dental technician including any invasive procedure on a patient or delegation of tasks to persons who are not properly trained or authorized to perform such tasks.

11. Failing to provide immediate and direct supervision to a licensed veterinary technician or an assistant in his employ.

12. Refusing to release a copy of a valid prescription upon request from a client.

13. Misrepresenting or falsifying information on an application or renewal form.

14. Failing to report evidence of animal abuse to the appropriate authorities.

15. Failing to release [~~client~~ patient] records when [~~such failure could result in immediate harm to the animal~~ requested by the owner; a law-enforcement entity; or a federal, state, or local health regulatory agency].

18VAC150-20-172. Delegation of duties ~~to unlicensed veterinary personnel~~.

A. A licensed veterinarian may delegate the administration (including by injection) of schedule VI drugs to a properly trained assistant under his ~~direction and~~ immediate and direct supervision. The prescribing veterinarian has a specific duty and responsibility to determine that the assistant has had adequate training to safely administer the drug in a manner prescribed. Injections involving anesthetic or chemotherapy drugs [, subgingival scaling,] or the placement of intravenous catheters shall not be delegated to an assistant.

B. Additional tasks that may be delegated by a licensed veterinarian to a properly trained assistant include but are not limited to the following:

1. Grooming;

2. Feeding;

3. Cleaning;

4. Restraining;

5. Assisting in radiology;

6. Setting up diagnostic tests;

7. Prepping for surgery;

8. Dental polishing [~~, but not dental~~ and] scaling [of teeth above the gum line (supragingival)];

9. Drawing blood samples; or

10. Filling of schedule VI prescriptions under the direction of a veterinarian licensed in Virginia.

C. A licensed veterinarian may delegate duties electronically to appropriate veterinary personnel provided the veterinarian

has physically examined the patient within the previous 36 hours.

D. Animal massage or physical therapy may be delegated by a veterinarian to persons qualified by training and experience by an order from the veterinarian.

E. The veterinarian remains responsible for the duties being delegated and remains responsible for the health and safety of the animal.

Part V
Veterinary Establishments

18VAC150-20-180. Requirements to be registered as a veterinary establishment.

A. Every veterinary establishment shall apply for registration on a form provided by the board and may be issued a permit as a full-service or restricted service establishment. Every veterinary establishment shall have a veterinarian-in-charge registered with the board in order to operate.

1. Veterinary medicine may only be practiced out of a registered establishment except in emergency situations or in limited specialized practices as provided in 18VAC150-20-171. The injection of a microchip for identification purposes shall only be performed in a veterinary establishment, except personnel of animal shelters [or pounds] may inject animals while in their possession.

2. Applications for permits must be made to the board 45 days in advance of opening or changing the location of the establishment or requesting a change in category to a full-service establishment.

B. A veterinary establishment will be registered by the board when:

1. It is inspected by the board and is found to meet the standards set forth by 18VAC150-20-190 and 18VAC150-20-200 where applicable. If, during a new or routine inspection, violations or deficiencies are found necessitating a reinspection, the prescribed reinspection fee will be levied. Failure to pay the fee shall be deemed unprofessional conduct and, until paid, the establishment shall be deemed to be unregistered.

2. A veterinarian currently licensed by and in good standing with the board is registered with the board in writing as veterinarian-in-charge and has paid the establishment registration fee.

18VAC150-20-181. Requirements for veterinarian-in-charge.

A. The veterinarian-in-charge of a veterinary establishment is responsible for:

1. Regularly being on site on a schedule of no less than monthly and providing routine oversight to the veterinary establishment.

2. Maintaining the facility within the standards set forth by this chapter.

3. Performing the biennial controlled substance inventory and ensuring compliance at the facility with any federal or state law relating to controlled substances as defined in § 54.1-3404 of the Code of Virginia. The performance of the biennial inventory may be delegated to another licensee, provided the veterinarian-in-charge signs the inventory and remains responsible for its content and accuracy.

4. Notifying the board in writing of the closure of the permitted facility 10 days prior to closure.

5. Notifying the board immediately if no longer acting as the veterinarian-in-charge.

6. Ensuring the establishment maintains a current and valid permit issued by the board.

B. Upon any change in veterinarian-in-charge, these procedures shall be followed:

1. The veterinarian-in-charge registered with the board remains responsible for the establishment and the stock of controlled substances until a new veterinarian-in-charge is registered or for five days, whichever occurs sooner.

2. An application for a new permit, naming the new veterinarian-in-charge, shall be made five days prior to the change of the veterinarian-in-charge. If no prior notice was given by the previous veterinarian-in-charge, an application for a new permit naming a new veterinarian-in-charge shall be filed as soon as possible but no more than 10 days after the change.

3. The previous establishment permit is void on the date of the change of veterinarian-in-charge and shall be returned by the former veterinarian-in-charge to the board five days following the date of change.

4. Prior to the opening of the business, on the date of the change of veterinarian-in-charge, the new veterinarian-in-charge shall take a complete inventory of all Schedule II-V drugs on hand. He shall date and sign the inventory and maintain it on premises for two years. That inventory may be designated as the official biennial controlled substance inventory.

18VAC150-20-190. Requirements for drug storage, dispensing, destruction, and records for all establishments, full service and restricted.

A. All drugs shall be maintained, administered, dispensed, prescribed and destroyed in compliance with state and federal laws, which include the Drug Control Act (§ 54.1-3400 et

seq. of the Code of Virginia), applicable parts of the federal Food, Drug, and Cosmetic Control Act (21 USC § 301 et seq.), the Prescription Drug Marketing Act (21 USC § 301 et seq.), and the Controlled Substances Act (21 USC § 801 et seq.), as well as applicable portions of Title 21 of the Code of Federal Regulations.

B. All repackaged tablets and capsules dispensed for companion animals shall be in approved safety closure containers, except safety caps shall not be required when any person who requests that the medication not have a safety cap, or in such cases in which the medication is of such form or size that it cannot be reasonably dispensed in such containers (e.g., topical medications, ophthalmic, or otic). A client request for nonsafety packaging shall be documented in the patient record.

C. All drugs dispensed for companion animals shall be labeled with the following:

1. Name and address of the facility;

2. Name [~~(first and last)~~] of client;

3. Animal identification;

4. Date dispensed;

5. Directions for use;

6. Name, strength (if more than one dosage form exists), and quantity of the drug; and

7. Name of the prescribing veterinarian.

D. All drugs shall be maintained in a secured manner with precaution taken to prevent diversion.

1. All Schedule II through V drugs shall be maintained under lock at all times, with access to the veterinarian or veterinary technician only, ~~provided, however, that a working stock of Schedule II drugs under separate lock may be accessible to the licensed veterinary technician~~ but not to any unlicensed personnel.

2. Whenever a veterinarian discovers a theft or any unusual loss of Schedule II, III, IV, or V drugs, he shall immediately report such theft or loss to the Board of Veterinary Medicine and to the U.S. Drug Enforcement Administration.

E. Schedule II, III, IV and V drugs ~~may~~ shall be destroyed by following the instructions contained in the drug destruction packet available from the board office which provides the latest U.S. Drug Enforcement Administration approved drug destruction guidelines.

F. The drug storage area shall have appropriate provision for temperature control for all drugs and biologics, including a refrigerator with the interior thermometer maintained between 36°F and 46°F. Drugs stored at room temperature shall be maintained between 59°F and 86°F. The stock of drugs shall be reviewed frequently and removed from the working stock of drugs at the expiration date.

G. A distribution record shall be maintained in addition to the patient's record, in chronological order, for the administration and dispensing of all Schedule II-V drugs.

This record is to be maintained for a period of two years from the date of transaction. This record shall include the following:

1. Date of transaction;

2. Drug name, strength, and the amount dispensed, administered and wasted;

3. Client and animal identification; and

4. Identification of the veterinarian authorizing the administration or dispensing of the drug.

H. ~~Invoices~~ Original invoices for all Schedule II, III, IV and V drugs received shall be maintained in chronological order on the premises where the stock of drugs is held and actual date of receipt is noted. Invoices for Schedule II drugs shall be maintained separately from other records. All drug records shall be maintained for a period of two years from the date of transaction.

I. A complete and accurate inventory of all Schedule II, III, IV and V drugs shall be taken, dated, and signed on any date that is within two years of the previous biennial inventory. Drug strength must be specified. This inventory shall indicate if it was made at the opening or closing of business and shall be maintained on the premises where the drugs are held for two years from the date of taking the inventory.

J. Veterinary establishments in which bulk reconstitution of injectable, bulk compounding or the prepackaging of drugs is performed shall maintain adequate control records for a period of one year or until the expiration, whichever is greater. The records shall show the name of the drug(s) used; strength, if any; date repackaged; quantity prepared; initials of the veterinarian verifying the process; the assigned lot or control number; the manufacturer's or distributor's name and lot or control number; and an expiration date.

18VAC150-20-195. Recordkeeping.

A. A daily record of each patient treated shall be maintained by the veterinarian at the permitted veterinary establishment and shall include pertinent medical data such as drugs administered, dispensed or prescribed, and all relevant medical and surgical procedures performed. Records should contain at a minimum:

1. Presenting complaint/reason for contact;

2. Physical examination findings, if appropriate;

3. Tests performed and results;

4. Procedures performed/treatment given and results; and

5. Drugs (and their dosages) administered, dispensed or prescribed.

B. Individual records shall be maintained on each patient, except that records for economic animals or litters of companion animals under the age of four months may be maintained on a per client basis. Client records shall be kept for a period of three years following the last office visit or discharge of such animal from a veterinary establishment.

C. An animal identification system must be used by the establishment.

D. Upon the sale or closure of a veterinary establishment involving the transfer of patient records to another location, the veterinarian shall follow the requirements for transfer of patient records in accordance with § 54.1-2405 of the Code of Virginia.

E. An initial rabies certification for an animal receiving a primary rabies vaccination shall clearly display the following information: "An animal is not considered immunized for at least 28 days after the initial or primary vaccination is administered."

18VAC150-20-200. Standards for veterinary establishments.

A. Full-service establishments. A full-service establishment shall provide surgery and encompass all aspects of health care for small or large animals, or both. All full-service establishments shall meet the requirements set forth below:

1. Buildings and grounds must be maintained to provide sanitary facilities for the care and medical well-being of patients.

a. Temperature, ventilation, and lighting must be consistent with the medical well-being of the patients.

b. Water and waste. There shall be on-premises:

(1) Hot and cold running water of drinking quality, as defined by the Virginia Department of Health;

(2) An acceptable method of disposal of deceased animals; and

(3) Refrigeration exclusively for carcasses of companion animals that require storage for 24 hours or more.

c. Sanitary toilet and lavatory shall be available for personnel and clients.

2. Areas within building. The areas within the facility shall include the following:

a. A reception area separate from other designated rooms;

b. Examination room or rooms;

c. Surgery room. There shall be a room which is reserved only for surgery and used for no other purpose. The walls of the surgery room must be constructed of nonporous material and extend from the floor to the ceiling. In order that surgery can be performed in a manner compatible with current veterinary medical practice with regard to anesthesia, asepsis, life support, and monitoring procedures, the surgery room shall:

(1) Be of a size adequate to accommodate a surgical table, anesthesia support equipment, surgical supplies, the veterinarian, an assistant, and the patient;

(2) Be kept so that storage in the surgery room shall be limited to items and equipment normally related to surgery and surgical procedures; and

(3) For small animal facilities, have a door to close off the surgery room from other areas of the practice.

d. Laboratory. The veterinary establishment shall have, as a minimum, proof of use of either in-house laboratory service or outside laboratory services for performing the following lab tests, consistent with appropriate professional care for the species treated:

(1) Urinalysis, including microscopic examination of sediment;

(2) Complete blood count, including differential;

(3) Flotation test for ova of internal parasites;

(4) Skin scrapings for diagnosing external parasites;

(5) Blood chemistries;

(6) Cultures and sensitivities;

(7) Biopsy;

(8) Complete necropses, including histopathology; and

(9) Serology.

e. Animal housing areas. These shall be provided with:

(1) Separate compartments constructed in such a way as to prevent residual contamination;

(2) Accommodations allowing for the effective separation of contagious and noncontagious patients; and

(3) Exercise runs which provide and allow effective separation of animals or walking the animals at medically appropriate intervals.

3. Radiology. A veterinary establishment shall:

a. ~~Have proof of use of either~~ Either have radiology service in-house or documentation of outside services for obtaining diagnostic-quality radiographs.

b. If radiology is in-house:

(1) Each radiograph shall be permanently imprinted with the identity of the facility or veterinarian, patient and the date of exposure. Each radiograph shall also be clearly

labeled by permanent imprinting to reflect anatomic specificity.

(2) Document that radiographic equipment complies with all requirements of 12VAC5-480-8520, Veterinary Medicine Radiographic Installations, of the Virginia Department of Health document, "Ionizing Radiation Rules and Regulations" (1988), which requirements are adopted by this board and incorporated herewith by reference in this chapter.

c. Maintain radiographs as a part of the patient's record. If a radiograph is transferred to another establishment or released to the client, a record of this transfer must be maintained on or with the patient's records.

4. Equipment; minimum requirements.

a. Examination room containing a table with nonporous surface.

b. Surgery suite.

(1) Surgical table with nonporous surface;

(2) Surgical supplies, instruments and equipment commensurate with the kind of surgical services provided;

(3) Automatic emergency lighting;

(4) Surgical lighting;

(5) Instrument table, stand, or tray; and

(6) Waste receptacle.

c. Radiology (if in-house).

(1) Lead aprons and gloves;

(2) Radiation exposure badges; and

(3) X-ray machine.

d. General equipment.

(1) Steam pressure sterilizer or an appropriate method of sterilizing instruments;

(2) Internal and external sterilization monitors, if steam pressure sterilizers are used;

(3) Stethoscope;

(4) Thermometer;

(5) Equipment for delivery of assisted ventilation, including but not necessarily limited to:

(a) A resuscitation bag; and

(b) Endotracheal tubes.

(6) Scales; and

(7) Storage for records.

B. Restricted establishments. When the scope of practice is less than full service, a specifically restricted establishment permit shall be required. Upon submission of a completed application, satisfactory inspection and payment of the permit fee, a restricted establishment permit may be issued. Such restricted establishments shall have posted in a conspicuous manner the specific limitations on the scope of practice on a form provided by the board.

1. Large animal establishment, ambulatory practice. A large animal ambulatory establishment is a mobile practice in which health care of large animals is performed at the location of the animal. Surgery on large animals may be performed as part of a large animal ambulatory practice provided the facility has surgical supplies, instruments and equipment commensurate with the kind of surgical services provided. All large animal ambulatory establishments shall meet the requirements of a full-service establishment in subsection A of this section with the exception of those set forth below:

a. All requirements for buildings and grounds.

b. All requirements for an examination room and surgery suite.

c. Equipment for assisted ventilation.

d. Scales.

2. Small animal establishment, house call practice. A small animal house call establishment is a mobile practice in which health care of small animals is performed at the residence of the owner of the small animal. Surgery may be performed only in a surgical suite that has passed inspection. Small animal house call facilities shall meet the requirements of a full-service establishment in subsection A of this section with the exception of those set forth below:

a. All requirements for buildings and grounds.

b. All requirements for an examination room or surgery suite.

c. Steam pressure sterilizer.

d. Internal or external sterilization monitor.

3. Small animal establishment, outpatient practice. A small animal outpatient establishment is a stationary facility or ambulatory practice where health care of small animals is performed. This practice may include surgery, provided the facility is equipped with a surgery suite as required by subdivision A 2 c of this section. Overnight hospitalization shall not be required. All other requirements of a full-service establishment shall be met.

C. A separate facility permit is required for separate practices that share the same location.

18VAC150-20-210. Revocation or suspension of a veterinary establishment permit.

A. The board may revoke or suspend or take other disciplinary action deemed appropriate against the registration permit of a veterinary establishment if it finds the establishment to be in violation of any provisions of laws or regulations governing veterinary medicine or if:

1. The board or its agents are denied access to the establishment to conduct an inspection or investigation;

2. The licensee does not pay any and all prescribed fees or monetary penalties;

3. The establishment is performing procedures beyond the scope of a restricted establishment permit; or

4. The establishment has no veterinarian-in-charge registered with the board.

B. The Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) shall apply to any determination under this section.

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 (18VAC150-20)

Licensure Procedure for Veterinarians (rev. 8/07).

Application for a License to Practice Veterinary Medicine (rev. 8/07).

Instructions to the Applicant for Licensure by Examination as a Veterinary Technician ~~Licensure Applicant~~ (rev. ~~8/07)~~ 4/09).

Instructions to the Applicant for Licensure by Endorsement as a Veterinary Technician (rev. 4/09).

Application for a License to Practice Veterinary Technology (rev. 8/07).

Applicant Instructions for New, Upgrading to Full Service, or Change of Location Inspections (rev. 8/07).

Application for Veterinary Establishment Permit (rev. 8/07).

Application for Reinstatement (rev. 8/07).

Licensure Verification - Veterinarian (rev. 8/07).

Licensure Verification - Veterinary Technician (rev. 9/07).

Application for Registration for Volunteer Practice (rev. 8/07).

Sponsor Certification for Volunteer Registration (rev. 8/07).

Application for Registration to Practice as an Equine Dental Technician (eff. 11/07).

Recommendation for Registration as a Equine Dental Technician (eff. 11/07).]

VA.R. Doc. No. R07-754; Filed October 7, 2009, 10:56 a.m.

EXECUTIVE ORDER NUMBER 91 (2009)

DESIGNATING THE GOVERNOR'S WORKING GROUP ON EARLY CHILDHOOD INITIATIVES AS VIRGINIA'S EARLY CHILDHOOD ADVISORY COUNCIL

The Improving Head Start for School Readiness Act of 2007 requires that the Governor of each state designate an existing entity, or create a new entity, to serve as the state's Advisory Council on Early Childhood Education and Care to improve the quality, availability, and coordination of services for children from birth to school entry. By virtue of the authority vested in me by Article V of the Constitution of Virginia and Section 2.2-134 of the Code of Virginia, I hereby create the Virginia's Early Childhood Advisory Council, in full recognition of the Commonwealth's commitment to creating a seamless continuum of services and resources for young children as their families support and nurture them through a profoundly fertile period of growth and development in the first few years of life. The Early Childhood Advisory Council succeeds the Governor's Working Group on Early Childhood Initiatives, established by Executive Directive in 2006.

The Council

Council activities shall be coordinated by the director of the Office of Early Childhood Development, with the Secretary of Education serving as chair and the President of the Virginia Early Childhood Foundation serving as co-chair. Members are appointed by the Governor and serve at his pleasure. The Council consists of the following members: the Secretaries of Commerce and Trade, Health and Human Resources, and Finance; the Governor's policy director; the state Superintendent of Instruction; Commissioners of the Departments of Social Services, Health, Behavioral Health and Rehabilitative Services, and Medical Assistance Services; director of the State Council Higher Education; chancellor of the Virginia Community College System; the director of the Virginia Economic Development Partnership; the director of the state Head Start Collaboration office; a member of the state board of education; a local school division superintendent; a representative of local providers of early childhood education; and the director of a Virginia Head Start agency; and other members as appointed by the Governor.

The Council's activities will complement and coordinate with existing efforts such as the work of the Office of Early Childhood Development, the P-16 Council, and the Virginia Early Childhood Foundation. The Council's efforts will be supported by the work of subcommittees, as determined by the chair, dedicated to specific focus areas.

The Council's responsibilities shall include the following:

1. Lead implementation of the objectives of Virginia's Plan for Smart Beginnings.

2. Conduct a biennial progress report on school readiness in Virginia. The report should include:

   a. performance data indicating the effectiveness and availability of early childhood programs and services for children from birth to school entry, as outlined in Virginia's Plan for Smart Beginnings,

   b. an assessment of need concerning the quality and availability of early childhood programs and services for children from birth to school entry including an assessment of the availability of high-quality preschool services for low-income children in the Commonwealth,

   c. a summary of recent reports, research and resources supporting school readiness in the Commonwealth.

3. Identify opportunities for, and barriers to, collaboration and coordination among Federally-funded and State-funded programs and services for young children, including collaboration and coordination among State agencies responsible for administering such programs.

4. Develop recommendations for increasing the overall participation of children in existing Federal, State, and local early childhood programs, including outreach to underrepresented and special populations.

5. Develop recommendations regarding the establishment of a unified data-driven evaluation system for public early childhood programs and services throughout the Commonwealth.

6. Develop recommendations regarding statewide professional development and career advancement plans for the early childhood workforce in the Commonwealth.

7. Assess the capacity and effectiveness of 2- and 4-year public and private institutions of higher education toward supporting the development of the early childhood workforce, including the extent to which such institutions have in place articulation agreements, professional development and career advancement plans, and practice or internships for students to spend time in Head Start or preschool programs.

8. Meet quarterly, or at the call of the Chair, and on a regular basis, review any implementation of recommendations in the report and address changes in state and local needs.

Council Staffing and Funding

Necessary staff support for the Council's work during its existence shall be furnished by the Office of Early Childhood Development, the Virginia Early Childhood Foundation, and such other agencies and offices as designated by the Governor.

Necessary funding to support the Council and its staff shall be provided from federal funds, private contributions, and state funds appropriated for the same purposes as the Council, as authorized by Section 2.2-135 of the Code of Virginia.

Council members shall serve without compensation and may receive reimbursement for expenses incurred in the discharge of their official duties.

This Executive Order will remain in effect until December 31, 2011.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 23rd day of September 2009.

/s/ Timothy M. Kaine
Governor

EXECUTIVE ORDER NUMBER 92 (2009)

DIRECTING THE DIVISION OF CONSOLIDATED LABORATORY SERVICES OF THE DEPARTMENT OF GENERAL SERVICES TO ACCEPT AND STORE PHYSICAL EVIDENCE RECOVERY KITS RECEIVED FROM HEALTH CARE PROVIDERS

Importance of the Issue

Under Section B of § 19.2-165.1 of the Code of Virginia, "victims complaining of sexual assault shall not be required to participate in the criminal justice system or cooperate with law-enforcement authorities in order to be provided with such forensic medical exams."

Currently, there is a lack of clarity regarding the steps to be taken following a forensic medical examination in an instance where evidence is collected from an alleged victim but that victim is not yet prepared to release personal identifying information to law enforcement.

Law enforcement is not required by the Code of Virginia to accept responsibility for the receipt, transport, and/or storage of evidence without a report from the complainant. Health care providers are not equipped to accept the responsibility to store the evidence in a manner that preserves chain of custody and assures that it can be used in any future prosecution.

The Commonwealth is in a position to help resolve this situation and better facilitate the protection of the privacy rights of sexual assault victims and the preservation of vital evidence in the prosecution of a serious crime by providing a secure process for the acceptance and storage of physical evidence recovery kits (PERK) of alleged sexual assault victims.

Direction to the Division of Consolidated Laboratory Services

Accordingly, by virtue of the authority vested in me as Governor under Article V of the Constitution and the laws of the Commonwealth, including but not limited to Chapter 1 of Title 2.2 of the Code of Virginia, and subject always to my continuing and ultimate authority and responsibility to act in such matters, I hereby direct the Division of Consolidated Laboratory Services of the Department of General Services to accept and store evidence from Physical Evidence Recovery Kits (PERK) received from health care providers provided that:

1) the PERK examinations have been conducted by a health care provider on victims complaining of sexual assault under Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2;

2) the health care provider has sent the PERK to the Division of Consolidated Laboratory Services by certified mail or other method of delivery approved by the Division that meets chain of custody requirements;

3) the unique PERK number found within the kit is placed on the outside of the PERK and the name of the alleged victim appears on the inside of the PERK. The name of the alleged victim is not disclosed by the Consolidated Lab without the alleged victim's express written consent in advance and the Consolidated Lab meets all federal HIPAA requirements in regard to patient confidentiality;

4) the health care provider may include the actual costs of delivery to the Division as a medical fee incurred in gathering evidence as authorized by Section 19.2-165.1 of the Code of Virginia;

5) if law enforcement and/or an Attorney for the Commonwealth does not inform the Division of Consolidated Laboratory Services in writing within 120 days of the receipt of the PERK kit by the Division that the alleged victim has proceeded with a report to law enforcement, the Division shall dispose of the PERK.

This Executive Order shall be effective September 30, 2009 and shall remain in full force and effect unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 28th day of September 2009.

/s/ Timothy M. Kaine
Governor

EXECUTIVE ORDER NUMBER 93 (2009)

ESTABLISHING VIRGINIA'S SEXUAL AND DOMESTIC VIOLENCE WORKGROUP

Importance of the Issue

Each year, Virginians are victims of sexual and domestic violence. In 2007 alone, 5,317 victims reported crimes involving forcible sexual violence to law enforcement, almost three quarters of which involved non-stranger offenses. That this number does not reflect the full picture of the amount of sexual violence in Virginia, however, is revealed by the fact

that, of those who sought sexual violence crisis services, only half said that they reported the incident to law enforcement.

More than 38,000 people made calls to hotlines operated by Virginia Sexual and Domestic Violence Agencies in 2007. As of October 2008, there were more than 15,000 protective orders in effect in Virginia, a rate of 217 Orders per 100,000 people. Another 1,200 protective orders had been issued but not served.

Finally, it is a grim fact that 20% of the homicides in Virginia between 1999 and 2007 were homicides involving intimate partners. These homicides represent a total of 802 preventable deaths.

To make Virginia's citizens, communities and families safe, it is appropriate that the state government marshal all appropriate resources to combat, reduce and prevent sexual and domestic violence in the Commonwealth.

Virginia's Sexual and Domestic Violence Work Group

Since 1995, the Department of Criminal Justice Services and the Virginia Sexual and Domestic Violence Action Alliance (Action Alliance) have worked as partners addressing violence against women issues as participants in the Virginia Services, Training, Officers and Prosecution (STOP) State Planning Team.

In 1999, the Office of the Chief Medical Examiner and the Office of the Executive Secretary joined this effort as members of the State Planning Team and partners on a grant to study domestic violence arrest policies and protective orders and to develop a protocol on intimate partner fatality review. In 2005, the Virginia State Police joined the state collaboration with a focus on the Virginia Criminal Information Network (VCIN) registry. In 2007, the Office of the Attorney General joined the partnership to encourage the involvement of prosecutors and other law enforcement personnel in the project.

Currently a $1.26 million two-year competitive Grant to Encourage Arrest and the Enforcement of Protective Orders (GEAP) from the U.S. Department of Justice, Office on Violence Against Women, supports this collaborative partnership. Work funded by this grant has revealed the critical need to continue a coordinated approach and collaborative effort to addressing issues of sexual and domestic violence across the Commonwealth. In addition, the findings and recommendations of the Governor's Commission on Sexual Violence remain to be fully communicated and implemented across the Commonwealth.

Accordingly, I hereby establish the Virginia Sexual and Domestic Violence Workgroup, to build on the work of the GEAP partnership and the Commission on Sexual Violence and to promote ongoing collaboration among and between relevant state agencies and private sector partners involved in sexual and domestic violence reduction, enforcement and prevention efforts.

Composition of the Workgroup

Virginia's Sexual and Domestic Violence Work Group will be co-chaired by the head of the Department of Criminal Justice Services (or his or her designee) and a representative of a participating private sector organization chosen by the members of the work group.

Recognizing that developing and implementing an effective statewide and community response to sexual and domestic violence encompasses the work of many state agencies, this workgroup shall consist of appropriate designees from the following agencies:

- The Department of Criminal Justice Services
- The Department of Health, Office of the Chief Medical Examiner
- The Department of Juvenile Justice
- The Department of Social Services
- The Department of State Police

In addition, representatives from the Office of the Attorney General, Commonwealth's Attorneys' Services Council, Office of the Executive Secretary of the Supreme Court of Virginia, Virginia Association of Commonwealth's Attorneys, Virginia Chapter of the International Association of Forensic Nurse Examiners, the Virginia Association of Chiefs of Police, the Virginia Sheriffs' Association, the Virginia Poverty Law Center, the Victim-Witness Network, the Virginia Community Criminal Justice Association, the Criminal Injuries Compensation Fund and the Virginia Sexual and Domestic Violence Action Alliance shall be invited to participate in the Workgroup. Additional members may be appointed at the Governor's discretion.

Staff support for the workgroup will be provided by the Department of Criminal Justice Services, the Governor's Office and such other agencies as may be designated by the Governor. All agencies of the Commonwealth will cooperate fully with the workgroup and offer support as requested.

Duties of the Workgroup

The specific objectives of Virginia's Sexual and Domestic Violence Workgroup are to:

1. Establish a central source of information, tools and resources that can be used by communities to improve the response to domestic and sexual violence.

2. Support training for criminal justice system professionals, promoting a consistent and effective response to sexual and domestic violence.

3. Increase the number of Virginia communities supporting intimate partner violence fatality review teams.

4. Increase the number of Virginia communities supporting Sexual Assault Response Teams.

5. Increase the number of Virginia courts utilizing the I-CAN system to make Protective Orders accessible to a broad range of victims, including victims with disabilities.

6. Improve the enforcement of Protective Orders in Virginia by increasing the number of correct Protective Order entries in VCIN.

7. Ensure that Virginia localities have law enforcement officers, prosecutors and victim advocates who are prepared to respond to allegations of sexual violence in a manner that complies with state and federal protocols for investigation, evidence collection and protection of victims' rights.

This Executive Order shall be effective September 30, 2009 and shall remain in full force and effect until September 30, 2011, unless sooner amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 28th day of September 2009.

/s/ Timothy M. Kaine
Governor

EXECUTIVE ORDER NUMBER 94 (2009)

USE OF VIRGINIA RECOVERY ZONE VOLUME CAP ALLOCATIONS PROVIDED UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

Background

The American Recovery and Reinvestment Act of 2009 ("ARRA") created Recovery Zone Economic Development Bonds and Recovery Zone Facility Bonds (together, "Recovery Zone Bonds"), that must be issued before January 1, 2011 (the "Expiration Date"). Recovery Zone Bonds are intended to lower the costs of borrowing for purposes of promoting job creation and economic recovery in areas designated as Recovery Zones. Pursuant to ARRA and as described in Notice 2009-50 of the Internal Revenue Service ("Notice 2009-50"), the Commonwealth of Virginia (the "Commonwealth") received volume cap allocations of $104,396,000 in Recovery Zone Economic Development Bonds and $156,595,000 in Recovery Zone Facility Bonds (together, the "Commonwealth Allocation"). Notice 2009-50 further provides that the Commonwealth Allocation be initially allocated among counties and cities of the Commonwealth as provided on Exhibit A (the "Originally Awarded Localities" and the "Original Allocations").

Together, the ARRA and Notice 2009-50 provide that all or any portion of the Original Allocations may be waived or deemed waived by the Originally Awarded Localities, and upon such waiver, the state shall be authorized to re-allocate the waived volume cap in any reasonable manner as it shall determine in good faith in its discretion. For additional information on Recovery Zone Bonds please visit: http://www.irs.gov/pub/irs-drop/n-09-50.pdf.

It is critical that the Commonwealth and its localities take advantage of this financing mechanism to create jobs, foster economic development, and develop critical infrastructure. Therefore, to the extent any Original Allocation will not be used by the Originally Awarded Localities, it is imperative to provide for the re-allocation of such unused amounts to projects that would promote economic recovery of the Commonwealth prior to the Expiration Date.

Accordingly, by virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and Sections 2.2-103 and 2.2-435.7 of the Code of Virginia, and subject to my continuing and ultimate authority and responsibility to act in such matters, I hereby establish the following procedure for the waiver of allocations by Originally Awarded Localities, and further direct my Chief of Staff to serve as re-allocation director (the "Re-allocation Director") to establish a process for the re-allocation of such allocations waived by the Originally Awarded Localities.

Waiver Requirements

1) By November 2, 2009, Originally Awarded Localities intending to utilize all or any portion of the Original Allocations must file a completed Notice of Intent with the Re-allocation Director. The amount so indicated will be reserved for such locality (the "Reserved Amount"). The form for such Notice of Intent is available from the Virginia Association of Counties, the Virginia Municipal League, and at www.stimulus.virginia.gov.

2) Failure by any Originally Awarded Locality to file such Notice of Intent shall be deemed a waiver of its entire Original Allocation. Any amounts so waived, with any amounts in excess of Reserved Amounts and such other amounts described herein, will be considered waived by the Originally Awarded Locality (together, "Waived Amounts").

3) By December 15, 2009, any Originally Awarded Locality with a Reserved Amount must file a Project Verification Report with the Re-allocation Director. Such documentation will include, as applicable, (i) a resolution or action designating the Recovery Zone in accordance with Section 1400U-1 through 1400U-3 of the ARRA, (ii) a resolution of the issuer approving the project, which may take the form of a reimbursement resolution or an inducement resolution, (iii) documentation of the appropriate governing body's or bodies' or elected official's approval of the project, in conformity with applicable federal and state law, (iv) an opinion of bond counsel, and

(v) a commitment letter from a purchaser or underwriter of the subject bonds. The form for such Project Verification Report including applicable attachments is available from the Virginia Association of Counties, the Virginia Municipal League, and at www.stimulus.virginia.gov.

4) Failure to provide a Project Verification Report shall be deemed a waiver of the Reserved Amount, and such amount so waived shall be included in the Waived Amounts.

5) Within 30 days of issuance of any Recovery Zone Bonds, the Originally Awarded Locality (or the entity issuing Recovery Zone Bonds on its behalf) shall provide to the Re-allocation Director the completed Internal Revenue Service reporting form then in effect for the type of Recovery Zone Bonds being issued.

6) Any Original Allocation, including any Reserved Amount, of Recovery Zone Bonds not issued by March 15, 2010 will be deemed waived, and such amount so waived shall be included in the Waived Amounts.

Any Waived Amounts, including amounts voluntarily waived, deemed waived or returned to the Re-allocation Director pursuant to the process, will be available for re-allocation by the Re-allocation Director to another locality or issuer ("Subsequent Awarded Entity"). Notwithstanding anything herein to the contrary, any Originally Awarded Locality or any Subsequent Awarded Entity may voluntarily waive its allocation at any time by providing notice to the Re-allocation Director.

Re-Allocation Process

1. The Re-allocation Director shall develop a process for the application, evaluation and re-allocation of the Waived Amounts to maximize the use of this financing mechanism to stimulate jobs and develop critical infrastructure within the Commonwealth.

2. The Re-allocation Director is hereby authorized to delegate to any official or agency or department of the Commonwealth any matter or task described herein, to take any action that he, as the Re-allocation Director, deems necessary or desirable to affect the purposes hereof, and to create an advisory committee consistent with, and in furtherance of, this Executive Order.

3. Determination of compliance with the procedures and requirements set forth herein or in the additional guidance, including any filings to be made and the timing and substance thereof, shall be subject to the sole discretion of the Re-allocation Director. The Re-allocation Director shall have sole discretion as to the manner and location of any on-line postings required herein or pursuant to such further rules and procedures promulgated by him so long as such posting are on an official website of the Commonwealth.

This Executive Order shall be effective upon its signing and shall remain in full force and effect until December 31, 2011, unless sooner amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 30th day of September 2009.

/s/ Timothy M. Kaine
Governor

Area	Residual	Recovery Zone Economic Development Bond	Recovery Zone Facility Bond
Virginia		104,396,000	156,595,000
Alexandria city, VA		537,000	806,000
Chesapeake city, VA		2,555,000	3,832,000
Hampton city, VA		1,523,000	2,284,000
Newport News city, VA		1,947,000	2,921,000
Norfolk city, VA		2,204,000	3,305,000
Portsmouth city, VA		1,025,000	1,538,000
Richmond city, VA		5,860,000	8,790,000
Virginia Beach city, VA		4,996,000	7,494,000
Accomack County, VA		308,000	462,000
Albemarle County, VA		2,799,000	4,198,000
Alleghany County, VA		555,000	833,000
Amelia County, VA		394,000	591,000
Amherst County, VA		253,000	380,000
Appomattox County, VA		113,000	169,000
Arlington County, VA		790,000	1,186,000
Augusta County, VA		0	0
Bath County, VA		220,000	330,000
Bedford County, VA		577,000	865,000
Bland County, VA		0	0
Botetourt County, VA		610,000	916,000
Brunswick County, VA		67,000	101,000
Buchanan County, VA		0	0
Buckingham County, VA		0	0
Campbell County, VA		446,000	668,000
Caroline County, VA		827,000	1,241,000
Carroll County, VA		723,000	1,085,000
Charles City County, VA		226,000	339,000
Charlotte County, VA		0	0
Chesterfield County, VA		9,998,000	14,998,000
Clarke County, VA		49,000	73,000
Craig County, VA		89,000	133,000
Culpeper County, VA		0	0
Cumberland County, VA		275,000	412,000
Dickenson County, VA		0	0
Dinwiddie County, VA		769,000	1,154,000
Essex County, VA		0	0
Fairfax County, VA		3,492,000	5,237,000
Fauquier County, VA		220,000	330,000
Floyd County, VA		281,000	421,000
Fluvanna County, VA		751,000	1,126,000
Franklin County, VA		916,000	1,373,000
Frederick County, VA		4,984,000	7,476,000
Giles County, VA		31,000	46,000
Gloucester County, VA		461,000	691,000
Goochland County, VA		674,000	1,012,000
Grayson County, VA		372,000	559,000
Greene County, VA		568,000	852,000
Greensville County, VA		0	0
Halifax County, VA		0	0
Hanover County, VA		3,308,000	4,963,000
Henrico County, VA		9,800,000	14,700,000
Henry County, VA		2,371,000	3,557,000
Highland County, VA		52,000	78,000
Isle of Wight County, VA		415,000	623,000
James City County, VA		702,000	1,053,000
King and Queen County, VA		198,000	298,000
King George County, VA		0	0
King William County, VA		510,000	765,000
Lancaster County, VA		0	0
Lee County, VA		0	0
Loudoun County, VA		986,000	1,479,000
Louisa County, VA		974,000	1,460,000
Lunenburg County, VA		0	0
Madison County, VA		250,000	375,000
Mathews County, VA		98,000	146,000
Mecklenburg County, VA		0	0
Middlesex County, VA		95,000	142,000
Montgomery County, VA		171,000	256,000
Nelson County, VA		427,000	641,000

Area	Residual	Recovery Zone Economic Development Bond	Recovery Zone Facility Bond
New Kent County, VA		568,000	852,000
Northampton County, VA		98,000	146,000
Northumberland County, VA		531,000	797,000
Nottoway County, VA		479,000	719,000
Orange County, VA		690,000	1,036,000
Page County, VA		211,000	316,000
Patrick County, VA		827,000	1,241,000
Pittsylvania County, VA		1,834,000	2,751,000
Powhatan County, VA		864,000	1,296,000
Prince Edward County, VA		0	0
Prince George County, VA		882,000	1,323,000
Prince William County, VA		1,199,000	1,799,000
Pulaski County, VA		67,000	101,000
Rappahannock County, VA		418,000	627,000
Richmond County, VA		0	0
Roanoke County, VA		1,718,000	2,577,000
Rockbridge County, VA		0	0
Rockingham County, VA		3,644,000	5,466,000
Russell County, VA		467,000	700,000
Scott County, VA		0	0
Shenandoah County, VA		534,000	801,000
Smyth County, VA		501,000	751,000
Southampton County, VA		0	0
Spotsylvania County, VA		388,000	581,000
Stafford County, VA		385,000	577,000
Surry County, VA		82,000	124,000
Sussex County, VA		262,000	394,000
Tazewell County, VA		0	0
Warren County, VA		116,000	174,000
Washington County, VA		0	0
Westmoreland County, VA		0	0
Wise County, VA		0	0
Wythe County, VA		0	0
York County, VA		699,000	1,048,000
Bedford city, VA		43,000	64,000
Bristol city, VA		0	0
Buena Vista city, VA		0	0
Charlottesville city, VA		1,151,000	1,726,000
Colonial Heights city, VA		552,000	829,000
Covington city, VA		211,000	316,000
Danville city, VA		1,148,000	1,721,000
Emporia city, VA		0	0
Fairfax city, VA		82,000	124,000
Falls Church city, VA		40,000	60,000
Franklin city, VA		0	0
Fredericksburg city, VA		73,000	110,000
Galax city, VA		165,000	247,000
Harrisonburg city, VA		1,990,000	2,986,000
Hopewell city, VA		617,000	926,000
Lexington city, VA		0	0
Lynchburg city, VA		549,000	824,000
Manassas city, VA		116,000	174,000
Manassas Park city, VA		40,000	60,000
Martinsville city, VA		528,000	792,000
Norton city, VA		0	0
Petersburg city, VA		821,000	1,231,000
Poquoson city, VA		140,000	211,000
Radford city, VA		27,000	41,000
Roanoke city, VA		1,602,000	2,403,000
Salem city, VA		467,000	700,000
Staunton city, VA		0	0
Suffolk city, VA		888,000	1,332,000
Waynesboro city, VA		0	0
Williamsburg city, VA		110,000	165,000
Winchester city, VA		1,730,000	2,596,000

AIR POLLUTION CONTROL BOARD

Notice of Revision to the State Implementation Plan

Purpose of notice: The Department of Environmental Quality (DEQ) is announcing an opportunity for public comment on a proposed permit to limit air pollution emitted by a facility in Shenandoah County, Virginia. If adopted, the Commonwealth intends to submit the permit or portion thereof as a revision to its State Implementation Plan (SIP) in accordance with the requirements of § 110(a) of the federal Clean Air Act. The SIP is the plan developed by the Commonwealth in order to fulfill its responsibilities under the federal Clean Air Act to attain and maintain the ambient air quality standards promulgated by the U.S. Environmental Protection Agency (EPA) under the Act.

Public comment period: October 15, 2009, to November 16, 2009.

State public hearing procedure: Interested persons may request a public hearing. The request must be made in writing to the contact listed below, and be received by DEQ on the last day of the comment period. In order to be considered, the request must include the full name, address and telephone number of the person requesting the hearing and of all people represented by the requester. The request must also include: (i) the reason why a public hearing is requested; (ii) a brief statement setting forth the factual nature and extent of interest in the proposed permit, including how the operation of the facility affects the requester; and (iii) specific references to applicable terms and conditions of concern as well as suggested revisions. A public hearing may be held as required by § 10.1-1322.01 of the Code of Virginia if at least 25 requests are received in accordance with these procedures. Notice of the date, time, and location of any requested public hearing will be announced in a separate notice, and another 30-day comment period will be conducted.

Federal public hearing procedure: Interested persons may request a public hearing. The request must be made in writing to the contact listed below, and be received by DEQ on the last day of the comment period. In order to be considered, the request must include the full name, address, and telephone number of the person requesting the hearing and of all people represented by the requester. A public hearing will be held as required by 40 CFR 51.102(a) if a request is received in accordance with these procedures. Notice of the date, time, and location of any requested public hearing will be announced in a separate notice, and another 30-day comment period will be conducted.

Permit name: State operating permit issued by DEQ, under the authority of the State Air Pollution Control Board.

Name, address and registration number: O-N Minerals (Chemstone) Company, 1696 Oranda Rd., Strasburg, VA 22657-3731, Registration No. 80252.

Description of proposal: The proposed revision consists of the control of emissions of particulate matter (PM), nitrogen oxides (NO_X), and sulfur dioxide (SO_2) to the atmosphere from O-N Minerals located in Shenandoah County, Virginia.

Virginia's regional haze regulation is found in Article 52 (9VAC5-40-7550 et seq.) of 9VAC5-40, Existing Stationary Sources. This regulation provides guidance for determining Best Available Retrofit Technology (BART). BART is required for any BART-eligible source that emits any air pollutant that may reasonably be anticipated to cause or contribute to visibility impairment in any federal Class I area. BART is an emission limitation based on the degree of reduction achievable through application of the best system of continuous emission reduction for each visibility-impairing pollutant emitted by an existing stationary facility established on a case-by-case basis. O-N Minerals is subject to these requirements, and has undergone a BART analysis resulting in the application of BART controls.

In essence, the proposed revision will consist of a determination of BART for the control of emissions of PM, PM_{10}, NO_X, and SO_2 to the atmosphere from a rotary kiln and a calcimatic kiln located at O-N Minerals. The BART determination is being made pursuant to Article 52 (9VAC5-40-7550 et seq.) of the Regulations for the Control and Abatement of Air Pollution (9VAC5-40, Existing Sources). BART has been determined to be as follows: (i) for the rotary kiln, NO_X will be controlled by good combustion practices and an indirect firing system, PM_{10} will be controlled by a multicyclone and fabric filters, and SO_2 will be controlled by a caustic wet scrubber or an approved alternative control technology, including inherent process scrubbing, capable of meeting the BART emission limit; and (ii) for the calcimatic kiln, NO_X will be controlled by good combustion practices, PM_{10} will be controlled by a multicyclone and Venturi scrubber, and SO_2 will be controlled by a Venturi scrubber.

A state operating permit is to be issued as the administrative mechanism to ensure compliance with the BART requirements. The permit is being issued pursuant to Article 52 (9VAC5-40-7550 et seq.) of 9 VAC 5-40 (Existing Stationary Sources) and Article 5 (9VAC5-80-800 et seq.) of 9VAC5-80 (Permits for Stationary Sources) of state regulations and is federally enforceable upon issuance. The permit will establish emission limits for control of PM, PM_{10}, NO_X, and SO_2.

Federal information: This notice is also being given to satisfy the public participation requirements of federal regulations (40 CFR 51.102). The proposal will be submitted as a revision to the Commonwealth of Virginia SIP under § 110(a) of the federal Clean Air Act in accordance with 40 CFR 51.104.

Consultation with federal land managers (FLMs): As provided in 40 CFR 51.302(b)(2), the FLMs were given the

opportunity to comment on this permit on January 15, 2009. NPS provided comments on March 2, 2009; DEQ responded to the comments in a letter dated September 22, 2009.

How to comment: DEQ accepts written comments by email, fax, and postal mail. In order to be considered, written comments must include the full name, address and telephone number of the person commenting and be received by DEQ on the last day of the comment period. Due to problems with the quality of faxes, commenters are encouraged to provide the signed original by postal mail within one week. All testimony, exhibits and documents received are part of the public record. Please note this proposed permit is being concurrently reviewed by U.S. EPA.

To review proposal: The proposal and any supporting documents are available on the DEQ Air Public Notices for Plans website (http://www.deq.virginia.gov/air/permitting/planotes.html). The documents may also be obtained by contacting the DEQ representative named below. The public may review the documents between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period at the following DEQ locations: (i) Main Street Office, 629 E. Main St., 8th Floor, Richmond, VA, telephone (804) 698-4070; and (ii) Valley Regional Office, 4411 Early Road, Harrisonburg, VA, telephone (540) 574-7800.

Contact Information: Lois R. Paul, Program Support Technician, Department of Environmental Quality, 4411 Early Road, P.O. Box 3000, Harrisonburg, VA 22801, telephone (540) 574-7920, FAX (540) 574-7878, or email lois.paul@deq.virginia.gov.

STATE CORPORATION COMMISSION

Bureau of Insurance

October 2, 2009

Administrative Letter 2009 - 09

To: All Domestic Insurers Licensed in Virginia

Re: Risk-Focused Examination Approach

The purpose of this administrative letter is to inform all Virginia domestic insurance companies that a new risk-focused examination approach will be used beginning with the 2010 financial examinations.

Background

In 2006, the National Association of Insurance Commissioners ("NAIC") adopted revisions to the Financial Condition Examiners' Handbook ("Handbook") relating to a revised risk-focused examination approach. This new examination approach will be required for the NAIC Financial Regulation Standards and Accreditation Program for all financial examinations beginning on or after January 1, 2010. The revised approach is meant to broaden and enhance the identification of risk inherent in an insurer's operations and utilize that evaluation in formulating the ongoing surveillance of an insurer. The revisions incorporate a seven-phase process, which will be required for all full scope examinations following the risk-focused surveillance examination approach.

In accordance with the revisions made to the Handbook, there will be a greater focus placed upon a company's risk management culture, corporate governance structure, risk assessment programs and control environment, which may change some of the information requested from the insurer by the examiner. The changes may include requests for interviews with key members of management and the Board of Directors, requests for additional internal control documentation (including any applicable compliance documentation), and an increased level of importance in coordinating with external and internal auditors. It is anticipated that the new exam approach will increase the overall effectiveness and efficiency of the examination process.

Description of Risk-Focused Surveillance Examination Approach

The intent of the revised risk-focused process is to broaden and enhance the identification of risk inherent in an insurer's operations and utilize that evaluation in formulating the ongoing surveillance of an insurer. The revised risk-focused approach is designed to provide continuous regulatory oversight and extend the examination process to not only encompass the risks present as of a specific examination date, but to consider risks which extend or commence during the time in which the examination was conducted, and risks which are anticipated to arise or extend past the point of completion of the examination. The Handbook has been revised to incorporate the following seven-phase process to conduct risk-focused examinations:

Phase 1: Understand the company and identify key functional activities to be reviewed: In this phase, key activities and sub-activities are identified using background information gathered on the company from various sources. The risk-focused surveillance process promotes the use of a "top-down" approach to identify activities.

Phase 2: Identify and assess inherent risk in activities: Phase 2 requires the examiner, with the assistance of the analysis staff to identify and document the inherent risks of the insurer being examined. The examiner may identify risks from the insurer's own risk assessment, internal and external audit risk assessments, filing requirements of the Securities and Exchange Commission (SEC) and the Sarbanes-Oxley Act of 2002, interviews with management, and any other source. Nine risk classifications have been identified to assist regulators in classifying the inherent risks: Credit, Market,

Pricing/Underwriting, Reserving, Liquidity, Operational, Legal, Strategic and Reputational. Once the primary risks are identified within the key business units, the examiner utilizes professional judgment to assess the inherent risk by determining the probability of occurrence and magnitude of impact to obtain the overall inherent risk assessment.

Phase 3: Identify and evaluate risk mitigation strategies/controls: Phase 3 requires the examiner to identify and evaluate controls in place to mitigate inherent risk. The overall assessment reflects the examiner's determination on how well the internal controls mitigate inherent risk.

Phase 4: Determine residual risk: Phase 4 requires the examiner to determine the residual risk for identified sub-activities to arrive at an overall residual risk by key activity. The assessment is made by determining how well controls reduce the level of inherent risk of the sub-activity using probability, impact and professional judgment. Assessing residual risk is the key to determining where the risks exist in the insurer's business. Once the riskier activities are identified the examiner may use these results to determine where to focus examiner or analyst resources most efficiently and to determine the nature and extent of testing.

Phase 5: Establish/conduct examination procedures: After completion of the risk assessment for an activity, the nature and extent of examination procedures can be determined.

Phase 6: Update prioritization and supervisory plan: Phase 6 requires relevant material findings from the risk assessment effort and any other examination activities to be utilized and incorporated into determining or validating the assessed prioritization of the insurer as well as establishing the going-forward supervisory plan.

Phase 7: Draft examination report and management letter based upon findings: In this phase an examination report should be developed. A Management Letter may also be developed to convey results and observations noted during the examination that should not be contained in a public examination report.

This seven-phase approach will be required for all full scope examinations following the risk-focused examination approach. This revised approach differs from the previous examination approach in that the examiner will assess risk throughout the organization on a prospective basis. In accordance with this assessment, not every financial statement account may need to be tested. However, the examiner will be required to provide assurance on the company's financial statements. Overall, the use of the revised risk-focused approach will lead examiners to focus on the areas of greatest risk at the insurer and to limit the testing of areas with less risk. In addition, there will be an increased importance in utilizing the insurer's internal and external audit work already performed.

It should be noted that the examinations associated with the revised risk-focused approach have enough flexibility to allow procedures to be added, modified, supplemented or reduced, in accordance with the overall risk assessment of the insurer. Therefore, it is anticipated that the scope of the examination and the procedures associated with such an examination will be modified for small to medium sized insurance companies. In some instances, companies may only note minor changes to the procedures that have been utilized in previous financial examinations.

We appreciate your cooperation in the transition to the new risk-focused examination approach. We believe that the risk-focused approach will be beneficial to both regulators and industry partners in the years to come.

Any questions or concerns about the new regulatory examination approach may be directed to: David H. Smith, Chief Insurance Examiner, Financial Regulation Division, Bureau of Insurance, State Corporation Commission, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9061, or email david.smith@scc.virginia.gov.

/s/ Alfred W. Gross
Commissioner of Insurance

DEPARTMENT OF ENVIRONMENTAL QUALITY

Proposed Consent Order for Evergreen Land Company

An enforcement action has been proposed for Evergreen Land Company for alleged violations in Albemarle County. A proposed consent order describes a settlement to resolve alleged wetland mitigation violations at its Mountain Valley Farm subdivision. A description of the proposed action is available at the DEQ office named below or online at www.deq.virginia.gov. Steven W. Hetrick will accept comments by email steven.hetrick@deq.virginia.gov, FAX (540) 574-7878, or postal mail at Department of Environmental Quality, Valley Regional Office, P.O. Box 3000, 4411 Early Road, Harrisonburg, Virginia, 22801, from October 26, 2009, to November 25, 2009.

DEPARTMENT OF FORENSIC SCIENCE

Approved Breath Alcohol Testing Devices

Statutory Authority: §§ 9.1-102, 18.2-267, and 18.2-268.9 of the Code of Virginia.

In accordance with 6VAC40-20-90 of the Regulations for Breath Alcohol Testing and under the authority of the Code of Virginia, the following breath test devices are approved for use in conducting breath tests:

1. The Intox EC/IR II with the Virginia test protocol, manufactured by Intoximeters, Inc., St. Louis, Missouri utilizing an external printer.

2. The Intoxilyzer, Model 5000, CD/FG5 [previously listed as the 768VA], equipped with the Virginia test protocol, simulator monitor, and external printer, manufactured by CMI, Inc., Owensboro, Kentucky.

In accordance with 6VAC40-20-100 of the Regulations for Breath Alcohol Testing and under the authority of the Code of Virginia, for evidential breath test devices, mouthpieces that are compatible with the specific testing device are approved as supplies for use in conducting breath tests on approved breath test devices

In accordance with 6VAC40-20-180 of the Regulations for Breath Alcohol Testing and under the authority of the Code of Virginia, the following devices are approved for use as preliminary breath test devices:

1. The ALCO-SENSOR, ALCO-SENSOR II, ALCOSENSOR III, ALCO-SENSOR IV, and ALCO-SENSOR FST manufactured by Intoximeters, Inc., St Louis, Missouri.

2. The CMI SD 2 and CMI SD 5, manufactured by Lyon Laboratories, Barry, United Kingdom.

3. The INTOXILYZER 400PA, manufactured by CMI, Inc., Owensboro, Kentucky.

4. The LIFELOC PBA 3000*, LIFELOC FC10, LIFELOC FC10Plus, and LIFELOC FC20, manufactured by Lifeloc Inc., Wheat Ridge, Colorado. *When used in the direct sensing mode only.

5. The ALCOTEST 6510 and ALCOTEST 6810 manufactured by Draeger Safety Diagnostics, Inc., Durango, Colorado.

Contact: Stephanie Merritt, Department of Forensic Science, 700 North 5th Street, Richmond, VA 23219, telephone (804) 786-4107.

STATE BOARD OF HEALTH and DEPARTMENT OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Proposed Notice of Request for Certificate of Public Need Applications For Development of Additional Inpatient Psychiatric Beds

Legal Notice of Request for Certificate of Public Need Applications.

Pursuant to the authority vested in the State Board of Health (Board) and the Department of Behavioral Health and Developmental Services by § 32.1-102.3:2 of the Code of Virginia, notice is hereby given of the issuance of a Request for Applications (RFA). This RFA is a request for certificate of public need (COPN) applications for projects that will result in an increase in the number of beds in which psychiatric services are provided in the Commonwealth of Virginia. The RFA process used is adapted from that outlined in 12VAC5-220-335 of the Virginia Medical Care Facilities Certificate of Public Need Rules and Regulations (COPN regulations).

Eligible Planning Districts and Total Psychiatric Beds Available for Authorization.

In the review cycle established by this RFA, the Commissioner of Health will consider requests for COPNs that propose an increase in psychiatric beds in the following planning districts and that propose an increase no greater than the number of available beds shown below for that planning district. COPN requests that propose an increase in psychiatric beds in any other planning district, not identified below, or propose an increase in beds greater than the number of available beds shown below will not be accepted for review.

- Planning District 1, also known as Lenowisco Planning District, consisting of the counties of Lee, Scott, and Wise and the city of Norton.

  Total psychiatric beds available for authorization: 15.

- Planning District 6, also known as Central Shenandoah Planning District, consisting of the counties of Augusta, Bath, Highland, Rockbridge, and Rockingham and the cities of Buena Vista, Harrisonburg, Lexington, Staunton, and Waynesboro.

  Total psychiatric beds available for authorization: 4.

- Planning District 8, also known as Northern Virginia Planning District, consisting of the counties of Loudoun, Fairfax, and Prince William and the cities of Fairfax City, Falls Church, Arlington, Alexandria, Manassas Park, and Manassas.

  Total psychiatric beds available for authorization: 83.

- Planning District 9, also known as Rappahannock Planning District, consisting of the counties of Rappahannock, Fauquier, Culpeper, Orange, and Madison.

  Total psychiatric beds available for authorization: 32.

- Planning District 10, also known as Thomas Jefferson Planning District, consisting of the counties of Albemarle, Fluvanna, Greene, Louisa, and Nelson and the city of Charlottesville.

  Total psychiatric beds available for authorization: 9.

- Planning District 12, also known as West Piedmont Planning District, consisting of the counties of Franklin,

Patrick, Henry, and Pittsylvania and the cities of Danville and Martinsville.

Total psychiatric beds available for authorization: 3.

- Planning District 14, also known as Piedmont Planning District, consisting of the counties of Amelia, Buckingham, Charlotte, Cumberland, Lunenburg, Prince Edward, and Nottoway.

  Total psychiatric beds available for authorization: 17.

- Planning District 18, also known as Middle Peninsula Planning District, consisting of the counties of Essex, Gloucester, King and Queen, King William, Mathews, and Middlesex.

  Total psychiatric beds available for authorization: 16.

- Planning District 19, also known as Crater Planning District, consisting of the counties of Dinwiddie, Greensville, Prince George, Surry, and Sussex and the cities of Colonial Heights, Hopewell, and Petersburg.

  Total psychiatric beds available for authorization: 19.

- Planning District 21, also known as Peninsula Planning District, consisting of the counties of James City and York and the cities of Hampton, Newport News, Poquoson, and Williamsburg.

  Total psychiatric beds available for authorization: 37.

Evaluation of Need for Additional Psychiatric Beds.

The "Mental Health Services" component of the Virginia State Medical Facilities Plan (SMFP) contains a psychiatric bed need forecasting method (12VAC5-230-860). This method has been employed by the Virginia Department of Health to compute a forecast of needed psychiatric beds in 2014 in each of Virginia's 22 planning districts.[1]

Consistent with the Virginia State Medical Facilities Plan (12VAC5-230-860), no planning district is considered to have a need for additional psychiatric beds unless the estimated average annual occupancy of all existing psychiatric beds adjusted based on staffing and operational status, in the planning district was at least 75% for the most recent five years for which bed utilization has been reported to the Virginia Department of Health (through filings with Virginia Health Information, Inc.).[2]

The following table displays, by planning district, the psychiatric service gross bed need forecast for 2014, the current licensed bed inventory and COPN-authorized additions of psychiatric beds, and the net bed need forecast for 2014.

The table also shows the estimated average annual occupancy rate of psychiatric beds for each planning district for the reporting years 2003 through 2007, adjusted to reflect those beds considered operational, in accordance with 12VAC5-230-860 A, and identifies the status of each planning district with respect to the percentage of the population living greater than a 60-minute drive from existing psychiatric beds. The final column of the table states whether the planning district qualifies for additional psychiatric beds for 2014.

[1] For conduct of the certificate of public need program, the Virginia Department of Health continues to recognize the former Planning District 20, Southeastern Virginia, and the former Planning District 21, Peninsula, rather than Planning District 23, Hampton Roads, which combined the former PD 20 and PD 21.

[2] The inventory was adjusted to not include the average number of psychiatric beds that have not been staffed and operated in each nonstate operated facility for the last three years for which data is available from VHI.

Psychiatric Bed Need Forecast and Whether a Planning District Qualifies for Additional Psychiatric Beds in 2014

PD	Gross Psychiatric Bed Need for 2014	Adjusted Existing and Authorized Inventory	Projected Net Need in 2014	Estimated 2007 Average Occupancy of Adjusted Beds	% of Population of PD Living > 60 minute Drive from Inpatient Psychiatric Service	Planning District Qualifies for Additional Psychiatric Beds
1	15	0	**15**	**N/A**	**50.9%**	**Yes**
2	12	20	(8)	44.3%	28.4%	no, no need, low occ
3	9	14	(5)	47.8%	6.0%	no, no need, low occ
4	32	36	(4)	63.6%	1.7%	no, no need, low occ, 95% of pop w/in 60 min
5	73	75	(3)	71.0%	6.7%	no, no need, low occ
6	42	38	4	77.8%	2.8%	**Yes**
7	25	26	(1)	61.0%	0.6%	no, no need, low occ, 95% of pop w/in 60 min

8	238	155	**83**	**98.9%**	0.1%	**Yes**
9	32	0	**32**	**N/A**	0.0%	**Yes**
10	48	39	**9**	**81.7%**	0.0%	**Yes**
11	41	39	2	74.4%	0.0%	no, low occ, 95% of pop w/in 60 min
12	27	24	**3**	**83.3%**	0.0%	**Yes**
13	12	12	0	78.2%	2.7%	no, no need, 95% of pop w/in 60 min
14	17	0	**17**	**N/A**	**28.3%**	**Yes**
15	285	261	24	72.9%	0.0%	no, low occ, 95% of pop w/in 60 min
16	50	50	0	57.7%	0.0%	no, no need, low occ, 95% of pop w/in 60 min
17	4	16	(12)	28.9%	0.0%	no, no need, low occ, 95% of pop w/in 60 min
18	16	0	**16**	**N/A**	0.0%	**Yes**
19	243	224	**19**	**76.0%**	0.0%	**Yes**
20	244	262	(18)	64.8%	0.6%	no, no need, low occ, 95% of pop w/in 60 min
21	116	79	**37**	**103.7%**	0.0%	**Yes**
22	6	14	(8)	29.4%	0.0%	no, no need, low occ, 95% of pop w/in 60 min

Sources: *Virginia State Medical Facilities Plan* (12VAC5-230-840, et. seq.)
Virginia Health Information and Office of Licensure and Certification, VDH (for bed inventory)

Basis for Review.

The Commissioner, in her review of COPN requests submitted pursuant to this RFA, will consider each of the eight factors enumerated at § 32.1-102.3 B of the Code of Virginia, as applicable. She will also consider applicable standards of the State Medical Facilities Plan (12VAC5-230-840 et. seq.).

Schedule for Review.

COPN requests filed in response to this RFA shall be filed in accordance with the provisions of 12VAC5-220-180 et. seq. The review schedule shown below will apply. Letters of intent and applications must be received by the Virginia Department of Health Division of COPN and by the appropriate Regional Health Planning Agency, when designated, by the dates shown below in order to qualify for consideration in the specified review cycle.

Letter of intent must be received by: To Be Determined.

Application must be received by: To Be Determined.

Review cycle will begin on: To Be Determined.

Application Fees.

The Virginia Department of Health shall collect fees for COPN applications filed in response to this RFA. No application may be deemed to be complete for review until the required application fee is paid. The fee is 1.0% of the proposed capital expenditure for the project, but not less than $1,000 or more than $20,000.

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 October 7, 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 Seventy-Two (09)

Virginia's Instant Game Lottery 1156 "Candy Cane Tripler" Final Rules for Game Operation (effective 10/6/09)

Director's Order Number Seventy-Three (09)

Virginia's Instant Game Lottery 1159 "Holiday Doubler" Final Rules for Game Operation (effective 10/6/09)

Director's Order Number Seventy-Four (09)

Virginia's Instant Game Lottery 1161"Wonderland of Dough" Final Rules for Game Operation (effective 10/6/09)

Director's Order Number Seventy-Five (09)

Virginia's Instant Game Lottery 1165 "The Perfect Gift" Final Rules for Game Operation (effective 10/6/09)

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Notice of Reimbursement of Early Intervention Services under Part C of IDEA

The Virginia Department of Medical Assistance Services (DMAS) hereby affords the public notice of its intention to amend the Virginia State Plan for Medical Assistance to provide for changes to the Methods and Standards for Establishing Payment Rates - Other Types of Care. The department intends to implement a new methodology for providers of Early Intervention (EI) services pursuant to Part C of the Individuals with Disabilities Education Act (IDEA) of 2004 (20 USC § 1431 et seq.). This action is being taken pursuant to the 2009 Appropriations Act (Chap. 781), Item TTT:

The planned regulatory action creates a new model for Medicaid coverage of Early Intervention services for children less than three years of age who are eligible for services under Chapter 53 (§ 2.2-5300 et seq.) of Title 2.2 of the Code of Virginia in accordance with Part C IDEA. In order to ensure compliance with federal Part C requirements, DMAS is establishing a newly recognized provider type and specialty to provide services specifically oriented to the requirements of individuals eligible for Part C services. This specialized provider group will support the service delivery system the state adopted to provide Early Intervention services -- the Virginia Infant and Toddler Connection of Virginia (I&TC). These new regulations establish a broader range of specialized Part C providers to meet the individual child's needs and assure that providers have the specific expertise to effectively address developmental problems in young children as provided for in Part C.

Medicaid payment for defined Early Intervention services would provide a framework for ensuring that providers of Early Intervention services through the IT&C model bill Medicaid first, if appropriate, before using Part C program funds to comply with the payor of last resort requirement contained in Part C of IDEA. Certified individuals and agencies who currently participate with the agency shall obtain Part C designation from DMAS and bill for services as Early Intervention providers rather than as a rehabilitation agency provider or another designation. New providers shall enroll to participate with DMAS with a Part C specialty designation in order to bill for EI services.

Early Intervention services shall be reimbursed on a fee-for-service basis for non-MCO providers. All private and governmental fee-for-service providers shall be paid according to the same methodology, with separate fees for certified Early Intervention providers who are licensed as physical therapists, physical therapy assistants, occupational therapists, occupational therapy assistants, speech pathologists, or registered nurses to ensure access to Early Intervention services.

This notice is intended to satisfy the requirements of 42 CFR 447.205 and of § 1902(a)(13) of the Social Security Act, 42 USC § 1396a(a)(13). A copy of this notice is available for public review from Molly Carpenter, Division of Child and Maternal Health, DMAS, 600 Broad Street, Suite 1300, Richmond, VA 23219, and this notice is available for public review on the Regulatory Town Hall (www.townhall.virginia.gov). Comments or inquiries may be submitted, in writing, within 30 days of this notice publication to Ms. Carpenter and such comments are available for review at the same address.

Contact Information: Molly Carpenter, Division of Maternal and Child Health, Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219, telephone (804) 786-1493, FAX (804) 225-3961, or email molly.carpenter@dmas.virginia.gov.

STATE WATER CONTROL BOARD

Proposed Consent Order for Al M. Cooper Construction Incorporated

An enforcement action has been proposed for Al M. Cooper Construction Incorporated for alleged violations occurring in Roanoke County. The board proposes to issue a consent order to Al M. Cooper Construction Incorporated, to address alleged violations of Virginia's regulations. The location of the facility, a subdivision, where the alleged violations occurred is (Tax Parcel ID: 087.20-01-09.00-0000) located north of Buck Mountain Road and known as Berkeley Manor & Bellview Garden. The consent order describes a settlement to resolve violations involving construction activities without a permit and other nonauthorized activities affecting state waters of an unnamed tributary of Back Creek. A description of the proposed action is available at the DEQ office named below or online at www.deq.virginia.gov. Steven B. Wright will accept comments by email at steven.wright@deq.virginia.gov, FAX (540) 562-6725, or postal mail Steve Wright, Department of Environmental Quality, Blue Ridge Regional Office, 3019 Peters Creek

Road, Roanoke, VA 24019, from November 9, 2009, to December 9, 2009.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Mailing Address: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219.

Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed

Beginning with Volume 26, Issue 1 of the Virginia Register of Regulations dated September 14, 2009, the Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed will no longer be published in the Virginia Register of Regulations. The cumulative table may be accessed on the Virginia Register Online webpage at http://register.dls.virginia.gov/cumultab.htm.

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

BOARD OF COUNSELING

Titles of Regulations: **18VAC115-20. Regulations Governing the Practice of Professional Counseling (amending 18VAC115-20-40, 18VAC115-20-45, 18VAC115-20-70, 18VAC115-20-90, 18VAC115-20-100).**

18VAC115-30. Regulations Governing the Certification of Substance Abuse Counselors and Substance Abuse Counseling (amending 18VAC115-30-40, 18VAC115-30-45, 18VAC115-30-110).

18VAC115-40. Regulations Governing the Certification of Rehabilitation Providers (amending 18VAC115-40-25, 18VAC115-40-30).

18VAC115-50. Regulations Governing the Practice of Marriage and Family Therapy (amending 18VAC115-50-30, 18VAC115-50-40, 18VAC115-50-90).

18VAC115-60. Regulations Governing the Practice of Licensed Substance Abuse Treatment Practitioners (amending 18VAC115-60-40, 18VAC115-60-50, 18VAC115-60-90, 18VAC115-60-100, 18VAC115-60-110).

Publication: 26:1 VA.R. 93-98 September 14, 2009.

Correction to Final Regulation:

The list of regulation titles and sections amended or repealed should appear as follows:

Titles of Regulations: **18VAC115-20. Regulations Governing the Practice of Professional Counseling (amending 18VAC115-20-40, 18VAC115-20-45, 18VAC115-20-70, 18VAC115-20-100; repealing 18VAC115-20-90).**

18VAC115-30. Regulations Governing the Certification of Substance Abuse Counselors and Substance Abuse Counseling (amending 18VAC115-30-40, 18VAC115-30-45, 18VAC115-30-110).

18VAC115-40. Regulations Governing the Certification of Rehabilitation Providers (amending 18VAC115-40-25, 18VAC115-40-30).

18VAC115-50. Regulations Governing the Practice of Marriage and Family Therapy (amending 18VAC115-50-30, 18VAC115-50-40, 18VAC115-50-90).

18VAC115-60. Regulations Governing the Practice of Licensed Substance Abuse Treatment Practitioners (amending 18VAC115-60-40, 18VAC115-60-50, 18VAC115-60-90, 18VAC115-60-110; repealing 18VAC115-60-100).

VA.R. Doc. No. R10-2075

STATE BOARD OF EDUCATION

Titles of Regulations: **8VAC20-80. Regulations Governing Special Education Programs for Children with Disabilities in Virginia.**

8VAC20-81. Regulations Governing Special Education Programs for Children with Disabilities in Virginia.

Publication: 25:16 VA.R. 2872-2968 April 13, 2009.

Correction to Final Regulation:

Page 2878, 8VAC20-81-10, definition of "Implementation Plan," line 2, strike "education" and insert "educational"

Page 2889, 8VAC20-81-20, subdivision 23, last sentence, strike "34 CFR 645" and insert "34 CFR 300.645"

Page 2904, 8VAC20-81-80 D 9, line 6, strike "member's" and insert "members'"

Page 2909, 8VAC20-81-80 O 2, line 3, strike "bilaterial" and insert "bilateral"

Page 2909, 8VAC20-81-80 O 2, line 5, strike "dys-synchrony" and insert "dyssynchrony"

Page 2939, 8VAC20-81-180 C 4, line 4, strike "mental retardation" and insert "intellectual disabilities"

Page 2952, 8VAC20-81-210 Q 5, line 2, change "[4 3]" to "4"

Page 2961, 8VAC20-81-270 B, lines 5 and 6, strike "Mental Health, Mental Retardation and Substance Abuse Services" and insert "Behavioral Health and Developmental Services"

Page 2962, 8VAC20-81-280 G, line 2, strike "C" and insert "B"

Page 2964, 8VAC20-81-320 A 1 c, lines 1 and 2, strike "Mental Health, Mental Retardation and Substance Abuse Services" and insert "Behavioral Health and Developmental Services"

Page 2965, 8VAC20-81-320 A 1 d, lines 4 and 5, strike "Mental Health, Mental Retardation and Substance Abuse Services" and insert "Behavioral Health and Developmental Services"

Page 2965, 8VAC20-81-320 B 2 b (1), lines 1, 2 and 3, strike "Mental Health, Mental Retardation and Substance Abuse Services" and insert "Behavioral Health and Developmental Services"

Page 2966, 8VAC20-81-320 C 2 b (1), line 1, strike "disturbance" and insert "disability"

Page 2966, 8VAC20-81-320 C 2 b (3), line 1, strike "Mental retardation" and insert "Intellectual disability"

Page 2966, 8VAC20-81-320 C 2 b (4), strike text of subdivision C 2 b (4) to be consist with the text of the regulation; renumber subdivisions C 2 b (4) through C 2 b (14) to subdivisions C 2 b (3) through C 2 b (13)

Page 2967, 8VAC20-81-340, Figure 1, column 1, row 12, strike "Other Health Impaired" and insert "Other Health Impairment"

VA.R. Doc. No. R07-95

MARINE RESOURCES COMMISSION

Title of Regulation: **4VAC20-1090. Pertaining to Licensing Requirements and License Fees.**

Publication: 26:1 VA.R. 10-13 September 14, 2009.

Correction to Final Regulation:

Page 13, 4VAC20-1090-30, the last four license categories are duplicative of previous four license categories and should be deleted.

VA.R. Doc. No. R10-2103