



Virginia Register of Regulations

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THE VIRGINIA REGISTER INFORMATION PAGE

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

A regulation becomes effective at the conclusion of the 30-day final adoption period, or at any other later date specified by the promulgating agency, unless (i) a legislative objection has been filed, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 21-day objection period; (ii) the Governor exercises his authority to require the agency to

provide for additional public comment, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the period for which the Governor has provided for additional public comment; (iii) the Governor and the General Assembly exercise their authority to suspend the effective date of a regulation until the end of the next regular legislative session; or (iv) the agency suspends the regulatory process, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 30-day public comment period and no earlier than 15 days from publication of the readopted action.

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

FAST-TRACK RULEMAKING PROCESS

Section 2.2-4012.1 of the Code of Virginia provides an exemption from certain provisions of the Administrative Process Act for agency regulations deemed by the Governor to be noncontroversial. To use this process, Governor's concurrence is required and advance notice must be provided to certain legislative committees. Fast-track regulations will become effective on the date noted in the regulatory action if no objections to using the process are filed in accordance with § 2.2-4012.1.

EMERGENCY REGULATIONS

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

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

STATEMENT

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

CITATION TO THE VIRGINIA REGISTER

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

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

Members of the Virginia Code Commission: **John S. Edwards**, Chairman; **William R. Janis**, Vice Chairman; **James M. LeMunyon**; **Ryan T. McDougle**; **Robert L. Calhoun**; **Frank S. Ferguson**; **E.M. Miller, Jr.**; **Thomas M. Moncure, Jr.**; **James F. Almand**; **Jane M. Roush**.

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

PUBLICATION SCHEDULE AND DEADLINES

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

July 2010 through June 2011

| <u>Volume: Issue</u> | <u>Material Submitted By Noon*</u> | <u>Will Be Published On</u> |
|----------------------|--------------------------------------|-----------------------------|
| 26:23 | June 30, 2010 | July 19, 2010 |
| 26:24 | July 14, 2010 | August 2, 2010 |
| 26:25 | July 28, 2010 | August 16, 2010 |
| 26:26 | August 11, 2010 | August 30, 2010 |
| 27:1 | August 25, 2010 | September 13, 2010 |
| 27:2 | September 8, 2010 | September 27, 2010 |
| 27:3 | September 22, 2010 | October 11, 2010 |
| 27:4 | October 6, 2010 | October 25, 2010 |
| 27:5 | October 20, 2010 | November 8, 2010 |
| 27:6 | November 3, 2010 | November 22, 2010 |
| 27:7 | November 16, 2010 (Tuesday) | December 6, 2010 |
| 27:8 | December 1, 2010 | December 20, 2010 |
| 27:9 | December 14, 2010 (Tuesday) | January 3, 2011 |
| 27:10 | December 29, 2010 | January 17, 2011 |
| 27:11 | January 12, 2011 | January 31, 2011 |
| 27:12 | January 26, 2011 | February 14, 2011 |
| 27:13 | February 9, 2011 | February 28, 2011 |
| 27:14 | February 23, 2011 | March 14, 2011 |
| 27:15 | March 9, 2011 | March 28, 2011 |
| 27:16 | March 23, 2011 | April 11, 2011 |
| 27:17 | April 6, 2011 | April 25, 2011 |
| 27:18 | April 20, 2011 | May 9, 2011 |
| 27:19 | May 4, 2011 | May 23, 2011 |
| 27:20 | May 18, 2011 | June 6, 2011 |
| 27:21 | June 1, 2011 | June 20, 2011 |

*Filing deadlines are Wednesdays unless otherwise specified.

PETITIONS FOR RULEMAKING

TITLE 12. HEALTH

STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Agency Decision

Title of Regulation: 12VAC35-115. Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services.

Statutory Authority: § 37.2-400 of the Code of Virginia.

Name of Petitioner: Steven Shoon.

Nature of Petitioner's Request: Amend 12VAC35-115-30 to (i) add statements to the definitions of "department" and "provider" that exclude the Department of Corrections and (ii) remove the Department of Corrections exclusion from the definitions of "abuse" and "neglect."

Agency Decision: Take no action.

Statement of Reason for Decision: The definitions of "abuse" and "neglect" in § 37.2-100 of the Code of Virginia includes the Department of Corrections exclusion. Therefore, the provisions of 12VAC35-115-30 referenced in this petition should not be changed as requested.

Agency Contact: Linda B. Grasewicz, Regulatory Coordinator, Department of Behavioral Health and Developmental Services, 1220 Bank Street, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-0040, FAX (804) 371-0092, or email linda.grasewicz@dbhds.virginia.gov.

VA.R. Doc. No. R10-54; Filed July 1, 2010, 9:14 a.m.

Agency Decision

Title of Regulation: 12VAC35-115. Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services.

Statutory Authority: § 37.2-400 of the Code of Virginia.

Name of Petitioner: Steven Shoon.

Nature of Petitioner's Request: Amend 12VAC35-115-30 to change the phrase "mental health, mental retardation, and substance abuse services" to "behavioral health and developmental services" in the definitions of "community services board" and "neglect."

Agency Decision: Take no action.

Statement of Reason for Decision: The definitions of "community services board" and "neglect" in § 37.2-100 of

the Code of Virginia contain the phrase "mental health, mental retardation, and substance abuse services."

Agency Contact: Linda B. Grasewicz, Regulatory Coordinator, Department of Behavioral Health and Developmental Services, 1220 Bank Street, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-0040, FAX (804) 371-0092, or email linda.grasewicz@dbhds.virginia.gov.

VA.R. Doc. No. R10-55; Filed July 1, 2010, 9:14 a.m.

Agency Decision

Title of Regulation: 12VAC35-115. Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services.

Statutory Authority: § 37.2-400 of the Code of Virginia.

Name of Petitioner: Steven Shoon.

Nature of Petitioner's Request: Amend 12VAC35-115-10 to remove the adjectives "public or private" to describe "providers" as redundant and remove the phrase "excluding the Department of Corrections," which appears twice in this section.

Agency Decision: Take no action.

Statement of Reason for Decision: The Department of Corrections exclusion reflects the current provisions of the Code of Virginia. The inclusion of the adjectives "public or private" is not redundant.

Agency Contact: Linda B. Grasewicz, Regulatory Coordinator, Department of Behavioral Health and Developmental Services, 1220 Bank Street, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-0040, FAX (804) 371-0092, or email linda.grasewicz@dbhds.virginia.gov.

VA.R. Doc. No. R10-56; Filed July 1, 2010, 9:14 a.m.

Agency Decision

Title of Regulation: 12VAC35-115. Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services.

Statutory Authority: § 37.2-400 of the Code of Virginia.

Name of Petitioner: Steven Shoon.

Nature of Petitioner's Request: Amend 12VAC35-115-70 B 8 b (3) by (i) creating a new subparagraph, 12VAC35-115-70 B 8 b (4), based on commitment status (Chapter 11 and 11.1); (ii) leaving the information related to commitments under Chapter 11 in 12VAC35-115-70 B 8 b (3); and (iii) providing

Petitions for Rulemaking

additional information for commitments under Chapter 11.1 in a new subparagraph, 12VAC35-115-70 B 8 b (4) as follows:

- a) The 2003 Guidelines For The Management of Individuals Found Not Guilty By Reason of Insanity (NGRI Manual) does not make the statement on how and when the Forensics Review Panel (FRP) reviews annual reports and their recommendations for disposition,
- b) The NGRI Manual makes the statement that completing the privilege process is the criteria for the FRP approving the treatment team's submission to the court recommending release,
- c) The NGRI Manual does not state whether the packet for conditional release or unconditional release is an annual report or a report for clinical findings attached to and in support of the Commissioner's petition for release,
- d) The NGRI Manual does not state the Commissioner's statutory function within the statute on Annual Continuation of Confinement Hearings (§ 19.2-182.5 B of the Code of Virginia), which the FRP approval requirement derives its statutory authority from, for attaching itself to the submission of annual reports with recommendations other than continued hospitalization,
- e) The NGRI Manual states the FRP reviews treatment team submissions recommending release without declaring whether treatment team submissions are annual reports or reports for clinical findings attached to and in support of the Commissioner's petition for release,
- f) The NGRI Manual makes the statement that the NGRI acquittees may request release, resulting in the acquittee's need for inpatient hospitalization, and
- g) The NGRI Manual does not state that the annual report recommending release results in the court of committing jurisdiction ordering a second evaluation to assess and report on the NGRI acquittee's need for inpatient hospitalization.

Agency Decision: Take no action.

Statement of Reason for Decision: The Department of Behavioral Health and Developmental Services and state operated facilities have many internal policies and procedures including the NGRI Manual. Internal policies are tools for managing day-to-day operations that are more specific and easier to amend or change than a regulation. Such policies must be in compliance with related regulations.

Agency Contact: Linda B. Grasewicz, Regulatory Coordinator, Department of Behavioral Health and Developmental Services, 1220 Bank Street, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-0040, FAX (804) 371-0092, or email linda.grasewicz@dbhds.virginia.gov.

VA.R. Doc. No. R10-57; Filed July 1, 2010, 9:14 a.m.

Agency Decision

Title of Regulation: **12VAC35-115. Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services.**

Statutory Authority: § 37.2-400 of the Code of Virginia.

Name of Petitioner: Steven Shoon.

Nature of Petitioner's Request: Amend 12VAC35-115-90 to prohibit physicians or clinical psychologists involved in denying or limiting an individual's access to his service record from selecting second evaluators to review the denial of the individual's request to access his service record.

Agency Decision: Take no action.

Statement of Reason for Decision: The regulations require the provider to designate a physician or clinical psychologist who is not directly involved in the denial to review the decision to deny access.

Agency Contact: Linda B. Grasewicz, Regulatory Coordinator, Department of Behavioral Health and Developmental Services, 1220 Bank Street, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-0040, FAX (804) 371-0092, or email linda.grasewicz@dbhds.virginia.gov.

VA.R. Doc. No. R10-58; Filed July 1, 2010, 9:14 a.m.

Agency Decision

Title of Regulation: **12VAC35-115. Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services.**

Statutory Authority: § 37.2-400 of the Code of Virginia.

Name of Petitioner: Steven Shoon.

Nature of Petitioner's Request: Amend 12VAC35-115-60 to only allow providers to return discharged individual's mail to senders when the providers do not have the discharged individual's address and the providers have made every attempt to ascertain the discharged individual's current address without success.

Agency Decision: Take no action.

Statement of Reason for Decision: The return of a discharged individual's mail is best dealt with in the provider's policy.

Agency Contact: Linda B. Grasewicz, Regulatory Coordinator, Department of Behavioral Health and Developmental Services, 1220 Bank Street, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-0040, FAX (804) 371-0092, or email linda.grasewicz@dbhds.virginia.gov.

VA.R. Doc. No. R10-59; Filed July 1, 2010, 9:14 a.m.

Agency Decision

Title of Regulation: 12VAC35-115. Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services.

Statutory Authority: § 37.2-400 of the Code of Virginia.

Name of Petitioner: Steven Shoon.

Nature of Petitioner's Request: Establish a new regulation requiring all providers receiving public funding to physically post Freedom of Information Act (FOIA) information.

Agency Decision: Take no action.

Statement of Reason for Decision: All providers can post such information. Requiring the posting of FOIA information is beyond the intended scope of 12VAC35-115-10. The petitioner could direct this request to the Virginia Freedom of Information Advisory Council.

Agency Contact: Linda B. Grasewicz, Regulatory Coordinator, Department of Behavioral Health and Developmental Services, 1220 Bank Street, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-0040, FAX (804) 371-0092, or email linda.grasewicz@dbhds.virginia.gov.

VA.R. Doc. No. R10-60; Filed July 1, 2010, 9:14 a.m.

NOTICES OF INTENDED REGULATORY ACTION

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Street, Suite 1300, Richmond, VA 23219, telephone (804)
371-8856, FAX (804) 786-1680, or email
brian.mccormick@dmas.virginia.gov.

VA.R. Doc. No. R10-2437; Filed July 1, 2010, 12:53 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: **12VAC30-80, Methods and Standards for Establishing Payment Rate; Other Types of Care;** and **12VAC30-50, Amount, Duration, and Scope of Medical and Remedial Care and Services.** The purpose of the proposed action is to conform to mandates contained in the 2010 Appropriation Act, Item 297 UUU and WWW. These mandates relate to (i) changes in the payment methodology for durable medical equipment and supplies and (ii) changes to the billing unit for incontinence supplies from a case amount to a per item amount.

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; Title XIX of the Social Security Act (42 USC § 1396).

Public Comment Deadline: August 18, 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.

VA.R. Doc. No. R10-2333; Filed July 1, 2010, 12:56 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: **12VAC30-50, Amount, Duration, and Scope of Medical and Remedial Care and Services;** and **12VAC30-60, Standards Established and Methods Used to Assure High Quality Care.** The purpose of the proposed action is to comply with Chapter 847, Item 297 YY of the 2010 Appropriation Act that implements the requirement to review intensive in-home services and community mental health services to ensure appropriate utilization and cost efficiency.

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; Title XIX of the Social Security Act (42 USC § 1396 et seq.).

Public Comment Deadline: August 18, 2010.

Agency Contact: Brian McCormick, Regulatory Supervisor, Department of Medical Assistance Services, 600 East Broad

REGULATIONS

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

Symbol Key

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

TITLE 1. ADMINISTRATION

STATE BOARD OF ELECTIONS

Final Regulation

REGISTRAR'S NOTICE: The State Board of Elections is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 B 8 of the Code of Virginia, which exempts agency action relating to the conduct of elections or eligibility to vote.

Title of Regulation: **1VAC20-10. Public Participation Guidelines (adding 1VAC20-10-10 through 1VAC20-10-130).**

Statutory Authority: § 24.2-103 of the Code of Virginia.

Effective Date: July 19, 2010.

Agency Contact: James B. Alcorn, Deputy Secretary, State Board of Elections, 1100 Bank Street, Richmond, VA 23219, telephone (804) 864-8944, or email james.alcorn@sbe.virginia.gov.

Summary:

The regulations provide procedures for the adoption of regulations based on model public participation guidelines issued by the Department of Planning and Budget. Public participation guidelines exist to promote public involvement in the development, amendment, or repeal of an agency's regulations.

CHAPTER 10 PUBLIC PARTICIPATION GUIDELINES

1VAC20-10-10. Definitions.

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

"Administrative Process Act" means Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

"Agency" means the State Board of Elections.

"Approving authority" means the State Board of Elections established pursuant to § 24.2-103 of the Code of Virginia as the legal authority to adopt regulations.

"Board" means the State Board of Elections, which is the unit of state government empowered by Title 24.2 of the Code of Virginia to make rules and regulations for registration of voters and elections. Actions specified in this

chapter may be fulfilled by state employees as delegated by the agency.

"Commonwealth Calendar" means the electronic calendar for official government meetings open to the public as required by § 2.2-3707 C of the Freedom of Information Act.

"Negotiated rulemaking panel" or "NRP" means an ad hoc advisory panel of interested parties established by an agency to consider issues that are controversial with the assistance of a facilitator or mediator, for the purpose of reaching a consensus in the development of a proposed regulatory action.

"Notification list" means a list used to notify persons pursuant to this chapter. Such a list may include an electronic list maintained through the Virginia Regulatory Town Hall or other list maintained by the agency.

"Open meeting" means any scheduled gathering of a unit of state government empowered by an agency's basic law to make regulations or decide cases, which is related to promulgating, amending or repealing a regulation.

"Person" means any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal or commercial entity and any successor, representative, agent, agency, or instrumentality thereof.

"Public hearing" means a scheduled time at which members of the board will meet for the purpose of receiving public comment on a regulatory action.

"Regulation" means any statement of general application having the force of law, affecting the rights or conduct of any person, adopted by the agency in accordance with the authority conferred on it by applicable laws.

"Regulatory action" means the promulgation, amendment, or repeal of a regulation by the agency.

"Regulatory advisory panel" or "RAP" means a standing or ad hoc advisory panel of interested parties established by the agency for the purpose of assisting in regulatory actions.

"Town Hall" means the Virginia Regulatory Town Hall, the website operated by the Virginia Department of Planning and Budget at www.townhall.virginia.gov, which has online public comment forums and displays information about regulatory meetings and regulatory actions under consideration in Virginia and sends this information to registered public users.

Regulations

"Virginia Register" means the Virginia Register of Regulations, the publication that provides official legal notice of new, amended, and repealed regulations of state agencies, which is published under the provisions of Article 6 (§ 2.2-4031 et seq.) of the Administrative Process Act.

1VAC20-10-20. Notification list.

A. The agency shall maintain a list of persons who have requested to be notified of regulatory actions being pursued by the agency.

B. Any person may request to be placed on a notification list by registering as a public user on the Town Hall or by making a request to the agency. Any person who requests to be placed on a notification list shall elect to be notified either by electronic means or through a postal carrier.

C. The agency may maintain additional lists for persons who have requested to be informed of specific regulatory issues, proposals, or actions.

D. When electronic mail is returned as undeliverable on multiple occasions at least 24 hours apart, that person may be deleted from the list. A single undeliverable message is insufficient cause to delete the person from the list.

E. When mail delivered by a postal carrier is returned as undeliverable on multiple occasions, that person may be deleted from the list.

F. The agency may periodically request those persons on the notification list to indicate their desire to either continue to be notified electronically, receive documents through a postal carrier, or be deleted from the list.

1VAC20-10-30. Information to be sent to persons on the notification list.

A. To persons electing to receive electronic notification or notification through a postal carrier as described in 1VAC20-10-20, the agency shall send the following information:

1. A notice of proposed exempt regulatory action with the comment period for a proposed, a repropoed, or an emergency regulation; and

2. If available, hyperlinks to, or instructions on how to obtain, a copy of the proposed action and any supporting documents.

B. The failure of any person to receive any notice or copies of any documents shall not affect the validity of any regulation or regulatory action.

1VAC20-10-40. Public comment.

A. Whenever directed by statute or upon its own initiative, the agency may commence the regulation adoption process and proceed to draft a proposal according to these procedures.

B. In considering any nonemergency, exempt regulatory action, the board shall afford interested persons an

opportunity to submit data, views, and arguments, either orally or in writing, to the agency. Such opportunity to comment shall include an online public comment forum on the Town Hall.

1. To any requesting person, the agency shall provide copies of the statement of basis, purpose, substance, and issues; any economic impact analysis of the proposed regulatory action; and the agency's response to public comments received.

2. The agency may begin crafting a regulatory action prior to or during any opportunities it provides to the public to submit comments.

C. The agency shall accept public comments in writing after the publication of a regulatory action in the Virginia Register as follows:

1. For a minimum of 30 calendar days following the publication of the notice of proposed exempt regulatory action.

2. For a minimum of 30 calendar days following the publication of a repropoed regulation.

3. To the extent reasonably possible following the publication of a proposed emergency regulation.

4. For a minimum of 21 calendar days following the publication of a notice of periodic review.

5. Not later than 21 calendar days following the publication of a petition for rulemaking.

D. The agency may determine if any of the comment periods listed in subsection C of this section shall be extended or reduced if necessary.

E. If the board finds that one or more changes with substantial impact have been made to a proposed regulation, it may allow an additional 30 calendar days to solicit additional public comment on the changes.

F. If practicable, the board shall send a draft of the board's summary description of public comment to all public commenters on the proposed regulation at least five days before final adoption of the regulation.

1VAC20-10-50. Petition for rulemaking.

A. Any person may petition the board to consider a regulatory action.

B. A petition shall include sufficient information to understand and evaluate the proposed action and contact the person responsible for presenting it. The following is a noninclusive list of information typically needed to the extent available:

1. The petitioner's name, mailing address, email address, and telephone number;

2. The petitioner's interest in the proposed action;
3. The substance and purpose of the rulemaking that is requested, including reference to any applicable Virginia Administrative Code sections;
4. Reference to the legal authority of the agency to take the action requested;
5. Statement of the need and justification for the proposed action;
6. Statement of the impact on the petitioner and other affected persons; and
7. Supporting documents, if applicable.

C. The agency shall receive, consider, and respond to a petition and shall have the sole authority to dispose of the petition. The board may require a petitioner to reimburse copying costs associated with a petition.

D. The petition shall be posted on the Town Hall and published in the Virginia Register.

E. Nothing in this chapter shall prohibit the agency from receiving information or from proceeding on its own motion for rulemaking.

1VAC20-10-60. Appointment of regulatory advisory panel.

A. The agency may appoint a regulatory advisory panel (RAP) to provide professional specialization or technical assistance when the agency determines that such expertise is necessary to address a specific regulatory issue or action or when individuals indicate an interest in working with the agency on a specific regulatory issue or action.

B. Any person may request the appointment of a RAP and request to participate in its activities. The agency shall determine when a RAP shall be appointed and the composition of the RAP.

C. A RAP may be dissolved by the agency if the proposed text of the regulation is posted on the Town Hall, published in the Virginia Register, or such other time as the agency determines is appropriate.

1VAC20-10-70. Appointment of negotiated rulemaking panel.

A. The agency may appoint a negotiated rulemaking panel (NRP) if a regulatory action is expected to be controversial.

B. An NRP that has been appointed by the agency may be dissolved by the agency when:

1. There is no longer controversy associated with the development of the regulation; or
2. The agency determines that resolution of a controversy is unlikely.

1VAC20-10-80. Meetings.

Notice of any open meeting, including meetings of a RAP or NRP, shall be posted on the Virginia Regulatory Town Hall and Commonwealth Calendar at least seven working days prior to the date of the meeting. The exception to this requirement is any meeting held in accordance with § 2.2-3707 D of the Code of Virginia allowing for contemporaneous notice to be provided to participants and the public.

1VAC20-10-90. Public hearings on regulations.

A. The board shall indicate in its notice of intended regulatory action whether it plans to hold a public hearing following the publication of the proposed stage of the regulatory action.

B. The board may conduct one or more public hearings during the comment period following the publication of a proposed regulatory action.

C. An agency is required to hold a public hearing following the publication of the proposed regulatory action when:

1. The Governor requests the board to hold a public hearing; or
2. The board receives requests for a public hearing from at least 25 persons during the public comment period following the publication of the notice of proposed regulatory action.

D. Notice of any public hearing shall be posted on the Town Hall and Commonwealth Calendar at least seven working days prior to the date of the hearing. The board shall also notify those persons who requested a hearing under subdivision C 2 of this section.

1VAC20-10-100. Effective date and posting to agency website.

Regulations adopted by the board shall be effective as of the date stated in the regulation, which may provide conditions, including preclearance required under the federal Voting Rights Act, and in no event before they are published in the Register of Regulations. All adopted regulations shall be posted to the agency website within three business days after they become effective.

1VAC20-10-110. Appeal of board decisions.

Any person aggrieved by an action of the board under this chapter may appeal to the House or Senate Privileges and Elections Committee or to the Joint Commission on Administrative Rules to make an objection as provided in § 2.2-4014 of the Code of Virginia.

1VAC20-10-120. Periodic review of regulations.

A. Following each presidential election, the board shall conduct a periodic review of its regulations consistent with an

Regulations

executive order issued by the Governor to receive comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance.

B. A periodic review may be conducted separately or in conjunction with other regulatory actions.

C. Notice of a periodic review shall be posted on the Town Hall and published in the Virginia Register.

1VAC20-10-130. Transition.

All regulatory actions shall be processed in accordance with this chapter. Policies of the board adopted or approved before July 19, 2010, shall be processed as regulations for publication in the Virginia Administrative Code.

VA.R. Doc. No. R10-2385; Filed June 30, 2010, 11:53 a.m.

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TITLE 2. AGRICULTURE

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Forms

Title of Regulation: **2VAC5-70. Health Requirements Governing the Control of Equine Infectious Anemia in Virginia.**

Statutory Authority: §§ 3.2-6001 and 3.2-6004 of the Code of Virginia.

Contact Information: Doug Saunders, Deputy Director, Division of Animal and Food Industry Services, Virginia Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23219, telephone (804) 786-8905, or email doug.saunders@vdacs.virginia.gov.

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 (2VAC5-70)

~~Equine Sale Release Requirement and Quarantine, Form VDACS 03038.~~

~~Permit For Movement of Restricted Animals, Form VS Form 1-27, eff. 1/73 (rev. 6/89).~~

~~Equine Infectious Anemia Report, Form VDACS 03172, eff. 4/85.~~

~~Horse Show Report Form.~~

~~Livestock For Slaughter Purposes Only, Form VDACS 03019, eff. 8/82.~~

~~Certificate of Veterinary Inspection (For Use Only in Shipping Equine) Examination, Form VDACS-03034, eff. 5/84 (rev. 1/06).~~

~~Notice of Quarantine, Form VDACS-03021, eff. 9/85 (rev. 5/10).~~

~~Equine Event Report (Equidae with Official EIA Test), VDACS-03028 (eff. 10/01).~~

~~Equine Event Denied Entry Report, VDACS-03029 (eff. 9/09).~~

~~Equine Infectious Anemia Laboratory Test, VS Form 10-11 (rev. 5/00).~~

VA.R. Doc. No. R10-2461; Filed June 22, 2010, 11:11 a.m.

REGISTRAR'S NOTICE: For the following regulations the Department of Agriculture and Consumer Services is claiming an exemption from the Administrative Process Act in accordance with § 3.2-703 of the Code of Virginia, which exempts quarantine to prevent or retard the spread of a pest into, within, or from the Commonwealth.

Final Regulation

Title of Regulation: **2VAC5-316. Rules and Regulations for Enforcement of the Virginia Pest Law - Beach Vitex Quarantine (amending 2VAC5-316-30 through 2VAC5-316-90).**

Statutory Authority: § 3.2-703 of the Code of Virginia.

Effective Date: July 8, 2010.

Agency Contact: Larry Nichols, Program Manager, Department of Agriculture and Consumer Services, 102 Governor Street, Richmond, VA 23219, telephone (804) 786-3515, FAX (804) 371-7793, or email larry.nichols@vdacs.virginia.gov.

Summary:

The amendments expand the Beach Vitex quarantine to prohibit the movement of regulated articles throughout the entire Commonwealth of Virginia, which is necessary to prevent the long distance (artificial) spread of Beach Vitex to coastal areas of the Commonwealth. Prior regulation prohibited the movement of regulated articles in Accomack and Northampton counties and the cities of Norfolk and Virginia Beach. Including all Virginia localities in this quarantine will help prevent the spread of this plant from inland areas to the coastal areas of Virginia.

The amendments restrict movement of regulated articles, as defined in 2VAC5-316-40. A certificate or permit must be issued before movement of regulated articles into, within, or out of the regulated area can occur. Conditions under which the certificate or permit will be issued are described in 2VAC5-316-70.

2VAC5-316-30. Definitions.

The following words and terms shall have the following meanings unless the context clearly indicates otherwise:

"Beach Vitex" means the live plant, in any life stage, known as Beach Vitex, *Vitex rotundifolia*.

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

"Certificate" means a document issued by an inspector or person operating in accordance with a compliance agreement to allow the movement of regulated articles to any destination.

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

"Compliance agreement" means a written agreement between a person engaged in handling, receiving, or moving regulated articles and the Virginia Department of Agriculture and Consumer Services wherein the former agrees to fulfill the requirements of the compliance agreement and comply with the provisions of this regulation.

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

"Infestation" means the presence of Beach Vitex or the existence of circumstances that make it reasonable to believe that life stages of Beach Vitex are present.

"Inspector" means an employee of the Virginia Department of Agriculture and Consumer Services or other person authorized by the Commissioner of the Virginia Department of Agriculture and Consumer Services to enforce the provisions of this quarantine or regulation.

"Limited permit" means a document issued by an inspector to allow the movement of regulated articles to a specific destination.

"Moved," "move," or "movement" means shipped, offered for shipment, received for transportation, transported, carried, or allowed to be moved, shipped, transported, or carried.

"Person" means the term as defined in § 1-230 of the Code of Virginia.

"Regulated area" means the ~~locality or~~ area listed in 2VAC5-315-50 of this quarantine.

"Virginia Pest Law" means the statute set forth in Chapter 7 (§ 3.2-700 et seq.) of Title 3.2 of the Code of Virginia.

2VAC5-316-40. Regulated articles.

The following articles are regulated under the provisions of this quarantine and shall not be moved into, within, or out of ~~any~~ the regulated area in Virginia, except in compliance with the conditions prescribed in this quarantine:

1. Beach Vitex, in any life stage, including roots, stems, and seeds.
2. Any article known to be infested with Beach Vitex, such as sand, soil, or mulch containing Beach Vitex in any life stage.
3. Any other article or means of conveyance when it is determined by an inspector that it presents a risk of spreading Beach Vitex.

2VAC5-316-50. Regulated areas.

~~The following areas in Virginia are quarantined for Beach Vitex:~~

~~The entire counties of:~~

~~Accomaek~~

~~Northampton~~

~~The entire cities of:~~

~~Norfolk~~

~~Virginia Beach~~

The entire Commonwealth of Virginia is quarantined for Beach Vitex.

2VAC5-316-60. Conditions governing the intrastate movement of regulated articles.

~~A. Movement within regulated area~~ The movement of a regulated article ~~solely into, within, or out of~~ the quarantined area is prohibited unless accompanied by a valid certificate or limited permit.

~~B. Movement from regulated area into nonregulated area— movement of a regulated article that originates inside of the quarantined area to an area outside of the quarantined area is prohibited unless accompanied by a valid certificate or limited permit.~~

~~C. Movement from nonregulated area into regulated area— movement of a regulated article that originates outside of the quarantined area to an area inside of the quarantined area is prohibited unless accompanied by a valid certificate or limited permit.~~

~~D. Movement outside of the regulated area— movement of a regulated article solely outside of the quarantined area is not restricted.~~

2VAC5-316-70. Issuance and cancellation of certificates and limited permits.

A. Certificates and limited permits may be issued by an inspector for the movement of regulated articles into, within, or out of ~~any~~ the regulated area ~~to any destination within Virginia~~ when the regulated articles meet the following three conditions:

Regulations

1. The regulated articles are to be moved ~~intrastate~~ to a specified destination under conditions that specify the limited handling, utilization, processing, or treatment of the articles when the inspector determines that such movement will not result in the spread of Beach Vitex because the life stage of the plant will be destroyed by such specified handling, utilization, processing, or treatment; or the regulated articles are to be moved by a state or federal agency or person authorized by the department for experimental or scientific purposes;

2. The regulated articles are to be moved in compliance with any additional conditions deemed necessary under the Virginia Pest Law to prevent the spread of Beach Vitex; and

3. The regulated articles are eligible for unrestricted movement under all other domestic plant quarantines and regulations applicable to the regulated articles.

B. Any certificate or limited permit that has been issued or authorized may be withdrawn by the inspector orally or in writing if the inspector determines that the holder of the certificate or limited permit has not complied with all conditions for the use of the certificate or limited permit or with any applicable compliance agreement. If the withdrawal is oral, the withdrawal and the reasons for the withdrawal shall be confirmed in writing and communicated to the certificate or limited permit holder as promptly as circumstances allow.

2VAC5-316-80. Assembly and inspection of regulated articles.

A. Any person who desires to move regulated articles into, within, or out of ~~any the~~ regulated area shall apply for a limited permit as far in advance as practical but no less than five business days before the regulated articles are to be moved.

B. The regulated article must be assembled at the place and in the manner the inspector designates as necessary to facilitate inspection and shall be safeguarded from infestation.

2VAC5-316-90. Attachment and disposition of certificates and limited permits.

A. A certificate or limited permit required for the movement of a regulated article into, within, or out of ~~any the~~ regulated area must be attached at all times during the intrastate movement to the outside of the container that contains the regulated article or to the regulated article itself. The requirements of this section may also be met by attaching the certificate or limited permit to the consignee's copy of the waybill provided the regulated article is sufficiently described on the certificate or limited permit and on the waybill to facilitate the identification of the regulated article.

B. The certificate or limited permit for the intrastate movement of a regulated article must be furnished by the

carrier to the consignee at the destination of the regulated article. A copy of the certificate or the limited permit must be retained by the sender of the regulated article at the place of shipment.

VA.R. Doc. No. R10-2483; Filed July 8, 2010, 9:35 a.m.

Final Regulation

Title of Regulation: 2VAC5-335. Virginia Emerald Ash Borer Quarantine for Enforcement of the Virginia Pest Law (amending 2VAC5-335-50).

Statutory Authority: § 3.2-703 of the Code of Virginia.

Effective Date: July 8, 2010.

Agency Contact: Larry M. Nichols, Program Manager, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 371-3515, FAX (804) 371-7793, or email larry.nichols@vdacs.virginia.gov.

Summary:

The amendment extends the regulated areas under the Virginia Emerald Ash Borer Quarantine due to the detection of adult Emerald Ash Borers in Frederick County. The current regulated area is changed by the addition of the counties of Frederick and Clarke and the city of Winchester. All other parts of the Emerald Ash Borer Quarantine remain unchanged.

2VAC5-335-50. Regulated areas.

The following areas in Virginia:

The entire counties of:

Arlington

Clarke

Fairfax

Fauquier

Frederick

Loudoun

Prince William

The entire independent cities of:

Alexandria

Fairfax City

Falls Church

Manassas

Manassas Park

Winchester

VA.R. Doc. No. R10-2495; Filed July 8, 2010, 9:34 a.m.

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TITLE 5. CORPORATIONS

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.

Title of Regulation: **5VAC5-40. Administration of the Office of the Clerk of the Commission (adding 5VAC5-40-10).**

Statutory Authority: § 12.1-13 of the Code of Virginia.

Effective Date: July 1, 2010.

Agency Contact: Joel Peck, Clerk of the Commission, State Corporation Commission, 1300 E. Main Street, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9733, FAX (804) 692-0681, or email joel.peck@scc.virginia.gov.

Summary:

The regulation is intended to implement the provisions of Chapter 669 of the 2010 Acts of Assembly relating to fees charged by the State Corporation Commission for copying. The regulation specifies the fees to be charged for copying and for providing a certificate for certain documents. The fees are identical to those that are currently in statute. Changes from the proposed regulation and the final regulation are technical in nature and merely conform the language of the regulation more closely to the language of the statute the regulation is intended to replace.

AT RICHMOND, JUNE 29, 2010

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. CLK-2010-00007

Ex Parte: In re: fees charged by the Office of the Clerk of the Commission

ORDER ADOPTING A REGULATION

On May 18, 2010, the State Corporation Commission ("Commission") entered an Order to Take Notice of a proposal by the Commission to adopt a regulation pursuant to Chapter 669 of the 2010 Virginia Acts of Assembly ("Chapter 669 of the Acts"). The proposed regulation, 5 VAC 5-40-10, places in the Virginia Administrative Code the fees charged by the Commission for copying and other

services that are repealed from the Code of Virginia by Chapter 669 of the Acts. The Order and proposed regulation were published in the Virginia Register of Regulations on June 7, 2010, and published on the Commission's website. Interested parties were afforded the opportunity to provide written comments or request a hearing on or before June 18, 2010.

No comments were filed, nor were any requests for hearing made in this matter.

NOW THE COMMISSION, upon consideration of the proposed regulation, the recommendations of the Office of the Clerk of the Commission ("Clerk"), and applicable law, concludes that the proposed regulation should be modified to reflect certain technical changes recommended by the Clerk and that the proposed regulation, as modified, should be adopted with an effective date of July 1, 2010.

Accordingly, IT IS ORDERED THAT:

- (1) The proposed regulation, 5 VAC 5-40-10, as modified herein and attached hereto, is adopted effective July 1, 2010.
- (2) This Order and the attached regulation shall be posted on the Commission's website at <http://www.scc.virginia.gov/case>.
- (3) The Commission's Division of Information Resources shall send a copy of this Order, including a copy of the attached regulation, to the Virginia Registrar of Regulations for publication in the Virginia Register of Regulations.
- (4) This case is dismissed from the Commission's docket of active cases.

AN ATTESTED COPY hereof shall be sent to the Clerk of the Commission, who shall forthwith mail a copy of this Order, including a copy of the attached regulation, to interested parties as he may designate.

CHAPTER 40

ADMINISTRATION OF THE OFFICE OF THE CLERK OF THE COMMISSION

5VAC5-40-10. Fees to be charged by the [~~Office of the Clerk commission~~].

A. The Office of the Clerk shall charge and collect a fee of \$6.00 for each certificate of fact provided pursuant to § 12.1-20 of the Code of Virginia.

B. The commission shall charge and collect for furnishing [and certifying] a copy of any document, instrument, or paper [or any information from its records] \$.50 per page and \$3.00 for the certificate and affixing [thereto] the seal [~~thereto~~ of the commission or a facsimile thereof].

VA.R. Doc. No. R10-2430; Filed June 29, 2010, 4:22 p.m.

Regulations

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TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

DEPARTMENT OF CRIMINAL JUSTICE SERVICES

Final Regulation

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

Title of Regulation: **6VAC20-20. Rules Relating to Compulsory Minimum Training Standards for Law-Enforcement Officers (amending 6VAC20-20-21).**

Statutory Authority: § 9.1-102 of the Code of Virginia.

Effective Date: August 18, 2010.

Agency Contact: Judith Kirkendall, Regulatory Coordinator, Department of Criminal Justice Services, 1100 Bank Street, Richmond, VA 23219, telephone (804) 786-8003, FAX (804) 225-3853, or email judith.kirkendall@dcjs.virginia.gov.

Summary:

The amendment removes the outdated and inaccurate numbering related to performance outcomes.

6VAC20-20-21. Performance outcomes and minimum hours required.

A. The performance outcomes are detailed in the document entitled "Performance Outcomes for Compulsory Minimum Training For Law Enforcement Officers," December 1997, which is incorporated by reference and made a part of this chapter.

B. Academy training.

1. Category 1—Professionalism, ~~Performance Outcomes 1.1 through 1.5~~
2. Category 2—Legal Issues, ~~Performance Outcomes 2.A.1 through 2.C.1.f~~
3. Category 3—Communications, ~~Performance Outcomes 3.A.1 through 3.B.3~~
4. Category 4—Patrol, ~~Performance Outcomes 4.A.1 through 4.H.3~~
5. Category 5—Investigations, ~~Performance Outcomes 5.A.1 through 5.D.2~~

6. Category 6—Defensive Tactics/Use of Force, ~~Performance Outcomes 6.A.1 through 6.F.1~~

7. Category 7—Weapons Use, ~~Performance Outcomes 7.A.1 through 7.A.3.d~~

8. Category 8—Driver Training, ~~Performance Outcomes 8.A.1 through 8.A.7~~

9. Category 9—Physical Training, ~~Performance Outcomes 9.A.1 through 9.B.9 (Optional)~~

ACADEMY TRAINING HOURS—480 (excluding Category 9)

C. Field training.

Category 10—Field Training, ~~Performance Outcomes 10.A.1 through 10.I.6~~

FIELD TRAINING HOURS—100

TOTAL MINIMUM TRAINING STANDARDS HOURS—580 (excluding Category 9)

VA.R. Doc. No. R10-2434; Filed July 2, 2010, 8:31 a.m.

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TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Final Regulation

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

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

9VAC5-30. Ambient Air Quality Standards (amending 9VAC5-30-70).

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

Effective Date: August 18, 2010.

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.

Summary:

A new Appendix S was added to 40 CFR Part 50. Therefore, 9VAC5-20 is amended to add Appendix S to the list of federal documents incorporated by reference.

9VAC5-30 is revised to (i) specify that NO₂ is the indicator for NO_x, (ii) limit the 53 ppb standard to the annual primary standard and change unit of measurement, (iii) add the new primary 1-hour standard, (iv) specify reference methods used to measure the standard, and (v) specify how the different standards are attained.

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

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

1. United States Code.
2. Code of Virginia.
3. Code of Federal Regulations.
4. Federal Register.
5. Technical and scientific reference documents.

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

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

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

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

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

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

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

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

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

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

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

(e) Appendix E -- Reserved.

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

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

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

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

(j) Appendix J -- Reference Method for the Determination of Particulate Matter as PM₁₀ in the Atmosphere.

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

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

(m) Appendix M - Reserved.

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

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

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

(q) Appendix Q - Reference Method for the Determination of Lead in Suspended Particulate Matter as PM₁₀ Collected from Ambient Air.

Regulations

(r) Appendix R - Interpretation of the National Ambient Air Quality Standards for Lead.

(s) Appendix S - Interpretation of the Primary National Ambient Air Quality Standards for Oxides of Nitrogen (Nitrogen Dioxide).

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

(a) Appendix M -- Recommended Test Methods for State Implementation Plans.

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

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

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

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

Appendix A - Quality Assurance Requirements for SLAMS, SPMs and PSD Air Monitoring.

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

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

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

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

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

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

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

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

(9) 40 CFR Part 72, Permits Regulation.

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

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

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

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

(14) 40 CFR Part 77, Excess Emissions.

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

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

(17) 40 CFR Part 152 Subpart I, Classification of Pesticides.

(18) 49 CFR Part 172, Hazardous Materials Table. Special Provisions, Hazardous Materials Communications, Emergency Response Information, and Training Requirements, Subpart E, Labeling.

(19) 29 CFR Part 1926 Subpart F, Fire Protection and Prevention.

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

2. U.S. Environmental Protection Agency.

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

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

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

(3) "Guidelines for Determining Capture Efficiency" (GD-35), Emissions Monitoring and Analysis Division, Office of Air Quality Planning and Standards, January 9, 1995.

b. Copies of the document identified in subdivision E 2 a (1) of this subdivision, and Volume I and Supplements A through C of the document identified in subdivision E 2 a (2) of this subdivision, may be obtained from: U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161; phone 1-800-553-6847. Copies of Supplements D and E of the document identified in subdivision E 2 a (2) of this subdivision may be obtained online from EPA's Technology Transfer Network at <http://www.epa.gov/ttn/index.html>. Copies of the document identified in subdivision E 2 a (3) of this subdivision are only available online from EPA's

Technology Transfer Network at <http://www.epa.gov/ttn/emc/guidInd.html>.

3. U.S. government.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(18) D86-04b, "Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure" (2004).

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

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

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

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

(23) F852-99, "Standard Specification for Portable Gasoline Containers for Consumer Use" (reapproved 2006).

(24) F976-02, "Standard Specification for Portable Kerosine and Diesel Containers for Consumer Use."

(25) D4457-02, "Standard Test Method for Determination of Dichloromethane and 1,1,1-Trichloroethane in Paints and Coatings by Direct Injection into a Gas Chromatograph" (reapproved 2008).

(26) D3792-05, "Standard Test Method for Water Content of Coatings by Direct Injection Into a Gas Chromatograph."

(27) D2879-97, "Standard Test Method for Vapor Pressure-Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope" (reapproved 2007).

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

5. American Petroleum Institute (API).

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

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- b. Copies may be obtained from: American Petroleum Institute, 1220 L Street, Northwest, Washington, D.C. 20005; phone (202) 682-8000.
6. American Conference of Governmental Industrial Hygienists (ACGIH).
- a. The following document from the ACGIH is incorporated herein by reference: 1991-1992 Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices (ACGIH Handbook).
- b. Copies may be obtained from: ACGIH, 1330 Kemper Meadow Drive, Suite 600, Cincinnati, Ohio 45240; phone (513) 742-2020.
7. National Fire Prevention Association (NFPA).
- a. The documents specified below from the National Fire Prevention Association are incorporated herein by reference.
- (1) NFPA 385, Standard for Tank Vehicles for Flammable and Combustible Liquids, 2000 Edition.
- (2) NFPA 30, Flammable and Combustible Liquids Code, 2000 Edition.
- (3) NFPA 30A, Code for Motor Fuel Dispensing Facilities and Repair Garages, 2000 Edition.
- b. Copies may be obtained from the National Fire Prevention Association, One Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269-9101; phone (617) 770-3000.
8. American Society of Mechanical Engineers (ASME).
- a. The documents specified below from the American Society of Mechanical Engineers are incorporated herein by reference.
- (1) ASME Power Test Codes: Test Code for Steam Generating Units, Power Test Code 4.1-1964 (R1991).
- (2) ASME Interim Supplement 19.5 on Instruments and Apparatus: Application, Part II of Fluid Meters, 6th edition (1971).
- (3) Standard for the Qualification and Certification of Resource Recovery Facility Operators, ASME QRO-1-1994.
- b. Copies may be obtained from the American Society of Mechanical Engineers, Three Park Avenue, New York, New York 10016; phone (800) 843-2763.
9. American Hospital Association (AHA).
- a. The following document from the American Hospital Association is incorporated herein by reference: An Ounce of Prevention: Waste Reduction Strategies for Health Care Facilities, AHA Catalog no. W5-057007, 1993.
- b. Copies may be obtained from: American Hospital Association, One North Franklin, Chicago, IL 60606; phone (800) 242-2626.
10. Bay Area Air Quality Management District (BAAQMD).
- a. The following documents from the Bay Area Air Quality Management District are incorporated herein by reference:
- (1) Method 41, "Determination of Volatile Organic Compounds in Solvent-Based Coatings and Related Materials Containing Parachlorobenzotrifluoride" (December 20, 1995).
- (2) Method 43, "Determination of Volatile Methylsiloxanes in Solvent-Based Coatings, Inks, and Related Materials" (November 6, 1996).
- b. Copies may be obtained from: Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109, phone (415) 771-6000.
11. South Coast Air Quality Management District (SCAQMD).
- a. The following documents from the South Coast Air Quality Management District are incorporated herein by reference:
- (1) Method 303-91, "Determination of Exempt Compounds," in Manual SSMLLABM, "Laboratory Methods of Analysis for Enforcement Samples" (1996).
- (2) Method 318-95, "Determination of Weight Percent Elemental Metal in Coatings by X-Ray Diffraction," in Manual SSMLLABM, "Laboratory Methods of Analysis for Enforcement Samples" (1996).
- (3) Rule 1174 Ignition Method Compliance Certification Protocol (February 28, 1991).
- (4) Method 304-91, "Determination of Volatile Organic Compounds (VOC) in Various Materials," in Manual SSMLLABM, "Laboratory Methods of Analysis for Enforcement Samples" (1996).
- (5) Method 316A-92, "Determination of Volatile Organic Compounds (VOC) in Materials Used for Pipes and Fittings" in Manual SSMLLABM, "Laboratory Methods of Analysis for Enforcement Samples" (1996).
- (6) "General Test Method for Determining Solvent Losses from Spray Gun Cleaning Systems," October 3, 1989.
- b. Copies may be obtained from: South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765, phone (909) 396-2000.

12. California Air Resources Board (CARB).

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

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

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

(3) Method 100, "Procedures for Continuous Gaseous Emission Stack Sampling" (July 28, 1997).

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

(5) Method 310, "Determination of Volatile Organic Compounds (VOC) in Consumer Products and Reactive Organic Compounds in Aerosol Coating Products (Including Appendices A and B)" (May 5, 2005).

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

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

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

(9) "Certification Procedure 501 for Portable Fuel Containers and Spill-Proof Spouts, CP-501" (July 26, 2006).

(10) "Test Procedure for Determining Integrity of Spill-Proof Spouts and Spill-Proof Systems, TP-501" (July 26, 2006).

(11) "Test Procedure for Determining Diurnal Emissions from Portable Fuel Containers, TP-502" (July 26, 2006).

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

13. American Architectural Manufacturers Association.

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

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

(2) Voluntary Specification 2605-02, "Performance Requirements and Test Procedures for Superior

Performing Organic Coatings on Aluminum Extrusions and Panels" (2002).

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

14. American Furniture Manufacturers Association.

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

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

9VAC5-30-70. Nitrogen dioxide Oxides of nitrogen with nitrogen dioxide as the indicator.

A. ~~The primary and secondary annual ambient air quality standard is 0.053 parts per million (100 micrograms per cubic meter) — annual arithmetic mean concentration 53 parts per billion (ppb), annual average concentration, measured in the ambient air as nitrogen dioxide.~~

B. The primary 1-hour ambient air quality standard is 100 ppb, 1-hour average concentration, annual arithmetic mean concentration.

C. The secondary ambient air quality standard is 0.053 parts per million (ppm) (100 micrograms per cubic meter), annual arithmetic mean concentration.

D. ~~The levels of the standards Nitrogen dioxide shall be measured by the a reference method described in based on Appendix F of 40 CFR Part 50, or other method designated as such, or by an equivalent method by a federal equivalent method (FEM) designated in accordance with 40 CFR Part 53.~~

C. ~~The standards are attained when the annual arithmetic mean concentration in a calendar year is less than or equal to 0.053 ppm, rounded to three decimal places (fractional parts equal to or greater than 0.0005 ppm must be rounded up). To demonstrate attainment, an annual mean must be based upon hourly data that are at least 75% complete or upon data derived from manual methods that are at least 75% complete for the scheduled sampling days in each calendar quarter E. The annual primary standard is met when the annual average concentration in a calendar year is less than or equal to 53 ppb, as determined in accordance with Appendix S of 40 CFR Part 50 for the annual standard.~~

F. The 1-hour primary standard is met when the three-year average of the annual 98th percentile of the daily maximum 1-hour average concentration is less than or equal to 100 ppb.

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as determined in accordance with Appendix S of 40 CFR Part 50 for the 1-hour standard.

G. The secondary standard is attained when the annual arithmetic mean concentration in a calendar year is less than or equal to 0.053 ppm, rounded to three decimal places (fractional parts equal to or greater than 0.0005 ppm must be rounded up). To demonstrate attainment, an annual mean shall be based upon hourly data that are at least 75% complete or upon data derived from manual methods that are at least 75% complete for the scheduled sampling days in each calendar quarter.

VA.R. Doc. No. R10-2330; Filed June 28, 2010; 8:18 a.m.

Final Regulation

REGISTRAR'S NOTICE: The State Water Control Board is claiming an exclusion from the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The State Water Control Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 9VAC5-140. Regulation for Emissions Trading Programs (repealing 9VAC5-140-1061, 9VAC5-140-1062, 9VAC5-140-2061, 9VAC5-140-2062, 9VAC5-140-3061, 9VAC5-140-3062).

Statutory Authority: §§ 10.1-1308 and 10.1-1322.3 of the Code of Virginia; §§ 108, 109, 110, and 302 of the federal Clean Air Act; 40 CFR Part 51.

Effective Date: August 18, 2010.

Agency Contact: Mary L. Major, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4423, FAX (804) 698-4510, TTY (804) 698-4021, or email mary.major@deq.virginia.gov.

Background:

The State Air Pollution Control Board adopted final regulations to implement the provisions of the Code of Virginia that address compliance in nonattainment areas for the state Clean Air Interstate Rule (CAIR) program in 2007. The regulations were adopted under the authority of the Code of Virginia that addressed compliance in nonattainment areas for the state CAIR program, as set forth in Chapters 867 and 920 the 2006 Acts of Assembly. A petition was filed; the effective date of the regulations was suspended, and litigation over the provisions continued through 2008 and 2009. On February 25, 2010, a final decision of the Court of Appeals of Virginia remanded the regulation and vacated the nonattainment provisions in both the Nitrogen Oxides (NO_x) Annual Trading Program (9VAC5-140-1061) and the NO_x Ozone Season Trading Program (9VAC5-140-2061). Chapters

783 and 867 of the 2010 Acts of Assembly amended § 10.1-1328 A 5 by removing the board's authority to restrict the purchase of allowances for compliance obligations for NO_x and sulfur dioxide (SO₂) sources in nonattainment areas. Therefore, the nonattainment provisions of 9VAC5-140-3061 of Article 5 (CAIR SO₂ Allowance Allocations) of the SO₂ Annual Trading Program are not consistent with the Code of Virginia.

Summary:

Based upon a final decision of the Court of Appeals of Virginia and amendments to the Code of Virginia, this action repeals regulations that implement the provisions of the Code of Virginia that address compliance in nonattainment areas for the state CAIR program.

9VAC5-140-1061. Nonattainment area requirements. (Repealed.)

A. The following requirements apply to any CAIR NO_x unit located in a nonattainment area designated in 9VAC5-20-204:

~~1. No owner, operator or other person shall cause or permit to be discharged into the atmosphere from any CAIR NO_x unit any NO_x emissions in excess of the NO_x annual emissions cap. For each control period, the NO_x annual emissions cap shall be equal to the number of NO_x allowances (expressed in tons) allocated for the CAIR NO_x unit for the control period in accordance with 9VAC5-140-1420.~~

~~2. A CAIR NO_x unit shall be subject to the requirements under subdivision 1 of this subsection for the control period starting on the later of January 1, 2009, or the deadline for meeting the unit's monitor certification requirements under 9VAC5-140-1700 C 1, 2, or 5 and for each control period thereafter.~~

~~3. Compliance with the NO_x annual emissions cap in subdivision 1 of this subsection shall be based on a comparison of (i) the total NO_x emissions (expressed in tons) from each CAIR NO_x unit during the control period, as determined in accordance with Article 8 (9VAC5-140-1700 et seq.) of this part and (ii) the NO_x annual emissions cap.~~

~~4. The owner or operator of a CAIR NO_x unit subject to this section shall be in violation of this subsection if the owner or operator fails to submit by April 1 of each year for the preceding control period (i) documentation to verify compliance with the NO_x annual emissions cap set forth in subdivision 1 of this subsection or (ii) a NO_x emissions compliance demonstration in accordance with 9VAC5-140-1062.~~

B. Nothing in this part shall prevent the permitting authority from issuing a nonattainment area permit under the authority and procedures of the state operating permit program in order to:

1. Cap the emissions of a CAIR NO_x unit or CAIR NO_x source contributing to a violation of any air quality standard or a nonattainment condition;

2. Remedy a situation that may cause or contribute to nonattainment condition or the endangerment of human health or welfare; or

3. Establish a source specific emission standard or other requirements necessary to implement the federal Clean Air Act or the Virginia Air Pollution Control Law.

C. Nothing in this part shall prevent the permitting authority from including in any nonattainment area permit issued to implement subdivision B 1 of this section any terms and conditions that would prohibit any CAIR NO_x unit or CAIR NO_x source subject to this part from engaging in any emissions trading activities or using any emissions credits obtained from emissions reductions external to the CAIR NO_x unit or CAIR NO_x source to comply with the requirements of subsection A of this section or any nonattainment area permit issued pursuant to subdivision B 1 of this section except that such terms and conditions may not prohibit any CAIR NO_x unit or CAIR NO_x source subject to this part from engaging in any emissions trading activities unrelated to compliance with the requirements of subsection A of this section or any nonattainment area permit issued pursuant to subdivision B 1 of this section.

D. Nothing in this section shall be construed to prohibit any CAIR NO_x unit or CAIR NO_x source from participating in the CAIR NO_x Annual Trading Program. Notwithstanding any other provision of this section or any regulation of the board, the permitting authority may not include in any permit any terms and conditions that restrict any emissions trading activities under the CAIR NO_x Annual Trading Program. Compliance with the CAIR NO_x Annual Trading Program and this section (including any nonattainment area permits issued pursuant to this section) shall be determined separately and in accordance with the terms of the provisions of each.

E. The provisions of subsection A of this section shall not apply once an area is no longer listed in 9VAC5-20-204 as nonattainment for any pollutant; however, regardless of the attainment status of the area, any nonattainment area permits issued to implement this section shall remain in effect until revoked by the permitting authority.

F. The provisions of subsection A of this section shall not apply to any CAIR NO_x unit commencing operation on or after January 1, 2006, until the later of (i) January 1, 2014, or (ii) the unit has operated each calendar year during a period of at least five consecutive calendar years.

9VAC5-140-1062. NO_x emissions compliance demonstration. (Repealed.)

A. Compliance with the NO_x annual emissions cap set forth in 9VAC5-140-1061 A-1 may also be achieved through a

NO_x emissions compliance demonstration meeting the requirements of this section:

B. The NO_x emissions compliance demonstration submitted pursuant to this section may include one or more CAIR NO_x units in a CAIR NO_x source under common control and located in the nonattainment area.

C. NO_x emissions compliance demonstrations shall be submitted to the permitting authority by April 1 of each year for the preceding control period.

D. A complete NO_x emissions compliance demonstration shall include the following elements in a format acceptable to the permitting authority:

1. Identification of each CAIR NO_x unit in the NO_x emissions compliance demonstration.
2. The number of NO_x allowances (expressed in tons) allocated for each CAIR NO_x unit for the preceding control period.
3. The total NO_x emissions (expressed in tons) from each CAIR NO_x unit during the preceding control period.
4. The calculation for the equation in subsection E of this section.

E. Compliance with this section shall be demonstrated with the following equation:

$$\sum_{i=1}^n (ANO E_i) \leq \sum_{i=1}^n (X)$$

where:

n is the number of CAIR NO_x units in the NO_x emissions compliance demonstration (n may equal 1).

Σ is the sum of all i CAIR NO_x units.

i is a CAIR NO_x unit identified in subsection B of this section.

ANO E (Actual Nitrogen Oxides Emissions) are the total NO_x emissions (expressed in tons) from each CAIR NO_x unit during the preceding control period, as determined in accordance with Article 8 (9VAC5-140-1700 et seq.) of this part.

X is the number of NO_x allowances (expressed in tons) allocated for the CAIR NO_x unit for the preceding control period in accordance with 9VAC5-140-1420.

F. The emissions measurements recorded and reported in accordance with Article 8 (9VAC5-140-1700 et seq.) of this part shall be used to determine compliance by each CAIR NO_x source with the NO_x annual emissions cap set forth in 9VAC5-140-1061 A.

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9VAC5-140-2061. Nonattainment area requirements. (Repealed.)

A. The following requirements apply to any CAIR NO_x Ozone Season unit located in a nonattainment area designated in 9VAC5-20-204:

1. No owner, operator or other person shall cause or permit to be discharged into the atmosphere from any CAIR NO_x Ozone Season unit any NO_x emissions in excess of the NO_x Ozone Season emissions cap. For each control period, the NO_x Ozone Season emissions cap shall be equal to the number of NO_x allowances (expressed in tons) allocated for the CAIR NO_x Ozone Season unit for the control period in accordance with 9VAC5-140-2420.

2. A CAIR NO_x Ozone Season unit shall be subject to the requirements under subdivision 1 of this subsection for the control period starting on the later of May 1, 2009, or the deadline for meeting the unit's monitor certification requirements under 9VAC5-140-2700 C 1, 2, 3 or 7 and for each control period thereafter.

3. Compliance with the NO_x Ozone Season emissions cap in subdivision 1 of this subsection shall be based on a comparison of (i) the total NO_x emissions (expressed in tons) from each CAIR NO_x Ozone Season unit during the control period, as determined in accordance with Article 8 (9VAC5-140-2700 et seq.) of this part and (ii) NO_x Ozone Season emissions cap.

4. The owner or operator of a CAIR NO_x Ozone Season unit subject to this section shall be in violation of this subsection if the owner or operator fails to submit by January 1 of each year for the preceding control period (i) documentation to verify compliance with the NO_x Ozone Season emissions cap set forth in subdivision 1 of this subsection or (ii) a NO_x emissions compliance demonstration in accordance with 9VAC5-140-2062.

B. Nothing in this part shall prevent the permitting authority from issuing a nonattainment area permit under the authority and procedures of the state operating permit program in order to:

1. Cap the emissions of a CAIR NO_x Ozone Season unit or CAIR NO_x Ozone Season source contributing to a violation of any air quality standard or a nonattainment condition;

2. Remedy a situation that may cause or contribute to nonattainment condition or the endangerment of human health or welfare; or

3. Establish a source-specific emission standard or other requirements necessary to implement the federal Clean Air Act or the Virginia Air Pollution Control Law.

C. Nothing in this part shall prevent the permitting authority from including in any nonattainment area permit issued to

implement subdivision B 1 of this section any terms and conditions that would prohibit any CAIR NO_x Ozone Season unit or CAIR NO_x Ozone Season source subject to this part from engaging in any emissions trading activities or using any emissions credits obtained from emissions reductions external to the CAIR NO_x Ozone Season unit or CAIR NO_x Ozone Season source to comply with the requirements of subsection A of this section or any nonattainment area permit issued pursuant to subdivision B 1 of this section except that such terms and conditions may not prohibit any CAIR NO_x Ozone Season unit or CAIR NO_x Ozone Season source subject to this part from engaging in any emissions trading activities unrelated to compliance with the requirements of subsection A of this section or any nonattainment area permit issued pursuant to subdivision B 1 of this section.

D. Nothing in this section shall be construed to prohibit any CAIR NO_x Ozone Season unit or CAIR NO_x Ozone Season source from participating in the CAIR NO_x Ozone Season Trading Program. Notwithstanding any other provision of this section or any regulation of the board, the permitting authority may not include in any permit any terms and conditions that restrict any emissions trading activities under the CAIR NO_x Ozone Season Trading Program. Compliance with the CAIR NO_x Ozone Season Trading Program and this section (including any nonattainment area permits issued pursuant to this section) shall be determined separately and in accordance with the terms of the provisions of each.

E. The provisions of subsection A of this section shall not apply once an area is no longer listed in 9VAC5-20-204 as nonattainment for any pollutant; however, regardless of the attainment status of the area, any nonattainment area permits issued to implement this section shall remain in effect until revoked by the permitting authority.

F. The provisions of subsection A of this section shall not apply to any CAIR NO_x Ozone Season unit commencing operation on or after January 1, 2006, until the later of (i) January 1, 2014, or (ii) the unit has operated each calendar year during a period of at least five consecutive calendar years.

9VAC5-140-2062. NO_x emissions compliance demonstration. (Repealed.)

A. Compliance with the NO_x Ozone Season emissions cap set forth in 9VAC5-140-2061 A 1 may also be achieved through a NO_x emissions compliance demonstration meeting the requirements of this section.

B. The NO_x emissions compliance demonstration submitted pursuant to this section may include one or more CAIR NO_x Ozone Season units in a CAIR NO_x Ozone Season source under common control and located in the nonattainment area.

C. NO_x emissions compliance demonstrations shall be submitted to the permitting authority by January 1 of each year for the preceding control period.

D. A complete NO_x emissions compliance demonstration shall include the following elements in a format acceptable to the permitting authority:

1. Identification of each CAIR NO_x-Ozone Season unit in the NO_x emissions compliance demonstration.
2. The number of NO_x allowances (expressed in tons) allocated for each CAIR NO_x-Ozone Season unit for the preceding control period.
3. The total NO_x emissions (expressed in tons) from each CAIR NO_x-Ozone Season unit during the preceding control period.
4. The calculation for the equation in subsection E of this section.

E. Compliance with this section shall be demonstrated with the following equation:

$$\sum_{i=1}^n (ANOE_i) \leq \sum_{i=1}^n (X)$$

where:

n is the number of CAIR NO_x-Ozone Season units in the NO_x emissions compliance demonstration (n may equal 1).

Σ is the sum of all i CAIR NO_x-Ozone Season units.

i is a CAIR NO_x-Ozone Season unit identified in subsection B of this section.

ANOE (Actual Nitrogen Oxides Emissions) are the total NO_x emissions (expressed in tons) from each CAIR NO_x-Ozone Season unit during the preceding control period, as determined in accordance with Article 8 (9VAC5-140-2700 et seq.) of this part.

X is the number of NO_x allowances (expressed in tons) allocated for the CAIR NO_x-Ozone Season unit for the preceding control period in accordance with 9VAC5-140-2420.

F. The emissions measurements recorded and reported in accordance with Article 8 (9VAC5-140-2700 et seq.) of this part shall be used to determine compliance by each CAIR NO_x-Ozone Season source with the NO_x-Ozone Season emissions cap set forth in 9VAC5-140-2061 A.

9VAC5-140-3061. Nonattainment area requirements. (Repealed.)

A. The following requirements apply to any CAIR SO₂ unit located in a nonattainment area designated in 9VAC5-20-204:

1. No owner, operator or other person shall cause or permit to be discharged into the atmosphere from any CAIR SO₂ unit any SO₂ emissions in excess of the SO₂ annual emissions cap. For each control period, the SO₂ annual emissions cap shall be equal to the number of SO₂

allowances (expressed in tons) allocated for the CAIR SO₂ unit for the control period in accordance with 9VAC5-140-3420.

2. A CAIR SO₂ unit shall be subject to the requirements under subdivision 1 of this subsection for the control period starting on the later of January 1, 2010, or the deadline for meeting the unit's monitor certification requirements under 9VAC5-140-3700 C 1, 2, or 5 and for each control period thereafter.

3. Compliance with the SO₂ annual emissions cap in subdivision 1 of this subsection shall be based on a comparison of (i) the total SO₂ emissions (expressed in tons) from each CAIR SO₂ unit during the control period, as determined in accordance with Article 8 (9VAC5-140-3700 et seq.) of this part, and (ii) the SO₂ annual emissions cap.

4. The owner or operator of a CAIR SO₂ unit subject to this section shall be in violation of this subsection if the owner or operator fails to submit by April 1 of each year for the preceding control period (i) documentation to verify compliance with the SO₂ annual emissions cap set forth in subdivision 1 of this subsection or (ii) an SO₂ emissions compliance demonstration in accordance with 9VAC5-140-3062.

B. Nothing in this part shall prevent the permitting authority from issuing a nonattainment area permit under the authority and procedures of the state operating permit program in order to:

1. Cap the emissions of a CAIR SO₂ unit or CAIR SO₂ source contributing to a violation of any air quality standard or a nonattainment condition;
2. Remedy a situation that may cause or contribute to nonattainment condition or the endangerment of human health or welfare; or
3. Establish a source specific emission standard or other requirements necessary to implement the federal Clean Air Act or the Virginia Air Pollution Control Law.

C. Nothing in this part shall prevent the permitting authority from including in any nonattainment area permit issued to implement subdivision B 1 of this section any terms and conditions that would prohibit any CAIR SO₂ unit or CAIR SO₂ source subject to this part from engaging in any emissions trading activities or using any emissions credits obtained from emissions reductions external to the CAIR SO₂ unit or CAIR SO₂ source to comply with the requirements of subsection A of this section or any nonattainment area permit issued pursuant to subdivision B 1 of this section except that such terms and conditions may not prohibit any CAIR SO₂ unit or CAIR SO₂ source subject to this part from engaging in any emissions trading activities unrelated to compliance with the requirements of subsection A of this section or any

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nonattainment area permit issued pursuant to subdivision B 1 of this section:

D. Nothing in this section shall be construed to prohibit any CAIR SO₂ unit or CAIR SO₂ source from participating in the CAIR SO₂ Annual Trading Program. Notwithstanding any other provision of this section or any regulation of the board, the permitting authority may not include in any permit any terms and conditions that restrict any emissions trading activities under the CAIR SO₂ Annual Trading Program. Compliance with the CAIR SO₂ Annual Trading Program and this section (including any nonattainment area permits issued pursuant to this section) shall be determined separately and in accordance with the terms of the provisions of each.

E. The provisions of subsection A of this section shall not apply once an area is no longer listed in 9VAC5-20-204 as nonattainment for any pollutant; however, regardless of the attainment status of the area, any nonattainment area permits issued to implement this section shall remain in effect until revoked by the permitting authority.

F. The provisions of subsection A of this section shall not apply to any CAIR SO₂ unit for which no SO₂ allowances are allocated in accordance with 9VAC5-140-3420.

9VAC5-140-3062. SO₂ emissions compliance demonstration. (Repealed.)

A. Compliance with the SO₂ annual emissions cap set forth in 9VAC5-140-3061 A 1 may also be achieved through an SO₂ emissions compliance demonstration meeting the requirements of this section:

B. The SO₂ emissions compliance demonstration submitted pursuant to this section may include one or more CAIR SO₂ units in a CAIR SO₂ source under common control and located in the nonattainment area.

C. SO₂ emissions compliance demonstrations shall be submitted to the permitting authority by April 1 of each year for the preceding control period.

D. A complete SO₂ emissions compliance demonstration shall include the following elements in a format acceptable to the permitting authority:

1. Identification of each CAIR SO₂ unit in the SO₂ emissions compliance demonstration.
2. The number of SO₂ allowances (expressed in tons) allocated for each CAIR SO₂ unit for the preceding control period.
3. The total SO₂ emissions (expressed in tons) from each CAIR SO₂ unit during the preceding control period.
4. The calculation for the equation in subsection E of this section.

E. Compliance with this section shall be demonstrated with the following equation:

$$\sum_{i=1}^n (ASDE_i) \leq \sum_{i=1}^n (X)$$

where:

n is the number of CAIR SO₂ units in the SO₂ emissions compliance demonstration (n may equal 1).

Σ is the sum of all i CAIR SO₂ units.

i is a CAIR SO₂ unit identified in subsection B of this section.

ASDE (Actual Sulfur Dioxide Emissions) are the total SO₂ emissions (expressed in tons) from each CAIR SO₂ unit during the preceding control period, as determined in accordance with Article 8 (9VAC5-140-3700 et seq.) of this part.

X is the number of SO₂ allowances (expressed in tons) allocated for the CAIR SO₂ unit for the preceding control period in accordance with 9VAC5-140-3420.

F. The emissions measurements recorded and reported in accordance with Article 8 (9VAC5-140-3700 et seq.) of this part shall be used to determine compliance by each CAIR SO₂ source with the SO₂ annual emissions cap set forth in 9VAC5-140-3061 A.

VA.R. Doc. No. R10-2457; Filed June 28, 2010; 8:18 a.m.

VIRGINIA WASTE MANAGEMENT BOARD

Final Regulation

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

Title of Regulation: 9VAC20-90. Solid Waste Management Permit Action Fees and Annual Fees (amending 9VAC20-90-65, 9VAC20-90-115, 9VAC20-90-130; adding 9VAC20-90-114).

Statutory Authority: § 10.1-1402 of the Code of Virginia.

Effective Date: August 18, 2010.

Agency Contact: Gary E. 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.

Summary:

The amendments implement the provisions of budget Item 354 of Chapter 874 of the 2010 Acts of Assembly by increasing the amount of nonhazardous solid waste annual fees assessed and making a change in the method of determining those annual fees in order to recover \$1,250,000 of revenue removed from general fund appropriations by the 2010 Acts of Assembly. In addition, this action ensures that annual fees continue to cover a portion of the direct costs for processing, compliance, and enforcement of permits issued for the disposal, treatment, or storage of nonhazardous solid waste. This action also provides for a cap on the total amount of fees collected.

9VAC20-90-65. Payment of annual fees.

A. Operators of permitted solid waste management facilities shall pay annual fees based on the requirements of this ~~part~~ section. An annual fee is required for each activity occurring at a permitted facility.

1. Annual fees, including those that are based on annual tonnage, shall be calculated using the procedures in 9VAC20-90-114 and 9VAC20-90-115.

2. For facilities engaged in multiple activities under the provisions of a single permit, an operator shall pay multiple annual fees. ~~These activities and the associated fees are provided in Table 4.1 of 9VAC20-90-130.~~

3. Annual fees assessed for single or multiple activities conducted under a permit reflect the time and complexity of inspecting and monitoring the different categories of facilities identified in § 10.1-1402.1:1 of the Code of Virginia.

B. Due date.

1. Submission date. The department may bill the operator for amounts due or becoming due in the immediate future. Payments are due on or before October 1 or 30 days after receipt of a bill from the department, whichever comes later, unless the operator is using the ~~deferred payment or quarter payment option. Each operator of a permitted waste management facility shall be assessed an annual fee as shown in Table 4.1 of 9VAC20-90-130. Except as specified in subdivisions subdivision 2 and 3 of this subsection, all annual fees are submitted on a yearly basis and are due on or before October 1 (for the preceding annual year). Annual fees, including those that are based on annual tonnage shall be calculated using the procedures in 9VAC20-90-115. Annual tonnage will be determined from the total amount of waste reported as having been either landfilled or incinerated on Form DEQ 50-25 for the preceding year pursuant to the Waste Information Assessment Program (9VAC20-80-115 and 9VAC20-130-165).~~

~~2. All fees to be paid in 2004 will be submitted on or before October 1, 2004, (for the 2003 annual year) unless the operator of a facility submits a written request to the department prior to that date requesting a deferred payment until January 1, 2005. Requests for deferral will be sent to the address listed in subdivision C 2 of this section. No deferred payment will be allowed for facilities opting to use a quarter payment schedule. Subsequent annual payments will be submitted on or before the first day of October (for the preceding annual year).~~

~~3. 2. Optional quarter payment. Facility operators that are required to pay annual fees exceeding \$8,000 for single or multiple permits may submit four equal payments totaling the annual fee on or before October 1, January 1, April 1, and June 1. The annual payment cycle for quarter payments will begin with the October 1 payment and will end with the June 1 payment. Those facilities opting for the quarter payment schedule shall accompany all payments with a copy of DEQ form PF001.~~

~~4. 3. Late quarter payments. If the quarter payment is not paid by the deadline, DEQ may, in addition to seeking other remedies available under the law, issue a notice of failure to pay. The notice shall require payment of the entire remainder of the annual fee payment within 30 days of the date of the notice, or inform the owner that he is ineligible to opt for the quarter payment schedule until eligibility is reinstated by written notice from the department, or both.~~

~~C. Method of payment. 1. The operator of the facility shall send a payment transmittal letter to the Department of Environmental Quality. The letter shall contain the name and permit number of the facility, the Federal Identification Number (FIN) for the facility or operator, the amount of the annual fee, and for sanitary landfills and incinerators, the waste reported as landfilled or incinerated on Form DEQ 50-25 for the preceding year pursuant to the Waste Information Assessment Program (9VAC20-80-115 and 9VAC20-130-165). In addition, a copy of the transmittal letter will be placed in the facility's operating record. 2. Fees shall be paid by check, draft, or postal money order made payable to "Treasurer of Virginia/DEQ," and shall be sent to the Department of Environmental Quality, Receipts Control, P.O. Box 40150 1104, Richmond, VA 23240 23218. When the department is able to accept electronic payments, payments may be submitted electronically. The payment transmittal letter required in subdivision 1 of this subsection shall accompany the payment.~~

D. Incomplete payments. All incomplete payments will be deemed nonpayments.

E. Late payment of annual fee. Interest may be charged for late payments at the underpayment rate set out by the U.S. Internal Revenue Service established pursuant to Section 6621(a)(2) of the Internal Revenue Code. This rate is

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prescribed 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 be charged to any delinquent (over 90 days past due) account. The Department of Environmental Quality is entitled to all remedies available under the Code of Virginia in collecting any past due amount and may recover any attorney's fees and other administrative costs incurred in pursuing and collecting any past due amount.

F. Annual fees received by the department shall be deposited in the Virginia Waste Management Permit Program Fund and used exclusively for the solid waste management program as set forth in the Code of Virginia.

9VAC20-90-114. Annual fee calculation for noncaptive industrial landfills and construction and demolition debris landfills.

A. General. All persons operating a noncaptive industrial landfill or a construction and demolition debris landfill permitted under the regulations outlined in 9VAC20-90-50 shall submit annual fees according to the procedures provided in 9VAC20-90-65. Annual fees shall be calculated using the procedures provided in subsection B of this section. Fees shall be rounded to the nearest dollar.

B. Fee calculation. The amount of the annual fees to be submitted for a specified year shall be calculated according to the following formulae:

$$F = B \times C$$
$$C = 1 + \Delta CPI$$
$$\Delta CPI = \frac{CPI - 215.15}{215.15}$$

where:

F = the annual fee amount due for the specified calendar year, expressed in dollars.

B = the base fee rate for the type of facility determined as provided in subdivision 1 of this subsection, expressed in dollars.

Δ CPI = the difference between CPI and 215.15 (the average of the Consumer Price Index values for all-urban consumers for the 12-month period ending on April 30, 2009), expressed as a proportion of 215.15.

CPI = the average of the Consumer Price Index values for all-urban consumers for the 12-month period ending on April 30 of the calendar year before the specified year for which the permit maintenance fee is due. (The Consumer Price Index for all-urban consumers is published by the U.S. Department of Labor, Bureau of Labor Statistics, U.S. All items, CUUR0000SA0).

1. Values for B (base fee rate) in Table 4.1 of 9VAC20-90-130 for construction and demolition debris landfills and noncaptive industrial landfills shall be calculated using the procedures in this subdivision. Annual tonnage will be determined from the total amount of waste reported as having been either landfilled or incinerated on Form DEQ 50-25 for the preceding year pursuant to the Waste Information Assessment Program (9VAC20-80-115 and 9VAC20-130-165). Base fee rates for construction and demolition debris landfills and noncaptive industrial landfills include the base tonnage fee rate plus an additional fee amount per ton of waste over the base tonnage that is landfilled based on the tonnage reported on the previous year's Solid Waste Information Reporting Table, Form DEQ 50-25.

a. For example, the base fee rate for a construction and demolition debris landfill that reported 120,580 tons of waste landfilled for the previous year is the \$10,000 base tonnage fee rate for a facility landfilling 100,001 to 250,000 tons of waste, plus an additional fee amount of \$0.09 per ton of waste landfilled over the base tonnage, as provided in Table 4.1 of 9VAC20-90-130. The base fee rate for this facility is \$10,000 + [(120,580 tons - 100,001 tons) x \$0.09/ton] = \$11,852. The base tonnage fee rate and the additional fee amount per ton vary with the tonnage of the waste that the facility landfilled.

b. Tonnage used to determine the base fee rate shall be rounded to the nearest full ton of waste.

2. Calculation of the 2010 annual fee (F) for the construction and demolition debris landfill discussed in subdivision B 1 of this subsection is provided as an example:

CPI = 215.15 (the average of CPI values from May 1, 2008, to April 30, 2009, inclusive would be used for the 2010 annual fee calculation).

Δ CPI = zero for the 2010 annual fee calculation (i.e., (CPI - 215.15)/215.15 = (215.15 - 215.15)/215.15 = 0). (Note: Δ CPI for other years would not be zero.)

C = 1.0 for the 2010 annual fee calculation (i.e., 1 + Δ CPI = 1 + 0 = 1.0).

B = \$11,852 (i.e., the value of the base fee rate for the example construction and demolition debris landfill in subdivision 2 of this subsection).

F = \$11,852 for the 2010 annual fee calculation for this example construction and demolition debris landfill (i.e., B x C = \$11,852 x 1.0 = \$11,852).

C. Weight/volume conversions. For facilities required to pay annual fees based on the tonnage of the waste landfilled or incinerated, the annual fee shall be based on the accurate weight of waste. If scales are unavailable, the volume of the waste landfilled or incinerated by the facility must be

multiplied by 0.50 tons per cubic yard to determine the weight of the waste landfilled or incinerated. If the volume of waste is used to determine the tonnage of waste landfilled or incinerated, accurate and complete records of the waste received and managed must be maintained in addition to the calculated weight records described in this part. These records must be maintained onsite throughout the life of the facility and made available to the department upon request.

D. Emergency. The director may waive or reduce annual fees assessed during a state of emergency or for waste resulting from an emergency response action. A facility operator may request a determination if a given volume of waste landfilled or incinerated in a given calendar year qualifies for a waived or reduced fee by submitting documentation of the emergency to the regional office where the facility is located. The request will provide the name and permit number of the facility, a facility contact, the nature of the emergency or response action, a description of the waste, and an accurate accounting of the type and tonnage of waste managed as a result of the emergency. Requests for a determination by the director must be submitted by March 31 of the year following the emergency coincident with the solid waste information assessment report. A separate request shall be provided for each year if the emergency lasts for multiple years.

E. Annual fee discounts for environmental excellence program participants are set out in 9VAC20-90-117.

F. The operator of a facility owned by a private entity and subject to any fee imposed pursuant to this section shall collect such fee as a surcharge on any fee schedule established pursuant to law, ordinance, resolution, or contract for solid waste processing or disposal operations at the facility.

G. Closure. Facilities that remove all waste materials at the time of closure and are subject only to closure requirements are subject to payment of the annual fee if they were operating at any time during the calendar year.

H. Transition from closure to post-closure care. Landfills entering post-closure care will pay the full annual fee for an active facility if they were operating, inactive, or conducting closure activities at any time during the calendar year. Landfills in post-closure care for a full calendar year (January 1 through December 31) will pay the annual fee for post-closure care provided in Table 4.1 of 9VAC20-90-130. The post-closure care period will begin on the date provided in 9VAC20-80-250 E 7, 9VAC20-80-260 E 6, or 9VAC20-80-270 E 6 as applicable.

I. The total annual sum of annual fees and permit application fees collected by the board from sanitary landfills and other nonhazardous solid waste facilities shall not exceed 60% of the direct costs of (i) processing an application to issue, reissue, amend, or modify permits; and (ii) performing

inspections and enforcement actions necessary to assure compliance with permits issued for any sanitary landfill and other facility for the disposal, treatment, or storage of nonhazardous solid waste. The director shall take whatever action is necessary to ensure that this limit is not exceeded.

9VAC20-90-115. Annual fee calculation for sanitary landfills, incinerators and other types of facilities.

A. General. All persons operating a sanitary landfill, an incinerator, or ~~other~~ another type of facility other than a noncaptive industrial landfill or construction and demolition debris landfill, that is permitted under the regulations outlined in 9VAC20-90-50 shall submit annual fees according to the procedures provided in 9VAC20-90-65. Annual fees are provided in Table 4.1, Annual Waste Management Facility Fees, in 9VAC20 90 130. Annual fees that include an additional fee based on tonnage shall be calculated using the procedures in this section. Annual tonnage will be determined from the total amount of waste reported as having been either landfilled or incinerated on Form DEQ 50 25 for the preceding year pursuant to the Waste Information Assessment Program (9VAC20 80 115 and 9VAC20 130 165). Annual fees shall be calculated using the procedures provided in subsection B of this section. Fees shall be rounded to the nearest dollar.

B. Fee calculation. The amount of the annual fees to be submitted for a specified year shall be calculated according to the following formulae:

$$F = B \times A \times C$$

$$A = 1 + (P/100)$$

$$C = 1 + \Delta CPI$$

$$\Delta CPI = \frac{CPI - 215.15}{215.15}$$

where:

F = the annual fee amount due for the specified calendar year, expressed in dollars.

B = the base fee rate for the type of facility determined as provided in subdivisions 1, 2, and 3 of this subsection, expressed in dollars.

A = the direct cost adjustment factor.

P = 79

ΔCPI = the difference between CPI and 215.15 (the average of the Consumer Price Index values for all-urban consumers for the 12-month period ending on April 30, 2009), expressed as a proportion of 215.15.

CPI = the average of the Consumer Price Index values for all-urban consumers for the 12-month period ending on April 30 of the calendar year before the specified year for

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which the permit maintenance fee is due. (The Consumer Price Index for all-urban consumers is published by the U.S. Department of Labor, Bureau of Labor Statistics, U.S. All items, CUUR000SA0).

1. Values for B (base fee rate) are provided in Table 4.1, Base Fee Rates for Annual Waste Management Facility Fees, in 9VAC20-90-130.

2. Values for B (base fee rate) in Table 4.1 of 9VAC20-90-130 that are based on tonnage shall be calculated using the procedures in this subdivision. Annual tonnage will be determined from the total amount of waste reported as having been either landfilled or incinerated on Form DEQ 50-25 for the preceding year pursuant to the Waste Information Assessment Program (9VAC20-80-115 and 9VAC20-130-165).

~~Sanitary a. Base fee rates for sanitary landfills are required to submit~~ include the base tonnage fee, rate plus a additional fee amount per ton of waste over the base tonnage that is landfilled based on the tonnage reported on the previous year's Solid Waste Information Reporting Table, Form DEQ 50-25. For example, the base fee rate for a sanitary landfill that reported 120,580 tons of waste landfilled for the previous year is the \$10,000 base tonnage fee rate for a facility landfilling 100,001 to 250,000 tons of waste, plus an additional fee amount of \$0.09 per ton of waste landfilled over the base tonnage, as provided in Table 4.1 of 9VAC20-90-130. The base fee rate for this facility is $\$10,000 + [(120,580 \text{ tons} - 100,001 \text{ tons}) \times \$0.09/\text{ton}] = \$11,852$. The base tonnage fee rate and the additional fee amount per ton vary with the tonnage of the waste that the facility landfilled.

~~Incinerators are required to submit a fee~~ b. Base fee rates for incinerators are based only on the amount of waste incinerated as reported on the previous year's Solid Waste Information Reporting Table, Form DEQ 50-25. For example, the base fee rate for an incinerator that reported 501,230 tons of waste incinerated for the previous year is \$5,000 for a facility incinerating 100,001 or more tons of waste, as provided in Table 4.1 of 9VAC20-90-130. Incinerator fees vary with the tonnage of waste that the facility incinerated.

~~The tonnage~~ c. Tonnage used in to determine the base fee calculation will rate shall be rounded to the nearest full ton of waste.

~~Other~~ 3. Values for B (base fee rate) for other facilities are required to submit based only an annual fee based on the facility type. Fees shall be rounded to the nearest dollar. For example, the base fee rate in Table 4.1 of 9VAC20-90-130 for a composting facility is \$500.

4. Calculation of the 2010 annual fee (F) for the composting facility discussed in subdivision B 3 of this subsection is provided as an example:

$CPI = 215.15$ (the average of CPI values from May 1, 2008, to April 30, 2009, inclusive would be used for the 2010 annual fee calculation).

$\Delta CPI = \text{zero}$ for the 2010 annual fee calculation (i.e., $(CPI - 215.15)/215.15 = (215.15 - 215.15)/215.15 = 0$). (Note: ΔCPI for other years would not be zero.)

$C = 1.0$ for the 2010 annual fee calculation (i.e., $1 + \Delta CPI = 1 + 0 = 1.0$).

$B = \$500$ (i.e., the value of the base fee rate for the example composting facility in subdivision 3 of this subsection).

$A = 1.79$ (i.e., $1 + (P/100) = 1 + (79/100) = 1.79$).

$F = \$895$ for the 2010 annual fee calculation for this example composting facility (i.e., $B \times A \times C = \$500 \times 1.79 \times 1.0 = \895).

Examples:

1. A composting facility is required to submit only the base fee in Table 4.1.

Composting facility annual fee = base fee = \$500.

2. A sanitary landfill that reported 120,580 tons landfilled on the Solid Waste Information Reporting Table, Form DEQ 50-25, from the previous year, is required to submit a base tonnage fee plus an additional fee per ton of waste over the base tonnage as provided in Table 4.1. The base fee and the fee per ton vary with the tonnage of the waste that the facility landfilled.

Sanitary landfill annual fee = base tonnage fee + (tonnage landfilled from previous year's waste information assessment - base tonnage) x fee per ton = $\$10,000 + (120,580 \text{ tons} - 100,001 \text{ tons}) \times \$0.09/\text{ton} = \$11,852$.

3. An incinerator that reported 501,230 tons incinerated on the Solid Waste Information Reporting Table, Form DEQ 50-25, from the previous year, is required to submit the fee required in Table 4.1. Incinerator fees vary with the tonnage of waste that the facility incinerated.

Incinerator annual fee = annual fee associated with the tonnage incinerated = \$5000.

C. Weight/volume conversions. For facilities required to pay annual fees based on the tonnage of the waste landfilled or incinerated, the annual fee shall be based on the accurate weight of waste. If scales are unavailable, the volume of the waste landfilled or incinerated by the facility must be multiplied by 0.50 tons per cubic yard to determine the weight of the waste landfilled or incinerated. If the volume of waste is used to determine the tonnage of waste landfilled or incinerated, accurate and complete records of the waste received and managed must be maintained in addition to the calculated weight records described in this part. These records

must be maintained onsite throughout the life of the facility and made available to the department upon request.

D. Emergency. The director may waive or reduce annual fees assessed during a state of emergency or for waste resulting from an emergency response action. A facility operator may request a determination if a given volume of waste landfilled or incinerated in a given calendar year qualifies for a waived or reduced fee by submitting documentation of the emergency to the regional office where the facility is located. The request will provide the name and permit number of the facility, a facility contact, the nature of the emergency or response action, a description of the waste, and an accurate accounting of the type and tonnage of waste managed as a result of the emergency. Requests for a determination by the director must be submitted by March 31 of the year following the emergency coincident with the solid waste information assessment report. A separate request shall be provided for each year if the emergency lasts for multiple years.

E. Annual fee discounts for environmental excellence program participants are set out in 9VAC20-90-117.

F. The operator of a facility owned by a private entity and subject to any fee imposed pursuant to this section shall collect such fee as a surcharge on any fee schedule established pursuant to law, ordinance, resolution or contract for solid waste processing or disposal operations at the facility.

G. Closure. Facilities that remove all waste materials at the time of closure and are subject only to closure requirements are subject to payment of the annual fee if they were operating at any time during the calendar year.

H. Transition from closure to post-closure care. Landfills entering post-closure care will pay the full annual fee for an active facility if they were operating, were inactive or were conducting closure activities at any time during the calendar year. Landfills in post-closure care for a full calendar year (January 1 through December 31) will pay the annual fee for post-closure care provided in Table 4.1 of 9VAC20-90-130. The post-closure care period will begin on the date provided in 9VAC20-80-250 E 7, 9VAC20-80-260 E 6, or 9VAC20-80-270 E 6 as applicable.

I. The total annual sum of annual fees and permit application fees collected by the board from sanitary landfills and other nonhazardous solid waste facilities shall not exceed 60% of the direct costs of (i) processing an application to issue, reissue, amend, or modify permits; and (ii) performing inspections and enforcement actions necessary to assure compliance with permits issued for any sanitary landfill and other facility for the disposal, treatment, or storage of nonhazardous solid waste. The director shall take whatever action is necessary to ensure that this limit is not exceeded.

9VAC20-90-130. Annual Base fee rate schedules.

TABLE 4.1. BASE FEE RATES FOR ANNUAL WASTE MANAGEMENT FACILITY FEES.

| Category of Facility/Activity | Annual Fee Base Fee Rate (B) | |
|---|------------------------------|--|
| 1. Noncaptive industrial landfills | \$8,000 | |
| 2. Construction and demolition debris landfills | \$4,000 | |
| 3. 1. Sanitary landfills shall be assessed, noncaptive industrial landfills, and construction and demolition landfills are assigned a two part base fee rate (B) based on their annual tonnage as follows: | | |
| Base Tonnage to Maximum Tonnage | Base Tonnage Fee Rate | Additional Fee Per Ton Over Base Tonnage |
| Up to 10,000 | \$1,000 | none |
| 10,001 to 100,000 | \$1,000 | \$0.09 |
| 100,001 to 250,000 | \$10,000 | \$0.09 |
| 250,001 to 500,000 | \$23,500 | \$0.075 |
| 500,001 to 1,000,000 | \$42,250 | \$0.06 |
| 1,000,001 to 1,500,000 | \$72,250 | \$0.05 |
| Over 1,500,000 | \$97,250 | \$0.04 |
| 4. 2. Incinerators and energy recovery facilities shall be assessed are assigned a base fee rate based upon their annual tonnage as follows: | | |
| Annual Tonnage | Base Fee Rate (B) | |
| 10,000 or less | \$2,000 | |
| 10,001 to 50,000 | \$3,000 | |
| 50,001 to 100,000 | \$4,000 | |
| 100,001 or more | \$5,000 | |
| 5. 3. Other types of facilities shall be assessed are assigned a base fee a rate as follows: | | |
| Type of Facility/Activity | Base Fee Rate (B) | |
| Composting | \$500 | |
| Regulated medical waste | \$1,000 | |
| Materials recovery | \$2,000 | |
| Transfer station | \$2,000 | |
| Facilities in post-closure care | \$500 | |

VA.R. Doc. No. R10-2398; Filed June 27, 2010, 9:18 a.m.

Regulations

STATE WATER CONTROL BOARD

Final Regulation

REGISTRAR'S NOTICE: The State Water Control Board is claiming an exclusion from the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The State Water Control Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **9VAC25-20. Fees for Permits and Certificates (amending 9VAC25-20-142).**

Statutory Authority: § 62.1-44.15:6 of the Code of Virginia.

Effective Date: August 18, 2010.

Agency Contact: Gary E. 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.

Summary:

The amendments change the amount of permit maintenance fees assessed in order to recover \$1,250,000 of revenue removed from general fund appropriations by the 2010 Acts of Assembly. The intent of this action is to ensure that permit maintenance fees continue to cover a portion of the direct costs for administration, compliance, and enforcement of the Virginia Pollutant Discharge Elimination System (VPDES) and the Virginia Pollution Abatement (VPA) permits. This action also provides for a cap on the amount of permit fees collected and revises the permit maintenance fee cap on certain public authorities with multiple facilities.

9VAC25-20-142. Permit maintenance fees.

A. The following annual permit maintenance fees apply to each individual VPDES and VPA permit, including expired permits that have been administratively continued, except those exempted by 9VAC25-20-50 B or 9VAC25-20-60 A 4:

1. Base fee rate for Virginia Pollutant Discharge Elimination System (VPDES) permitted facilities. (Note: All flows listed in the table below are facility "design" flows.)

| | |
|---|-----------------|
| VPDES Industrial Major | \$4,800 \$7.876 |
| VPDES Municipal Major/Greater Than 10 MGD | \$4,750 \$7.794 |
| VPDES Municipal Major/2 MGD - 10 MGD | \$4,350 \$7.138 |
| VPDES Municipal Major/Less Than 2 MGD | \$3,850 \$6.317 |

| | |
|--|-----------------|
| VPDES Municipal Major Stormwater/MS4 | \$3,800 \$6.235 |
| VPDES Industrial Minor/No Standard Limits | \$2,040 \$3.347 |
| VPDES Industrial Minor/Standard Limits | \$1,200 \$1.969 |
| VPDES Industrial Minor/Water Treatment System | \$1,200 \$1.969 |
| VPDES Industrial Stormwater | \$1,440 \$2.363 |
| VPDES Municipal Minor/Greater Than 100,000 GPD | \$1,500 \$2.461 |
| VPDES Municipal Minor/10,001 GPD - 100,000 GPD | \$1,200 \$1.969 |
| VPDES Municipal Minor/1,001 GPD - 10,000 GPD | \$1,080 \$1.772 |
| VPDES Municipal Minor/1,000 GPD or Less | \$400 \$656 |
| VPDES Municipal Minor Stormwater/MS4 | \$400 \$656 |

2. Base fee rate for Virginia Pollution Abatement (VPA) permits. (Note: Land application rates listed in the table below are facility "design" rates.)

| | |
|--|-----------------|
| VPA Industrial Wastewater Operation/Land Application of 10 or More Inches Per Year | \$1,500 \$2.461 |
| VPA Industrial Wastewater Operation/Land Application of Less Than 10 Inches Per Year | \$1,050 \$1.723 |
| VPA Industrial Sludge Operation | \$750 \$1.231 |
| VPA Municipal Wastewater Operation | \$1,350 \$2.215 |
| VPA Municipal Sludge Operation | \$750 \$1.231 |
| VPA Concentrated Animal Feeding Operation | (Reserved) |
| VPA Intensified Animal Feeding Operation | (Reserved) |
| All other operations not specified above | \$75 \$123 |

3. The amount of the annual permit maintenance fee due from the owner for VPDES and VPA permits for a specified year as required by 9VAC25-20-40 C shall be calculated according to the following formulae:

$$F = B \times C$$

$$C = \frac{1 + \Delta CPI}{215.15}$$

$$\Delta CPI = \frac{CPI - 215.15}{215.15}$$

where:

F = the permit maintenance fee amount due for the specified calendar year, expressed in dollars.

B = the base fee rate for the type of VPDES or VPA permit from subdivisions 1 or 2 of this subsection, expressed in dollars.

C = the Consumer Price Index adjustment factor.

Δ CPI = the difference between CPI and 215.15 (the average of the Consumer Price Index values for all-urban consumers for the 12-month period ending on April 30, 2009), expressed as a proportion of 215.15.

CPI = the average of the Consumer Price Index values for all-urban consumers for the 12-month period ending on April 30 of the calendar year before the specified year for which the permit maintenance fee is due. (The Consumer Price Index for all-urban consumers is published by the U.S. Department of Labor, Bureau of Labor Statistics, U.S. All items, CUUR0000SA0).

For example, if calculating the 2010 permit maintenance fee (F) for a VPDES Industrial Major source:

CPI = 215.15 (the average of CPI values from May 1, 2008, to April 30, 2009, inclusive would be used for the 2010 permit maintenance fee calculation).

Δ CPI = zero for the 2010 permit maintenance fee calculation (i.e., $(CPI - 215.15)/215.15 = (215.15 - 215.15)/215.15 = 0$). (Note: Δ CPI for other years would not be zero.)

C = 1.0 for the 2010 permit maintenance fee calculation (i.e., $1 + \Delta$ CPI = $1 + 0 = 1.0$).

B = \$7,876 (i.e. the value for a VPDES Industrial Major source, taken from subdivision 1 of this subsection).

F = \$7,876 for the 2010 permit maintenance fee calculation for this VPDES Industrial Major source (i.e., $\$7,876 \times 1.0 = \$7,876$).

4. Permit maintenance fees (F) calculated for each facility shall be rounded to the nearest dollar.

5. The total amount of permit fees collected by the board (permit maintenance fees plus permit application fees) shall not exceed 50% of direct costs for administration, compliance, and enforcement of VPDES and VPA permits. The director shall take whatever action is necessary to ensure that this limit is not exceeded.

B. Additional permit maintenance fees.

1. 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.

2. An additional permit maintenance fee of \$1,000 shall be paid annually by permittees that have more than five process wastewater discharge outfalls at a single facility (not including "internal" outfalls).

3. For a local government or public service authority with permits for multiple facilities in a single jurisdiction, the total permit maintenance fees for all permits held as of April 1, 2004, shall not exceed ~~\$20,000~~ \$32,818 per year.

C. If the category of a facility (as described in 9VAC25-20-142 A 1 or 2) changes as the result of a permit modification, the permit maintenance fee based upon the permit category as of April 1 shall be submitted by October 1.

D. Annual permit maintenance fees may be discounted for participants in the Environmental Excellence Program as described in 9VAC25-20-145.

VA.R. Doc. No. R10-2381; Filed June 28, 2010, 8:18 a.m.

Proposed Regulation

REGISTRAR'S NOTICE: The following regulation filed by the State Water Control Board is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 8 of the Code of Virginia, which exempts general permits issued by the State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.), Chapter 24 (§ 62.1-242 et seq.) of Title 62.1 and Chapter 25 (§ 62.1-254 et seq.) of Title 62.1, if the board (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01, (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit, (iii) provides notice and receives oral and written comment as provided in § 2.2-4007.03, and (iv) conducts at least one public hearing on the proposed general permit.

Title of Regulation: **9VAC25-110. Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Domestic Sewage Discharges of Less Than or Equal to 1,000 Gallons Per Day (amending 9VAC25-110-10, 9VAC25-110-20, 9VAC25-110-60, 9VAC25-110-70, 9VAC25-110-80).**

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

Public Hearing Information:

August 26, 2010 - 1 p.m. - Department of Environmental Quality, 629 East Main Street, 2nd Floor Conference Room, Richmond, VA

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Public Comment Deadline: September 17, 2010.

Public Participation: In addition to any other comments, the board is seeking comments on the costs and benefits of the proposal, the potential impacts on the regulated community, and any impacts of the regulation on farm and forest land preservation. Also, the board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include (i) projected reporting, recordkeeping, and other administrative costs, (ii) probable effect of the regulation on affected small businesses, and (iii) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so at the public hearing or by mail, email, or fax to George Cosby, Office of Regulatory Affairs, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4067, fax (804) 698-4032, email george.cosby@deq.virginia.gov. Comments may also be submitted through the public forum feature of the Virginia Regulatory Town Hall website at www.townhall.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered comments must be received by 11:59 p.m. on the date established as the close of the comment period.

Agency Contact: George Cosby, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4067, FAX (804) 698-4032, or email george.cosby@deq.virginia.gov.

Summary:

The proposed regulation amends and reissues the existing general permit for domestic sewage discharges of less than or equal to 1,000 GPD (VAG40) that will expire on August 1, 2011. The significant revisions to the regulation are as follows:

- 1. Authorization to Discharge (9VAC25-110-60). Added two reasons why the Department of Environmental Quality (DEQ) would deny coverage under the general permit.*
- 2. Registration Statement (9VAC25-110-70). Added a provision that allows owners of treatment works that were authorized under the expiring general permit, and who intend to continue coverage under this general permit, to be automatically covered without requiring the owner to submit a new registration statement. Clarified that maintenance contracts are required for treatment works serving individual single family dwellings.*
- 3. General Permit (9VAC25-110-80).*

Part I - Effluent Limitations, Monitoring Requirements, and Special Conditions. Identified the two effluent limitation and monitoring requirements sections as Part I.A (Receiving waters where the 7Q10 flows are < 0.2 MGD) and Part I.B (Receiving waters where the 7Q10

flows are >= 0.2 MGD) and made the following revisions: (i) modified the bacteria effluent limits to address the recent changes to the Virginia Water Quality Standards; and (ii) added clarifications to the footnotes for the effluent limits table to explain where to find the classes of water and boundary designations and the description of what are "shellfish waters" in the Virginia Water Quality Standards. Renumbered the special conditions section to Part I.C and made the following changes: (i) deleted the schedule of compliance special condition; (ii) clarified the maintenance contract special condition for treatment works serving individual single family dwellings to indicate that maintenance contracts are required for these treatment works; (iii) clarified that the previous permit maintenance contract special condition applies to treatment works serving nonsingle family dwellings; (iv) clarified that the operation and maintenance plan special condition applies to treatment works serving nonsingle family dwellings and added a requirement that all results of testing and sampling must be kept with the maintenance log; (v) added compliance recordkeeping special conditions containing recordkeeping instructions for the permittee regarding quantification levels and significant digits; and (vi) added a water quality standards special condition requiring discharges authorized by the permit to meet water quality standards.

Part II - Conditions Applicable To All VPDES Permits. Modified the duty to reapply section to indicate that permittees that are required to submit a new registration statement to reapply for permit coverage must submit the new registration statement at least 60 days prior to the expiration date of the permit. Added an explanation of automatic permit coverage renewal and how a facility qualifies. Clarified that the automatic transfer of permit provision applies when the current permittee notifies the DEQ within 30 days of the transfer of property title.

9VAC25-110-10. Definitions.

The words and terms used in this chapter shall have the same meanings as given in the State Water Control Law, Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Code of Virginia and the VPDES Permit Regulation (9VAC25-31), unless the context clearly indicates otherwise, except that for the purposes of this chapter:

"7Q10" means the lowest flow averaged over a period of seven consecutive days that can be statistically expected to occur once every 10 climatic years.

"Climatic year" means a year beginning on April 1 and ending on March 31.

"DEQ" means the Virginia Department of Environmental Quality or the department.

"Domestic sewage" means the water-carried human wastes from residences, buildings, industrial establishments or other places.

"Total maximum daily load" or "TMDL" means a calculation of the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards, and an allocation of that amount to the pollutant's sources. A TMDL includes wasteload allocations (WLAs) for point source discharges, and load allocations (LAs) for nonpoint sources or natural background or both, and must include a margin of safety (MOS) and account for seasonal variations.

9VAC25-110-20. Purpose; delegation of authority; effective date of permit.

A. This general permit regulation governs domestic sewage discharges to surface waters from treatment works with a design discharge flow of less than or equal to 1,000 gallons per day on a monthly average. No discharge of pollutants from domestic sewage treatment works is allowed except when in compliance with the conditions of this permit.

B. The Director of the Department of Environmental Quality, or his designee, may perform any act of the board provided under this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.

C. This general VPDES permit will become effective on August 2, ~~2006~~ 2011, and it expires on August 1, ~~2011~~ 2016. With respect to a particular facility, this general permit shall become effective upon the facility owner's compliance with the provisions of 9VAC25-110-60 ~~and receipt of a copy of the general VPDES permit.~~

9VAC25-110-60. Authorization to discharge.

A. Any owner of a treatment works governed by this general permit is hereby authorized to discharge treated domestic sewage to surface waters of the Commonwealth of Virginia provided that ~~the~~:

1. The owner ~~has filed with the department~~ the submits a registration statement ~~described~~, if required to do so, in accordance with 9VAC25-110-70, ~~has complied~~ and that registration statement is accepted by the department;

2. The owner complies with the effluent limitations and other requirements of 9VAC25-110-80, ~~and has complied with all the following conditions:~~ and

3. The owner has not been notified by the department that authorization is denied in accordance with subsection B of this section.

B. The department will notify an owner of denial of authorization in the event of any of the following:

1. The owner ~~shall not have been~~ is required to obtain an individual VPDES permit ~~as may be required~~ in

accordance with 9VAC25-31-170 B 3 of the VPDES Permit Regulation;

2. The owner ~~shall not be authorized by this general permit~~ is proposing to discharge to surface waters specifically named in other board regulations or policies that prohibit such discharges;

3. The owner ~~shall not be authorized by this general permit~~ is proposing to discharge to surface waters in an area where there are central sewage facilities reasonably available, as determined by the department; ~~and~~

4. The owner of any proposed treatment works or any treatment works that has not previously been issued a ~~valid~~ VPDES permit ~~shall have~~ has applied to the Virginia Department of Health for an onsite sewage disposal system permit, and the Virginia Department of Health ~~must have~~ has determined that there is ~~no~~ technology available to serve that parcel of land with an onsite system;

5. The discharge would violate the antidegradation policy stated in 9VAC25-260-30 of the Virginia Water Quality Standards; or

6. A TMDL (board adopted, EPA approved, or EPA imposed) contains a WLA for the facility, unless this general permit specifically addresses the TMDL pollutant of concern and the permit limits are at least as stringent as those required by the TMDL WLA.

~~B. Receipt of C. Compliance with this general permit constitutes compliance with the Clean Water Act, the State Water Control Law, and applicable regulations under either, with the exceptions stated in 9VAC25-31-60 of the VPDES Permit Regulation. Approval for coverage under this general VPDES permit does not relieve any owner of the responsibility to comply with any other applicable federal, state or local statute, ordinance or regulation, including applicable regulations, for owners of sewage treatment works that serve individual single family dwellings, the Alternative Discharging Sewage Treatment Regulations for Individual Single Family Dwellings (12VAC5-640) of the Virginia Department of Health adopted pursuant to §§ 32.1-12, 32.1-163, and 32.1-164 of the Code of Virginia and, for ~~any owner~~ owners of sewage treatment works that serve nonsingle family dwellings, the Sewage Collection and Treatment Regulations (9VAC25-790) adopted by the State Water Control Board pursuant to § 62.1-44.18 of the Code of Virginia.~~

D. Continuation of permit coverage.

1. Any owner that was authorized to discharge under the general permit issued in 2006, and who is required to and submits a complete registration statement on or before August 1, 2011, is authorized to continue to discharge treated domestic sewage under the terms of the 2006 general permit until such time as the department either:

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a. Issues coverage to the owner under this general permit;
or

b. Notifies the owner that coverage under this permit is denied.

2. When the facility that was covered under the expiring or expired general permit is not in compliance with the conditions of that permit, the board may choose to do any or all of the following:

a. Initiate enforcement action based upon the general permit which has been continued;

b. Issue a notice of intent to deny coverage under the new general permit. If the general permit coverage is denied, the owner would then be required to cease the activities authorized by the continued general permit or be subject to enforcement action for operating without a permit;

c. Issue an individual permit with appropriate conditions;
or

d. Take other actions authorized by the VPDES Permit Regulation (9VAC25-31).

9VAC25-110-70. Registration statement.

A. Deadlines for submitting registration statement. ~~The~~ Any owner required to submit a registration statement shall file submit a complete General VPDES Permit Registration Statement in accordance with this chapter, which shall serve as a notice of intent to be covered under the general VPDES permit for domestic sewage discharges of less than or equal to 1,000 gallons per day ~~in accordance with this chapter.~~

1. New facilities. Any owner proposing a new discharge shall ~~file~~ submit a complete registration statement ~~with~~ to the department at least 60 days prior to the date planned for commencing operation of the treatment works.

2. Existing facilities.

a. Any owner of an existing treatment works covered by an individual VPDES permit who is proposing to be covered by this general permit shall ~~file~~ notify the department at least 180 days prior to the expiration date of the individual VPDES permit, and shall submit a complete registration statement at least ~~180~~ 60 days prior to the expiration date of the individual VPDES permit.

b. Any owner of ~~an existing~~ a treatment works that was authorized to discharge under the general permit issued in 2001 shall ~~have filed a complete registration statement prior to June 2, 2006,~~ and who intends to continue coverage under this general permit, is automatically covered under this general permit and is not required to submit a registration statement if:

(1) The ownership of the treatment works has not changed since the registration statement for coverage under the 2006 general permit was submitted, or, if the

ownership has changed, a new registration statement or VPDES Change of Ownership form was submitted to the department at the time of the title transfer;

(2) There has been no change in the design or operation, or both, of the treatment works since the registration statement for coverage under the 2006 general permit was submitted;

(3) For treatment works serving individual single family dwellings, the Virginia Department of Health has no objection to the automatic permit coverage renewal for this treatment works based on system performance issues, enforcement issues, or other issues sufficient to the department. If the Virginia Department of Health objects to the automatic renewal for this treatment works, the owner will be notified by the department in writing; and

(4) For treatment works serving nonsingle family dwellings, the department has no objection to the automatic permit coverage renewal for this treatment works based on system performance issues, or enforcement issues. If the department objects to the automatic renewal for this treatment works, the owner will be notified in writing.

Any owner that does not qualify for automatic permit coverage renewal shall submit a complete registration statement to the department on or before June 2, 2011.

c. Any owner of an existing treatment works not currently covered by a VPDES permit who is proposing to be covered by this general permit shall ~~file~~ submit a complete registration statement ~~by August 2, 2006~~ to the department.

3. New owners of existing facilities. Any new owner of an existing facility that is covered by this general permit must submit a complete registration statement or a "VPDES Change of Ownership" form to the department within 30 days of the ~~ownership change~~ transfer of title.

4. Late notifications. ~~Any owner of a new or existing facility is not precluded from submitting a registration statement after the applicable dates provided in subdivisions 1, 2 and 3 of this subsection. If a late registration statement is submitted, the owner is only authorized for discharges that occur after permit coverage is granted. The department reserves the right to take appropriate enforcement actions for any unpermitted discharges. Late registration statements will be accepted by the department, but authorization to discharge will not be retroactive.~~

B. Registration statement. The registration statement shall contain the following information:

1. a. Indicate if the facility served by the treatment works is a single family dwelling. If the facility is not a single family dwelling, describe the facility's use.

b. Name and location street address of the facility/residence facility served by the treatment works.

2. Name, mailing address, email address (where available), and work and home telephone numbers of the facility owner. Indicate For a dwelling, indicate if the owner is or will be the occupant of the facility dwelling.

3. Name of the water body receiving the discharge. Indicate if the discharge point is on a stream that usually flows during dry weather.

4. The amount of discharge, in gallons per day, on a monthly average, and the design flow of the treatment works, in gallons per day.

5. A description of any pollutants, other than domestic sewage, to be discharged.

6. ~~If~~ For a proposed treatment works, indicate if there are central sewage facilities available to serve this the facility.

7. If the facility currently has a VPDES permit. ~~Provide~~ provide the permit number, if applicable. Indicate if the facility has been built and begun discharge discharging.

8. For the owner of any proposed treatment works or any treatment works that has not previously been issued a ~~valid~~ VPDES permit:

a. A topographic map or computer generated map that indicates the discharge point, the location of the property to be served by the treatment works, and the location of any wells, springs, ~~and~~ other water bodies, ~~or downstream~~ and any residences within 1/2 mile downstream from the discharge point;

b. A site diagram of the existing or proposed sewage treatment works; ~~and including to include~~ the property boundaries, the location of the ~~facility/residence~~ facility or dwelling to be served, the individual sewage treatment units, the receiving water body, and the discharge line location; and

c. A copy of the notification from the Virginia Department of Health that an onsite sewage disposal system permit has been applied for and that the Virginia Department of Health has determined that there is no technology available to serve that parcel of land with an onsite system.

9. Maintenance contract.

a. For the owner of an existing treatment works serving an individual single family dwelling, provide the name of the individual or company contracted to perform the treatment works maintenance, and the expiration date of the current contract;

b. For the owner of ~~any an~~ an existing treatment works serving a nonsingle family dwelling, indicate if a valid maintenance contract has been obtained, or if an exception to the maintenance contract requirement has been requested and granted in accordance with subdivision 10 of this subsection. Provide the name of the ~~contract provider~~ individual or company contracted to perform the treatment works maintenance, and the expiration date of the current contract, if applicable. A valid maintenance contract shall provide for the following:

~~a-~~ (1) Performance of all testing required in accordance with either 9VAC25-110-80 Part I A or Part I B, as appropriate, and periodic (at least annual) inspections of the treatment works. Note: The treatment works should be sampled during normal discharging operations or normal discharging conditions (i.e., operations that are normal for that facility). The owner or maintenance provider should not force a discharge in order to collect a sample;

~~b-~~ (2) A written notification to the owner within 24 hours whenever the contract provider becomes aware that maintenance or repair of the owner's treatment works is necessary. The owner is responsible for prompt maintenance and repair of the treatment works including all costs associated with the maintenance or repair. Immediately upon receipt of notice that repair or maintenance is required, the owner shall begin emergency pump and haul of all sewage generated ~~in~~ from the facility or dwelling if full and complete repairs cannot be accomplished within 48 hours.

~~e-~~ (3) A log of the following items ~~will~~ shall be maintained by the contract provider for as long as the contract is in force:

~~(1)~~ (a) Results of all tests and sampling. Note: If sampling is attempted, but no sample was taken or possible, the log shall show all sampling attempts, and document and explain why no sample was taken or possible;

~~(2)~~ (b) Alarm activation incidents;

~~(3)~~ (c) Maintenance, corrective, or repair activities performed;

~~(4)~~ (d) Recommended repair or replacement items; and

~~(5)~~ (e) Copies of all reports prepared by the contract provider.

~~e-~~ (4) An inspection ~~will~~ shall be conducted by the contract provider within 48 hours after notification by the owner that a problem may be occurring; and

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~~e. A (5) The maintenance contract shall be valid for a minimum of 24 months of consecutive coverage under the maintenance contract.~~

10. The owner of ~~any~~ an existing treatment works servicing a nonsingle family dwelling may request an exception to the maintenance contract requirement by submitting an operation and maintenance plan to the department for review and approval. If an operation and maintenance plan has been approved by the department previously and remains current and complete, then it does not need to be resubmitted. In such cases, the owner shall provide the date of approval of the operation and maintenance plan, and identify any changes that have been made to the approved ~~operation and maintenance~~ plan. At a minimum, the operation and maintenance plan shall contain the following information:

a. An up-to-date operation and maintenance manual for the treatment works;

b. A log of all maintenance performed on the ~~plant~~ treatment works including, but not limited to, the following:

(1) The date and amount of disinfection chemicals added to the chlorinator.

(2) If dechlorination is used, the date and amount of any dechlorination chemicals that are added.

(3) The date and time of equipment failure(s) and the date and time the equipment was restored to service.

(4) The date and approximate volume of sludge removed.

(5) Results of all tests and sampling. Note: If sampling is attempted, but no sample was taken or possible, the log shall show all sampling attempts, and document and explain why no sample was taken or possible;

c. Dated receipts for chemicals purchased, equipment purchased, and maintenance performed; and

d. An effluent monitoring plan ~~in accordance to conform~~ with the requirements of 9VAC25-110-80 Part I A or Part I B, as appropriate, including all sample collection, preservation, and analysis procedures. Note: The treatment works should be sampled during normal discharging operations or normal discharging conditions (i.e., operations that are normal for that facility). The owner or maintenance provider should not force a discharge in order to collect a sample.

11. The following certification: "I hereby grant to duly authorized agents of the Department of Environmental Quality, upon presentation of credentials, permission to enter the property where the treatment works is located for

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

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

9VAC25-110-80. General permit.

Any owner whose registration statement is accepted by the board ~~will receive the following permit and, or whose permit coverage is automatically renewed,~~ shall comply with the requirements contained ~~therein~~ herein and be subject to all requirements of 9VAC25-31-170.

General Permit No.: VAG40

Effective Date: August 2, ~~2006~~ 2011

Expiration Date: August 1, ~~2014~~ 2016

GENERAL PERMIT FOR DOMESTIC SEWAGE
DISCHARGES OF LESS THAN OR EQUAL TO 1,000
GALLONS PER DAY

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

In compliance with the provisions of the Clean Water Act (33 USC § 1251 et seq.), as amended, and pursuant to the State Water Control Law and regulations adopted pursuant thereto, owners of treatment works with domestic sewage discharges of a design flow of less than or equal to 1,000 gallons per day on a monthly average are authorized to discharge to surface waters within the boundaries of the Commonwealth of Virginia, except those waters specifically named in board regulations or policies that prohibit such discharges.

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

Part I
Effluent Limitations, Monitoring Requirements and Special Conditions

A. Effluent limitations and monitoring requirements—receiving waters where the 7Q10 flows are less than 0.2 MGD.

1. During the period beginning with the permit's effective date and lasting until the permit's expiration date, the permittee is authorized to discharge from outfall number 001 to receiving waters where the 7Q10 flows are less than 0.2 MGD.

The discharge shall be limited and monitored by the permittee as specified below:

| EFFLUENT CHARACTERISTICS | DISCHARGE LIMITATIONS | | MONITORING REQUIREMENTS | |
|--|-----------------------|-------------------------------|-------------------------|-------------|
| | Instantaneous Minimum | Instantaneous Maximum | Frequency | Sample Type |
| Flow (MGD) [⊕] (1) | NA | NL | 1/year | Estimate |
| BOD ₅ | NA | 30 mg/l | 1/year | Grab |
| Total Suspended Solids | NA | 30 mg/l | 1/year | Grab |
| Total Residual Chlorine ^{**} (2) | | | | |
| After contact tank | 1.0 mg/l | NA | 1/year | Grab |
| Final effluent | NA | 0.016 mg/l | 1/year | Grab |
| E. coli ^{***} (3) | NA | 235/100 126/100 ml | 1/year | Grab |
| enterococci ^{****} (4) | NA | 104/100 35/100 ml | 1/year | Grab |
| Fecal Coliform Bacteria ^{*****} (5) | NA | 200/100 ml | 1/year | Grab |
| pH (standard units) | 6.0 | 9.0 | 1/year | Grab |
| Dissolved Oxygen | 5.0 mg/l | NA | 1/year | Grab |

NL = No Limitation, monitoring required

NA = Not Applicable

[⊕] (1) The design flow of this treatment facility is less than or equal to 1,000 gallons per day.

^{**} (2) Applies only when chlorine is used for disinfection and the discharge is ~~in~~ into freshwater (see 9VAC25-260-140 C for the classes of waters and boundary designations). ~~The quantification level of chlorine shall be 0.1 mg/l.~~

^{***} (3) Applies only when methods other than chlorine are used for disinfection and the discharge is ~~in~~ into freshwater (see 9VAC25-260-140 C for the classes of waters and boundary designations). ~~Continuous~~ When the facility is discharging, continuous disinfection ~~capability~~ shall be provided in order to maintain this effluent limit.

^{****} (4) Applies only when the discharge is ~~in~~ into saltwater or the transition zone (see 9VAC25-260-140 C for the classes of waters and boundary designations). ~~Continuous~~ When the facility is discharging, continuous disinfection ~~capability~~ shall be provided in order to maintain this effluent limit.

^{*****} (5) Applies only when the discharge is ~~in~~ into shellfish water waters (see 9VAC25-260-160 for the description of what are shellfish waters). ~~Continuous~~ When the facility is discharging, continuous disinfection ~~capability~~ shall be provided in order to maintain this effluent limit.

2. All monitoring data required by Part I A 1 shall be maintained on site in accordance with Part II B. Reporting of results to DEQ is not required; however, the monitoring results shall be made available to DEQ or Virginia Department of Health personnel upon request.

3. ~~40 CFR 133.102(e) requires that the~~ The 30-day average percent removal for BOD₅ and total suspended solids shall not be less than 85%.

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Part I Effluent Limitations Monitoring Requirements and Special Conditions

~~A. B.~~ Effluent limitations and monitoring requirements—receiving waters where the 7Q10 flows are equal to or greater than 0.2 MGD.

1. During the period beginning with the permit's effective date and lasting until the permit's expiration date, the permittee is authorized to discharge from outfall number 001 to receiving waters where the 7Q10 flows are equal to or greater than 0.2 MGD.

The discharge shall be limited and monitored by the permittee as specified below:

| EFFLUENT CHARACTERISTICS | DISCHARGE LIMITATIONS | | MONITORING REQUIREMENTS | |
|-----------------------------------|-----------------------|--------------------------------------|-------------------------|-------------|
| | Instantaneous Minimum | Instantaneous Maximum | Frequency | Sample Type |
| Flow (MGD) * (1) | NA | NL | 1/year | Estimate |
| BOD ₅ | NA | 30 mg/l | 1/year | Grab |
| Total Suspended Solids | NA | 30 mg/l | 1/year | Grab |
| Total Residual Chlorine ** (2) | | | | |
| Final effluent | 1.0 mg/l | 2.0 mg/l | 1/year | Grab |
| E. coli *** (3) | NA | 235/100 <u>126/100</u> ml | 1/year | Grab |
| enterococci **** (4) | NA | 104/100 <u>35/100</u> ml | 1/year | Grab |
| Fecal Coliform Bacteria ***** (5) | NA | 200/100 ml | 1/year | Grab |
| pH (standard units) | 6.0 | 9.0 | 1/year | Grab |

NL = No Limitation, monitoring required

NA = Not Applicable

* (1) The design flow of this treatment facility is less than or equal to 1,000 gallons per day.

** (2) Applies only when chlorine is used for disinfection and the discharge is ~~in~~ into freshwater (see 9VAC25-260-140 C for the classes of waters and boundary designations).

*** (3) Applies only when methods other than chlorine are used for disinfection and the discharge is ~~in~~ into freshwater (see 9VAC25-260-140 C for the classes of waters and boundary designations). ~~Continuous~~ When the facility is discharging, ~~continuous~~ disinfection ~~capability~~ shall be provided in order to maintain this effluent limit.

**** (4) Applies only when the discharge is ~~in~~ into saltwater or the transition zone (see 9VAC25-260-140 C for the classes of waters and boundary designations). ~~Continuous~~ When the facility is discharging, ~~continuous~~ disinfection ~~capability~~ shall be provided in order to maintain this effluent limit.

***** (5) Applies only when the discharge is ~~in~~ into shellfish ~~water~~ waters (see 9VAC25-260-160 for the description of what are shellfish waters). ~~Continuous~~ When the facility is discharging, ~~continuous~~ disinfection ~~capability~~ shall be provided in order to maintain this effluent limit.

2. All monitoring data required by Part I ~~A B~~ 1 shall be maintained on site in accordance with Part II B. Reporting of results to DEQ is not required; however, the monitoring results shall be made available to DEQ or Virginia Department of Health personnel upon request.

3. ~~40 CFR 133.102(e) requires that the~~ The 30-day average percent removal for BOD₅ and total suspended solids shall not be less than 85%.

~~B. C.~~ Special conditions.

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

~~2. Schedule of compliance. This compliance schedule shall be allowed only for treatment works that were existing as of their dates of coverage under this general permit. Treatment works constructed after their dates of coverage are expected to comply with the limitations and conditions of the general permit from the date of operation. For existing facilities that require upgrades, the permittee shall install equipment or unit processes or make other physical modifications to the treatment works that are necessary to achieve compliance with the limitations and conditions of this permit within 180 days of the date of coverage under the permit. The modifications shall not be initiated until written authorization is first provided by the Virginia~~

~~Department of Health or DEQ. The permittee shall submit to the DEQ Regional Office a written notice certifying completion of any necessary modifications on or before the 180-day compliance deadline. If the permittee is unable to meet the deadline, a written notice shall be submitted that shall include the cause of the delay, any actions taken to eliminate the delay, and the projected date for compliance.~~

~~3-2. Maintenance contract.~~

a. Treatment works serving individual single family dwellings.

(1) For existing treatment works, the permittee shall keep a maintenance contract in force during the permit term. A copy of the maintenance contract shall be maintained at the site of treatment works and shall be made available to DEQ or to the Virginia Department of Health for examination upon request.

(2) For proposed treatment works, the permittee shall submit a copy of a valid maintenance contract to both DEQ and the Virginia Department of Health prior to operation of the treatment works. The maintenance contract shall be kept in force during the permit term, maintained at the site of treatment works, and made available to DEQ or the Virginia Department of Health for examination upon request.

(3) At a minimum, the maintenance contract shall provide for the following:

(a) Performance of all testing required in the Alternative Discharging Sewage Treatment Regulations for Individual Single Family Dwellings, 12VAC5-640-490 B, unless the owner maintains a separate monitoring contract in accordance with 12VAC5-640-490 F. Note: The treatment works should be sampled during normal discharging operations or normal discharging conditions (i.e., operations that are normal for that facility). The owner or maintenance provider should not force a discharge in order to collect a sample;

(b) A written notification to the owner within 24 hours whenever the contract provider becomes aware that maintenance or repair of the owner's treatment works is necessary. The owner is responsible for prompt maintenance and repair of the treatment works including all costs associated with the maintenance or repair. Immediately upon receipt of notice that repair or maintenance is required, the owner shall begin emergency pump and haul of all sewage generated in the dwelling if full and complete repairs cannot be accomplished within 48 hours; and

(c) The maintenance contract shall be valid for a minimum of 24 months of consecutive coverage.

b. Treatment works serving nonsingle family dwellings.

~~(1) For existing treatment works, the permittee shall maintain~~ keep a maintenance contract in force during the permit term, unless an exception to the maintenance contract requirement has been requested and granted in accordance with Part I ~~B-4 C 3~~. A copy of a valid maintenance contract shall be maintained at the site of treatment works and made available to DEQ ~~or to the Virginia Department of Health~~ for examination upon request.

(2) For proposed treatment works, the permittee shall submit a copy of a valid maintenance contract to DEQ prior to operation of the treatment works, unless an exception to the maintenance contract requirement has been requested and granted in accordance with Part I B-4 C 3.

~~The~~ (3) At a minimum, the maintenance contract shall provide for the following:

~~a-~~ (a) Performance of all testing required in accordance with either Part I A or Part I B, as appropriate, and periodic (at least annual) inspections of the treatment works. Note: The treatment works should be sampled during normal discharging operations or normal discharging conditions (i.e., operations that are normal for that facility). The owner or maintenance provider should not force a discharge in order to collect a sample;

~~b-~~ (b) A written notification to the owner within 24 hours whenever the contract provider becomes aware that maintenance or repair of the owner's treatment works is necessary. The owner is responsible for prompt maintenance and repair of the treatment works including all costs associated with the maintenance or repair. Immediately upon receipt of notice that repair or maintenance is required, the owner shall begin emergency pump and haul of all sewage generated ~~in~~ from the facility or dwelling if full and complete repairs cannot be accomplished within 48 hours;

~~e-~~ (c) A log of the following items ~~will~~ shall be maintained by the contract provider:

(1) (i) Results of all tests and sampling. Note: If sampling is attempted, but no sample was taken or possible, the log shall show all sampling attempts, and document and explain why no sample was taken or possible;

(2) (ii) Alarm activation incidents;

(3) (iii) Maintenance, corrective, or repair activities performed;

(4) (iv) Recommended repair or replacement items; and

(5) (v) Copies of all reports prepared by the contract provider;

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~~d.~~ (d) An inspection ~~will~~ shall be conducted by the contract provider within 48 hours after notification by the owner that a problem may be occurring; and

~~e.~~ (e) The maintenance contract shall be valid for a minimum of 24 months of consecutive coverage under the maintenance contract.

4. ~~3.~~ Operation and maintenance plan. The owner of any treatment works servicing a nonsingle family dwelling may request an exception to the maintenance contract requirement by submitting an operation and maintenance plan to DEQ for review and approval. At a minimum, the operation and maintenance plan shall contain the following information:

a. An up-to-date operation and maintenance manual for the treatment works;

b. A log of all maintenance performed on the ~~plant~~ treatment works including, but not limited to, the following:

(1) The date and amount of disinfection chemicals added to the chlorinator.

(2) If dechlorination is used, the date and amount of any dechlorination chemicals that are added.

(3) The date and time of equipment failure(s) and the date and time the equipment was restored to service.

(4) The date and approximate volume of sludge removed.

(5) Results of all tests and sampling. Note: If sampling is attempted, but no sample was taken or possible, the log shall show all sampling attempts, and document and explain why no sample was taken or possible;

c. Dated receipts for chemicals purchased, equipment purchased, and maintenance performed; and

d. An effluent monitoring plan ~~in accordance to conform~~ with the requirements of Part I A or Part I B, as appropriate, including all sample collection, preservation, and analysis procedures. Note: The treatment works should be sampled during normal discharging operations or normal discharging conditions (i.e., operations that are normal for that facility). The owner or maintenance provider should not force a discharge in order to collect a sample.

Should the permittee fail to implement the approved operation and maintenance plan, or if there are violations of effluent limitations, DEQ reserves the right to require the permittee to obtain a maintenance contract.

4. Compliance recordkeeping under Part I A and Part I B.

a. The quantification levels (QL) shall be less than or equal to the following concentrations:

| <u>Effluent Parameter</u> | <u>Quantification Level</u> |
|---------------------------|-----------------------------|
| <u>BOD₅</u> | <u>2.0 mg/l</u> |
| <u>TSS</u> | <u>1.0 mg/l</u> |
| <u>Chlorine</u> | <u>0.10 mg/l</u> |

The QL is defined as the lowest concentration used to calibrate a measurement system in accordance with the procedures published for the test method.

b. Recording results. Any concentration data below the QL used in the analysis shall be recorded as "<QL" if it is less than the QL in subdivision a. Otherwise the numerical value shall be recorded.

c. Monitoring results shall be recorded using the same number of significant digits as listed in the permit. Regardless of the rounding convention used by the permittee (e.g., 5 always rounding up or to the nearest even number), the permittee shall use the convention consistently, and shall ensure that consulting laboratories employed by the permittee use the same convention.

5. The discharges authorized by this permit shall be controlled as necessary to meet water quality standards.

Part II

Conditions Applicable to all VPDES Permits

A. Monitoring.

1. Samples and measurements taken as required by this permit shall be representative of the monitored activity.

2. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this permit.

3. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will ensure accuracy of measurements.

B. Records.

1. Records of monitoring information shall include:

a. The date, exact place, and time of sampling or measurements;

b. The individual(s) who performed the sampling or measurements;

c. The date(s) and time(s) analyses were performed;

d. The individual(s) who performed the analyses;

e. The analytical techniques or methods used; and

f. The results of such analyses.

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

C. Reporting monitoring results. Monitoring results under this permit are not required to be submitted to the department. However, should the department request that the permittee submit monitoring results, the following subsections would apply.

1. The permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after monitoring takes place, unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the department's regional office.
2. Monitoring results shall be reported on a Discharge Monitoring Report (DMR) or on forms provided, approved or specified by the department.
3. If the permittee monitors any pollutant specifically addressed by this permit more frequently than required by this permit using test procedures approved under 40 CFR Part 136 or using other test procedures approved by the U.S. Environmental Protection Agency or using procedures specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted on the DMR or reporting form specified by the department.
4. Calculations for all limitations that require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this permit.

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

furnish to the department, upon request, copies of records required to be kept by this permit.

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

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

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

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

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

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

H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge including a bypass or upset should occur from a treatment works and the discharge enters or could be expected to enter state waters, the permittee

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shall promptly notify, in no case later than 24 hours, the department by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse effects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the department within five days of discovery of the discharge in accordance with Part II I 2. Unusual and extraordinary discharges include, but are not limited to, any discharge resulting from:

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

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

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

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

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

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

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

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

NOTE: The immediate (within 24 hours) reports required in Parts II G, H, and I may be made to the department's regional office. Reports may be made by telephone or by fax. For reports outside normal working hours, leave a message and this shall fulfill the immediate reporting requirement. For

emergencies, the Virginia Department of Emergency Management maintains a 24-hour telephone service at 1-800-468-8892.

J. Notice of planned changes.

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

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

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

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

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

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

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

K. Signatory requirements.

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

a. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions which govern the operation of the regulated

facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or other actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

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

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

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

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

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

c. The written authorization is submitted to the department.

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

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

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to

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

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

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

M. Duty to reapply.

1. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, and the permittee does not qualify for automatic permit coverage renewal, the permittee shall submit a new registration statement at least ~~180~~ 60 days before the expiration date of the existing permit, unless permission for a later date has been granted by the board. The board shall not grant permission for registration statements to be submitted later than the expiration date of the existing permit.

2. A permittee qualifies for automatic permit coverage renewal and is not required to submit a registration statement if:

a. The ownership of the treatment works has not changed since this general permit went into effect on August 2, 2011, or, if the ownership has changed, a new registration statement or VPDES Change of Ownership form was submitted to the department at the time of the title transfer;

b. There has been no change in the design or operation, or both, of the treatment works since this general permit went into effect on August 2, 2011;

c. For treatment works serving individual single family dwellings, the Virginia Department of Health does not

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object to the automatic permit coverage renewal for this treatment works based on system performance issues, enforcement issues, or other issues sufficient to the department. If the Virginia Department of Health objects to the automatic renewal for this treatment works, the permittee will be notified by the department in writing; and

d. For treatment works serving nonsingle family dwellings, the department has no objection to the automatic permit coverage renewal for this treatment works based on system performance issues, or enforcement issues. If the department objects to the automatic renewal for this treatment works, the permittee will be notified in writing.

Any permittee that does not qualify for automatic permit coverage renewal shall submit a new registration statement in accordance with Part II M 1.

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

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

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

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

R. Disposal of solids or sludges. Solids, sludges or other pollutants removed in the course of treatment or management

of pollutants shall be disposed of in a manner so as to prevent any pollutant from such materials from entering state waters.

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

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

U. Bypass.

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

2. Notice.

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

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

3. Prohibition of bypass.

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

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

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

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

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

V. Upset.

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

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

- a. An upset occurred and that the permittee can identify the cause(s) of the upset;
- b. The permitted facility was at the time being properly operated;
- c. The permittee submitted notice of the upset as required in Part II I; and
- d. The permittee complied with any remedial measures required under Part II S.

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

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

- 1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
- 2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
- 3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
- 4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act and the State Water Control Law, any substances or parameters at any location.

For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours, and

whenever the facility is discharging. Nothing contained herein shall make an inspection unreasonable during an emergency.

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

Y. Transfer of permits.

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

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

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

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

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

FORMS (9VAC25-110)

VPDES Change of Ownership Agreement Form (eff. 7/10).

VPDES CHANGE OF OWNERSHIP AGREEMENT FORM

VPDES Permit Number: VA _____

Name of Permitted Facility: _____

Location (City/County): _____

We, the undersigned, hereby request a transfer of ownership for the referenced permit.

Anticipated date of transfer: _____

CURRENT OWNER: I (We) hereby agree to the transfer of ownership modification to the referenced VPDES Permit.

Current Owner Name (as listed on the VPDES Permit Cover Page):

*Signed: _____ Date: _____

Printed Name: _____ Title: _____

Address: _____

NEW OWNER: I (We) hereby agree to the change of ownership modification to the referenced VPDES Permit, and agree to accept all conditions and responsibilities of the permit.

Transferred permit to be issued to: _____

*Signed: _____ Date: _____

Printed Name: _____ Title: _____

Address: _____

Telephone: (____) _____

*** This form must be signed by properly authorized individuals as specified in the VPDES Permit Regulation.**

Proposed Regulation

REGISTRAR'S NOTICE: The following regulation filed by the State Water Control Board is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 8 of the Code of Virginia, which exempts general permits issued by the State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.), Chapter 24 (§ 62.1-242 et seq.) of Title 62.1 and Chapter 25 (§ 62.1-254 et seq.) of Title 62.1, if the board (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01, (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit, (iii) provides notice and receives oral and written comment as provided in § 2.2-4007.03, and (iv) conducts at least one public hearing on the proposed general permit.

Title of Regulation: **9VAC25-115. General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Seafood Processing Facilities (amending 9VAC25-115-10 through 9VAC25-115-50).**

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

Public Hearing Information:

August 26, 2010 - 1 p.m. - Department of Environmental Quality, 629 East Main Street, 2nd Floor Conference Room, Richmond, VA

Public Comment Deadline: September 17, 2010.

Public Participation: In addition to any other comments, the board is seeking comments on the costs and benefits of the proposal, the potential impacts on the regulated community, and any impacts of the regulation on farm and forest land preservation. Also, the board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include i) projected reporting, recordkeeping, and other administrative costs, ii) probable effect of the regulation on affected small businesses, and iii) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so at the public hearing or by mail, email, or fax to George Cosby, Office of Regulatory Affairs, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4067, fax (804) 698-4032, email george.cosby@deq.virginia.gov. Comments may also be submitted through the public forum feature of the Virginia Regulatory Town Hall website at www.townhall.virginia.gov. Written comments must include the name and address of the commenter. In order to be

considered comments must be received by 11:59 p.m. on the date established as the close of the comment period.

Agency Contact: George Cosby, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4067, FAX (804) 698-4032, or email george.cosby@deq.virginia.gov.

Summary

The proposed changes amend and reissue the general permit that expires on July 23, 2011. The general permit that establishes limitations and monitoring requirements for wastewater discharges from seafood processing facilities is continued. As with an individual VPDES permit, the effluent limits in the general permit are set to protect the quality of the waters receiving the discharges. The proposed changes (i) add two reasons authorization to discharge cannot be granted, (ii) add language to allow for administrative continuances of coverage, (iii) add three new special conditions, (iv) update the storm water pollution prevention plan section and (v) modify due dates in the conditions applicable to all permits section.

9VAC25-115-10. Definitions.

The words and terms used in this chapter shall have the meanings defined in the State Water Control Law, Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Code of Virginia and the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31) unless the context clearly indicates otherwise. Additionally, for the purposes of this chapter:

"Industrial activity" means the facilities classified under SIC Code 2091 or 2092.

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

"Seafood processing facility" means any facility classified under SIC Code 2091, 2092, 5142, or 5146, ~~except a mechanized clam facility~~, which processes or handles seafood intended for human consumption or as bait, ~~except a mechanized clam facility~~. Seafood includes but is not limited to crabs, oysters, hand-shucked clams, scallops, squid, eels, turtles, fish, conchs and crayfish.

"SIC" means the Standard Industrial Classification Code or Industrial Grouping from the U.S. Office of Management and Budget Standard Industrial Classification Manual, 1987 edition.

"Significant materials" includes, 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 (except oyster, clam or scallop shells); hazardous substances designated under § 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act

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(CERCLA) (42 USC § 9601); any chemical the facility is required to report pursuant to § 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) (42 USC § 11023); fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with storm water discharges.

"Storm water" means storm water runoff, snow melt runoff, and surface runoff and drainage.

"Storm water discharge associated with industrial activity" means the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the VPDES program under 9VAC25-31-10 et seq. For the categories of industries identified in the "industrial activity" definition, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or byproducts (except for oyster, clam or scallop shells) used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process wastewaters; sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage area (including tank farms) for raw materials, and intermediate and finished products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the purposes of this paragraph, material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, byproduct or waste product (except for oyster, clam or scallop shells). The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas.

"Total maximum daily load" or "TMDL" means a calculation of the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards, and an allocation of that amount to the pollutant's sources. A TMDL includes wasteload allocations (WLAs) for point source discharges, and load allocations (LAs) for nonpoint sources or natural background, or both, and must include a margin of safety (MOS) and account for seasonal variations.

9VAC25-115-20. Purpose; delegation of authority; effective date of permit.

A. This general permit regulation governs the discharge of wastewater and storm water associated with industrial activity from seafood processing facilities. It does not cover

~~wastewater~~ discharges from mechanized clam processing facilities. No discharge from seafood processing facilities is allowed except when in compliance with this permit.

B. The director, or an authorized representative, may perform any act of the board provided under this regulation, except as limited by § 62.1-44.14 of the Code of Virginia.

C. This general permit will become effective on July 24, ~~2004~~ 2011, and will expire on July 23, ~~2011~~ 2016. For any covered owner, this general permit is effective upon compliance with all the provisions of 9VAC25-115-30 ~~and the receipt of this general permit.~~

9VAC25-115-30. Authorization to discharge.

A. Any owner governed by this general permit is hereby authorized to discharge to surface waters of the Commonwealth of Virginia provided that the owner files a registration statement in accordance with 9VAC25-115-40 that is accepted by the board, files the required permit fee, complies with the effluent limitations and other requirements of 9VAC25-115-50, and provided that: ~~the owner has not been notified by the department that authorization is denied in accordance with subsection B of this section.~~

B. The department will notify an owner of denial of authorization in the event of any of the following:

1. ~~Individual permit.~~ The owner ~~shall not have been~~ is required to obtain an individual permit ~~as may be required in the VPDES Permit Regulation (9VAC25-31).~~ in accordance with 9VAC25-31-170 B 3 of the VPDES Permit Regulation;

2. ~~Prohibited discharge locations.~~ The owner ~~shall not be authorized by this general permit~~ is proposing to discharge to state waters specifically named in other board regulations or policies that prohibit such discharges;

3. ~~Nutrient discharges.~~ ~~Annual~~ The owner is proposing to discharge annual mass loadings of total nitrogen in excess of 2,300 pounds per year or of total phosphorus in excess of 300 pounds per year ~~are not authorized by this general permit;~~

4. The discharge would violate the antidegradation policy stated in 9VAC25-260-30 of the Virginia Water Quality Standards; or

5. A TMDL (board adopted and EPA approved or EPA imposed) contains a WLA for the facility, unless this general permit specifically addresses the TMDL pollutant of concern and the permit limits are at least as stringent as those required by the TMDL WLA.

~~Receipt of this general permit does not relieve any owner of the responsibility to comply with any other federal, state or local statute, ordinance or regulation.~~ C. Compliance with this general permit constitutes compliance with the Clean Water Act, the State Water Control Law, and applicable regulations

under either, with the exceptions stated in 9VAC25-31-60 of the VPDES Permit Regulation. Approval for coverage under this general permit does not relieve any owner of the responsibility to comply with any other federal, state or local statute, ordinance or regulation.

D. Continuation of permit coverage.

1. Any owner that was authorized to discharge under the general permit issued in 2006, and who submits a complete registration statement on or before July 23, 2011, is authorized to continue to discharge under the terms of the 2006 general permit until such time as the department either:

- a. Issues coverage to the owner under this general permit; or
- b. Notifies the owner that coverage under this permit is denied.

2. When the facility that was covered under the expiring or expired general permit is not in compliance with the conditions of that permit, the board may choose to do any or all of the following:

- a. Initiate enforcement action based upon the general permit that has been continued;
- b. Issue a notice of intent to deny coverage under the amended general permit. If the general permit coverage is denied, the owner would then be required to cease the activities authorized by the continued general permit or be subject to enforcement action for operating without a permit;
- c. Issue an individual permit with appropriate conditions; or
- d. Take other actions authorized by the VPDES permit Regulation (9VAC25-31)

9VAC25-115-40. Registration statement.

A. Deadlines for submitting registration statement. The owner shall ~~file~~ submit a complete general VPDES permit registration statement in accordance with this chapter, which will shall serve as a notice of intent for coverage under the general permit for seafood processors.

1. New facilities. Any owner proposing a new discharge shall submit a complete registration statement to the department at least 30 days prior to the date planned for commencing operation of the treatment works.

2. Existing facilities.

- a. Any owner of an existing seafood processing facility covered by an individual VPDES permit who is proposing to be covered by this general permit shall notify the department at least 180 days prior to the expiration date of the individual VPDES permits, and

shall submit a complete registration statement at least 30 days prior to the expiration date of the individual VPDES permit.

b. Any owner of an existing facility covered by the ~~that was authorized to discharge under the~~ general VPDES permit for seafood processing facilities that became effective on July 24, 2004 ~~2006,~~ and who wishes to ~~remain covered by~~ intends to continue coverage under this general permit shall ~~file a new~~ submit a complete registration statement to the department prior to June 24, 2011 in accordance with the general permit requirements in order to avoid a lapse in coverage. Any owner proposing a new discharge shall file the registration statement at least 30 days prior to the date planned for operation of the new discharge. Any owner of an existing seafood processing facility covered by an individual VPDES permit who is proposing to be covered by this general permit shall file the registration statement at least 180 days prior to the expiration date of the individual VPDES permit.

c. Any owner of an existing seafood processing facility not currently covered by a VPDES permit who is proposing to be covered by this general permit shall ~~file the~~ submit a complete registration statement to the department.

~~After~~ d. Any owner of an existing seafood processing facility adding a new process after coverage under the general permit is obtained, shall submit an amended registration statement must be submitted to the department at least 30 days prior to commencing operation of any the new process not included on the original registration statement.

3. New owners of existing facilities. Any new owner of an existing facility that is covered by this general permit must submit a complete registration statement or a VPDES Change of Ownership form within 30 days of the transfer of title.

4. Late registration statements will be accepted but authorization to discharge will not be retroactive.

B. The registration statement shall contain the following information:

- 1. Facility name, owner, mailing address, email address (where available), and telephone number;
- 2. Facility ~~location~~ street address (if different from mailing address);
- 3. Facility operator name, address, email address, and telephone number if different than owner;
- 4. Does the facility discharge to surface waters? Name of receiving stream if yes and, if no, describe the discharge;

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5. Does the facility have a current VPDES Permit? Permit Number if yes;

6. The original date of construction of the seafood processing facility building and dates and description of all subsequent facility construction;

7. A USGS topographic or computer generated map showing the facility discharge location and receiving water body;

8. Facility SIC Code(s);

9. Nature of business at facility;

10. Discharge outfall information;

11. Facility maximum production information;

12. Facility line (water balance) drawing;

13. Discharge and outfall descriptions for different seafood processes that operate simultaneously;

14. Treatment and solid waste disposal information;

15. Information on use of chemicals at the facility; and

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

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

9VAC25-115-50. General permit.

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

General Permit No.: VAG52
Effective Date: July 24, ~~2006~~ 2011
Expiration Date: July 23, ~~2011~~ 2016

GENERAL PERMIT FOR SEAFOOD PROCESSING FACILITY

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

In compliance with the provisions of the Clean Water Act, as amended, and pursuant to the State Water Control Law and regulations adopted pursuant to it, owners of seafood processing facilities, other than mechanized clam processing facilities, are authorized to discharge to surface waters within the boundaries of the Commonwealth of Virginia, except those specifically named in board regulations or policies that prohibit such discharges.

The authorized discharge shall be in accordance with this cover page, Part I—Effluent Limitations and Monitoring Requirements, Part II—Storm Water Pollution Prevention Plans, and Part III—Conditions Applicable to All VPDES Permits, as set forth herein.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS—SEAFOOD PROCESSING NOT LIMITED ELSEWHERE IN PART I. A.— SIC 2091, 2092, 5142 AND 5146 SOURCES EXCEPT MECHANIZED CLAM FACILITIES

1. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from seafood processing not otherwise classified from outfall(s) _____.

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

| EFFLUENT CHARACTERISTICS | MONITORING REQUIREMENTS kg/day | | DISCHARGE LIMITATIONS kg/kg | | | Sample Frequency | Sample Type |
|--------------------------|-----------------------------------|-----------|--------------------------------|-----------|-----------|------------------|------------------------------|
| | Monthly Avg | Daily Max | Monthly Avg | Daily Max | Daily Min | | |
| Flow (MGD) | NA | NL | NA | NA | NA | 1/YEAR | Estimate |
| pH (S.U.) | NA | NA | NA | 9.0 | 6.0 | 1/YEAR | Grab |
| TSS | NL | NL | NA | NA | NA | 1/YEAR | Comp Composite |

Regulations

| | | | | | | | |
|----------------|----|----|----|----|----|--------|----------------------------|
| Oil and Grease | NL | NL | NA | NA | NA | 1/YEAR | Grab |
| Production | NA | NL | NA | NA | NA | 1/YEAR | <u>Measure Measurement</u> |

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

~~Comp Composite~~ = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production—see Special Condition No. 5.

Samples shall be collected by the end of the year and reported by the 10th of January of the following year on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS—CONVENTIONAL (HANDPICKED) BLUE CRAB PROCESSING—EXISTING SOURCES PROCESSING MORE THAN 3,000 LBS OF RAW MATERIAL PER DAY ON ANY DAY

2. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from conventional blue crab processing, from outfall(s)

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

| EFFLUENT CHARACTERISTICS | MONITORING REQUIREMENTS kg/day | | DISCHARGE LIMITATIONS kg/kg | | | Sample Frequency | Sample Type |
|--------------------------|-----------------------------------|-----------|--------------------------------|-----------|-----------|------------------|----------------------------|
| | Monthly Avg | Daily Max | Monthly Avg | Daily Max | Daily Min | | |
| Flow (MGD) | NA | NL | NA | NA | NA | 1/3 Months | Estimate |
| pH (S.U.) | NA | NA | NA | 9.0 | 6.0 | 1/3 Months | Grab |
| TSS | NL | NL | 0.74 | 2.2 | NA | 1/3 Months | Comp Composite |
| Oil and Grease | NL | NL | 0.20 | 0.60 | NA | 1/3 Months | Grab |
| Production | NA | NL | NA | NA | NA | 1/3 Months | <u>Measure Measurement</u> |

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

~~Comp Composite~~ = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production—see Special Condition No. 5.

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Regulations

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS—CONVENTIONAL (HANDPICKED) BLUE CRAB PROCESSING—ALL NEW SOURCES

3. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from conventional blue crab processing, from outfall(s)

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

| EFFLUENT CHARACTERISTICS | MONITORING REQUIREMENTS kg/day | | DISCHARGE LIMITATIONS kg/kg | | | Sample Frequency | Sample Type |
|--------------------------|-----------------------------------|-----------|--------------------------------|-----------|-----------|------------------|-----------------------------------|
| | Monthly Avg | Daily Max | Monthly Avg | Daily Max | Daily Min | | |
| Flow (MGD) | NA | NL | NA | NA | NA | 1/3 Months | Estimate |
| pH (S.U.) | NA | NA | NA | 9.0 | 6.0 | 1/3 Months | Grab |
| BOD ₅ | NL | NL | 0.15 | 0.30 | NA | 1/3 Months | Comp Composite |
| TSS | NL | NL | 0.45 | 0.90 | NA | 1/3 Months | Comp Composite |
| Oil and Grease | NL | NL | 0.065 | 0.13 | NA | 1/3 Months | Grab |
| Production | NA | NL | NA | NA | NA | 1/3 Months | Measure Measurement |

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

~~Comp Composite~~ = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production—see Special Condition No. 5.

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS—MECHANIZED BLUE CRAB PROCESSING—ALL EXISTING SOURCES

4. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from mechanized blue crab processing, from outfall(s)

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

| EFFLUENT CHARACTERISTICS | MONITORING REQUIREMENTS kg/day | | DISCHARGE LIMITATIONS kg/kg | | | Sample Frequency | Sample Type |
|--------------------------|-----------------------------------|-----------|--------------------------------|-----------|-----------|------------------|-------------|
| | Monthly Avg | Daily Max | Monthly Avg | Daily Max | Daily Min | | |
| Flow (MGD) | NA | NL | NA | NA | NA | 1/3 Months | Estimate |

Regulations

| | | | | | | | |
|----------------|----|----|------|------|-----|------------|--|
| pH (S.U.) | NA | NA | NA | 9.0 | 6.0 | 1/3 Months | Grab |
| TSS | NL | NL | 12-0 | 36-0 | NA | 1/3 Months | Comp <u>Composite</u> |
| Oil and Grease | NL | NL | 4.2 | 13-0 | NA | 1/3 Months | Grab |
| Production | NA | NL | NA | NA | NA | 1/3 Months | Measure <u>Measurement</u> |

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

~~Comp Composite~~ = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production—see Special Condition No. 5.

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS—MECHANIZED BLUE CRAB PROCESSING—ALL NEW SOURCES

5. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from mechanized blue crab processing, from outfall(s)

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

| EFFLUENT CHARACTERISTICS | MONITORING REQUIREMENTS kg/day | | DISCHARGE LIMITATIONS kg/kkg | | | Sample Frequency | Sample Type |
|--------------------------|-----------------------------------|-----------|---------------------------------|-----------|-----------|------------------|--|
| | Monthly Avg | Daily Max | Monthly Avg | Daily Max | Daily Min | | |
| Flow (MGD) | NA | NL | NA | NA | NA | 1/3 Months | Estimate |
| pH (S.U.) | NA | NA | NA | 9.0 | 6.0 | 1/3 Months | Grab |
| BOD ₅ | NL | NL | 2.5 | 5.0 | NA | 1/3 Months | Comp <u>Composite</u> |
| TSS | NL | NL | 6.3 | 13 | NA | 1/3 Months | Comp <u>Composite</u> |
| Oil and Grease | NL | NL | 1.3 | 2.6 | NA | 1/3 Months | Grab |
| Production | NA | NL | NA | NA | NA | 1/3 Months | Measure <u>Measurement</u> |

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

~~Comp Composite~~ = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production—see Special Condition No. 5.

Regulations

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS—NONBREADED SHRIMP PROCESSING—EXISTING SOURCES PROCESSING MORE THAN 2,000 LBS OF RAW MATERIAL PER DAY ON ANY DAY

6. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from non-breaded shrimp processing, from outfall(s) _____.

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

| EFFLUENT CHARACTERISTICS | MONITORING REQUIREMENTS kg/day | | DISCHARGE LIMITATIONS kg/kg | | | Sample Frequency | Sample Type |
|--------------------------|-----------------------------------|-----------|--------------------------------|-----------------|-----------|------------------|--|
| | Monthly Avg | Daily Max | Monthly Avg | Daily Max | Daily Min | | |
| Flow (MGD) | NA | NL | NA | NA | NA | 1/3 Months | Estimate |
| pH (S.U.) | NA | NA | NA | 9.0 | 6.0 | 1/3 Months | Grab |
| TSS | NL | NL | 38-0 | 110 | NA | 1/3 Months | Comp <u>Composite</u> |
| Oil and Grease | NL | NL | 12-0 | 36-0 | NA | 1/3 Months | Grab |
| Production | NA | NL | NA | NA | NA | 1/3 Months | Measure <u>Measurement</u> |

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

~~Comp Composite~~ = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production—see Special Condition No. 5.

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS—NONBREADED SHRIMP PROCESSING—ALL NEW SOURCES

7. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from nonbreaded shrimp processing, from outfall(s) _____.

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

| EFFLUENT CHARACTERISTICS | MONITORING REQUIREMENTS kg/day | | DISCHARGE LIMITATIONS kg/kg | | | Sample Frequency | Sample Type |
|--------------------------|-----------------------------------|-----------|--------------------------------|-----------|-----------|------------------|-------------|
| | Monthly Avg | Daily Max | Monthly Avg | Daily Max | Daily Min | | |
| Flow (MGD) | NA | NL | NA | NA | NA | 1/3 Months | Estimate |
| pH (S.U.) | NA | NA | NA | 9.0 | 6.0 | 1/3 Months | Grab |

Regulations

| | | | | | | | |
|------------------|----|----|------|------|----|------------|----------------------------|
| BOD ₅ | NL | NL | 25-0 | 63-0 | NA | 1/3 Months | <u>Comp Composite</u> |
| TSS | NL | NL | 10-0 | 25-0 | NA | 1/3 Months | <u>Comp Composite</u> |
| Oil and Grease | NL | NL | 1.6 | 4.0 | NA | 1/3 Months | Grab |
| Production | NA | NL | NA | NA | NA | 1/3 Months | <u>Measure Measurement</u> |

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Comp Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production—see Special Condition No. 5.

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS—BREADED SHRIMP PROCESSING—EXISTING SOURCES PROCESSING MORE THAN 2,000 LBS OF RAW MATERIAL PER DAY ON ANY DAY

8. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from breaded shrimp processing, from outfall(s)

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

| EFFLUENT CHARACTERISTICS | MONITORING REQUIREMENTS kg/day | | DISCHARGE LIMITATIONS kg/kg | | | Sample Frequency | Sample Type |
|--------------------------|-----------------------------------|-----------|--------------------------------|-----------|-----------|------------------|----------------------------|
| | Monthly Avg | Daily Max | Monthly Avg | Daily Max | Daily Min | | |
| Flow (MGD) | NA | NL | NA | NA | NA | 1/3 Months | Estimate |
| pH (S.U.) | NA | NA | NA | 9.0 | 6.0 | 1/3 Months | Grab |
| TSS | NL | NL | 93-0 | 280 | NA | 1/3 Months | <u>Comp Composite</u> |
| Oil and Grease | NL | NL | 12-0 | 36-0 | NA | 1/3 Months | Grab |
| Production | NA | NL | NA | NA | NA | 1/3 Months | <u>Measure Measurement</u> |

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Comp Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production—see Special Condition No. 5.

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Regulations

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS—BREADED SHRIMP PROCESSING—ALL NEW SOURCES

9. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from breaded shrimp processing, from outfall(s) _____.

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

| EFFLUENT CHARACTERISTICS | MONITORING REQUIREMENTS kg/day | | DISCHARGE LIMITATIONS kg/kkg | | | Sample Frequency | Sample Type |
|--------------------------|-----------------------------------|-----------|---------------------------------|------------------|-----------|------------------|--|
| | Monthly Avg | Daily Max | Monthly Avg | Daily Max | Daily Min | | |
| Flow (MGD) | NA | NL | NA | NA | NA | 1/3 Months | Estimate |
| pH (S.U.) | NA | NA | NA | 9.0 | 6.0 | 1/3 Months | Grab |
| BOD ₅ | NL | NL | 40- 0 | 100 | NA | 1/3 Months | Comp <u>Composite</u> |
| TSS | NL | NL | 22- 0 | 55- 0 | NA | 1/3 Months | Comp <u>Composite</u> |
| Oil and Grease | NL | NL | 1.5 | 3.8 | NA | 1/3 Months | Grab |
| Production | NA | NL | NA | NA | NA | 1/3 Months | Measure <u>Measurement</u> |

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

~~Comp Composite~~ = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production—see Special Condition No. 5.

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS—TUNA PROCESSING—ALL EXISTING SOURCES

10. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from tuna processing, from outfall(s) _____.

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

| EFFLUENT CHARACTERISTICS | MONITORING REQUIREMENTS kg/day | | DISCHARGE LIMITATIONS kg/kkg | | | Sample Frequency | Sample Type |
|--------------------------|-----------------------------------|-----------|---------------------------------|-----------|-----------|------------------|-------------|
| | Monthly Avg | Daily Max | Monthly Avg | Daily Max | Daily Min | | |
| Flow (MGD) | NA | NL | NA | NA | NA | 1/3 Months | Estimate |
| pH (S.U.) | NA | NA | NA | 9.0 | 6.0 | 1/3 Months | Grab |

Regulations

| | | | | | | | |
|----------------|----|----|------|-----|----|------------|----------------------------|
| TSS | NL | NL | 3.3 | 8.3 | NA | 1/3 Months | <u>Comp Composite</u> |
| Oil and Grease | NL | NL | 0.84 | 2.1 | NA | 1/3 Months | Grab |
| Production | NA | NL | NA | NA | NA | 1/3 Months | <u>Measure Measurement</u> |

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Comp Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production—see Special Condition No. 5.

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS—TUNA PROCESSING—ALL NEW SOURCES

11. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from tuna processing, from outfall(s) _____.

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

| EFFLUENT CHARACTERISTICS | MONITORING REQUIREMENTS kg/day | | DISCHARGE LIMITATIONS kg/kg | | | Sample Frequency | Sample Type |
|--------------------------|-----------------------------------|-----------|--------------------------------|-----------|-----------|------------------|----------------------------|
| | Monthly Avg | Daily Max | Monthly Avg | Daily Max | Daily Min | | |
| Flow (MGD) | NA | NL | NA | NA | NA | 1/3 Months | Estimate |
| pH (S.U.) | NA | NA | NA | 9.0 | 6.0 | 1/3 Months | Grab |
| BOD ₅ | NL | NL | 8.1 | 20.0 | NA | 1/3 Months | <u>Comp Composite</u> |
| TSS | NL | NL | 3.0 | 7.5 | NA | 1/3 Months | <u>Comp Composite</u> |
| Oil and Grease | NL | NL | 0.76 | 1.9 | NA | 1/3 Months | Grab |
| Production | NA | NL | NA | NA | NA | 1/3 Months | <u>Measure Measurement</u> |

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Comp Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production—see Special Condition No. 5.

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Regulations

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS—CONVENTIONAL BOTTOM FISH PROCESSING—EXISTING SOURCES PROCESSING MORE THAN 4,000 LBS OF RAW MATERIAL PER DAY ON ANY DAY

12. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from conventional bottom fish processing, from outfall(s) _____.

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

| EFFLUENT CHARACTERISTICS | MONITORING REQUIREMENTS kg/day | | DISCHARGE LIMITATIONS kg/kkg | | | Sample Frequency | Sample Type |
|--------------------------|-----------------------------------|-----------|---------------------------------|-----------|-----------|------------------|----------------------------|
| | Monthly Avg | Daily Max | Monthly Avg | Daily Max | Daily Min | | |
| Flow (MGD) | NA | NL | NA | NA | NA | 1/3 Months | Estimate |
| pH (S.U.) | NA | NA | NA | 9.0 | 6.0 | 1/3 Months | Grab |
| TSS | NL | NL | 2.0 | 3.6 | NA | 1/3 Months | <u>Comp Composite</u> |
| Oil and Grease | NL | NL | 0.55 | 1.0 | NA | 1/3 Months | Grab |
| Production | NA | NL | NA | NA | NA | 1/3 Months | <u>Measure Measurement</u> |

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Comp Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production—see Special Condition No. 5.

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS—CONVENTIONAL BOTTOM FISH PROCESSING—ALL NEW SOURCES

13. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from conventional bottom fish processing, from outfall(s) _____.

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

| EFFLUENT CHARACTERISTICS | MONITORING REQUIREMENTS kg/day | | DISCHARGE LIMITATIONS kg/kkg | | | Sample Frequency | Sample Type |
|--------------------------|-----------------------------------|-----------|---------------------------------|-----------|-----------|------------------|-------------|
| | Monthly Avg | Daily Max | Monthly Avg | Daily Max | Daily Min | | |
| Flow (MGD) | NA | NL | NA | NA | NA | 1/3 Months | Estimate |
| pH (S.U.) | NA | NA | NA | 9.0 | 6.0 | 1/3 Months | Grab |
| BOD ₅ | NL | NL | 0.71 | 1.2 | NA | 1/3 Months | <u>Comp</u> |

Regulations

| | | | | | | | |
|----------------|----|----|-------|-------|----|------------|--|
| | | | | | | | <u>Composite</u> |
| TSS | NL | NL | 0.73 | 1.5 | NA | 1/3 Months | Comp <u>Composite</u> |
| Oil and Grease | NL | NL | 0.042 | 0.077 | NA | 1/3 Months | Grab |
| Production | NA | NL | NA | NA | NA | 1/3 Months | Measure <u>Measurement</u> |

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

~~Comp Composite~~ = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production—see Special Condition No. 5.

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS—MECHANIZED BOTTOM FISH PROCESSING—ALL EXISTING SOURCES

14. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from mechanized bottom fish processing, from outfall(s) _____.

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

| EFFLUENT CHARACTERISTICS | MONITORING REQUIREMENTS kg/day | | DISCHARGE LIMITATIONS kg/kkg | | | Sample Frequency | Sample Type |
|--------------------------|-----------------------------------|-----------|---------------------------------|------------------|-----------|------------------|--|
| | Monthly Avg | Daily Max | Monthly Avg | Daily Max | Daily Min | | |
| Flow (MGD) | NA | NL | NA | NA | NA | 1/3 Months | Estimate |
| pH (S.U.) | NA | NA | NA | 9.0 | 6.0 | 1/3 Months | Grab |
| TSS | NL | NL | 12- 0 | 22- 0 | NA | 1/3 Months | Comp <u>Composite</u> |
| Oil and Grease | NL | NL | 3.9 | 9.9 | NA | 1/3 Months | Grab |
| Production | NA | NL | NA | NA | NA | 1/3 Months | Measure <u>Measurement</u> |

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

~~Comp Composite~~ = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production—see Special Condition No. 5.

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Regulations

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS—MECHANIZED BOTTOM FISH PROCESSING—ALL NEW SOURCES

15. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from mechanized bottom fish processing, from outfall(s)

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

| EFFLUENT CHARACTERISTICS | MONITORING REQUIREMENTS kg/day | | DISCHARGE LIMITATIONS kg/kkg | | | Sample Frequency | Sample Type |
|--------------------------|-----------------------------------|-----------|---------------------------------|------------------|-----------|------------------|--|
| | Monthly Avg | Daily Max | Monthly Avg | Daily Max | Daily Min | | |
| Flow (MGD) | NA | NL | NA | NA | NA | 1/3 Months | Estimate |
| pH (S.U.) | NA | NA | NA | 9.0 | 6.0 | 1/3 Months | Grab |
| BOD ₅ | NL | NL | 7.5 | 13- 0 | NA | 1/3 Months | Comp <u>Composite</u> |
| TSS | NL | NL | 2.9 | 5.3 | NA | 1/3 Months | Comp <u>Composite</u> |
| Oil and Grease | NL | NL | 0.47 | 1.2 | NA | 1/3 Months | Grab |
| Production | NA | NL | NA | NA | NA | 1/3 Months | Measure <u>Measurement</u> |

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

~~Comp Composite~~ = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production—see Special Condition No. 5.

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS—HAND-SHUCKED CLAM PROCESSING—EXISTING SOURCES WHICH PROCESS MORE THAN 4,000 LBS OF RAW MATERIAL PER DAY ON ANY DAY

16. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from hand-shucked clam processing, from outfall(s)

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

| EFFLUENT CHARACTERISTICS | MONITORING REQUIREMENTS kg/day | | DISCHARGE LIMITATIONS kg/kkg | | | Sample Frequency | Sample Type |
|--------------------------|-----------------------------------|-----------|---------------------------------|-----------|-----------|------------------|-------------|
| | Monthly Avg | Daily Max | Monthly Avg | Daily Max | Daily Min | | |
| Flow (MGD) | NA | NL | NA | NA | NA | 1/3 Months | Estimate |
| pH (S.U.) | NA | NA | NA | 9.0 | 6.0 | 1/3 Months | Grab |

| | | | | | | | |
|----------------|----|----|-----------------|-----------------|----|------------|----------------------------|
| TSS | NL | NL | 18.0 | 59.0 | NA | 1/3 Months | <u>Comp Composite</u> |
| Oil and Grease | NL | NL | 0.23 | 0.60 | NA | 1/3 Months | Grab |
| Production | NA | NL | NA | NA | NA | 1/3 Months | <u>Measure Measurement</u> |

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Comp Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production—see Special Condition No. 5.

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS—HAND-SHUCKED CLAM PROCESSING—ALL NEW SOURCES

17. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from hand-shucked clam processing, from outfall(s) _____.

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

| EFFLUENT CHARACTERISTICS | MONITORING REQUIREMENTS kg/day | | DISCHARGE LIMITATIONS kg/kg | | | Sample Frequency | Sample Type |
|--------------------------|-----------------------------------|-----------|--------------------------------|-----------------|-----------|------------------|----------------------------|
| | Monthly Avg | Daily Max | Monthly Avg | Daily Max | Daily Min | | |
| Flow (MGD) | NA | NL | NA | NA | NA | 1/3 Months | Estimate |
| pH (S.U.) | NA | NA | NA | 9.0 | 6.0 | 1/3 Months | Grab |
| TSS | NL | NL | 17.0 | 55.0 | NA | 1/3 Months | <u>Comp Composite</u> |
| Oil and Grease | NL | NL | 0.21 | 0.56 | NA | 1/3 Months | Grab |
| Production | NA | NL | NA | NA | NA | 1/3 Months | <u>Measure Measurement</u> |

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Comp Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production—see Special Condition No. 5.

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Regulations

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS—HAND-SHUCKED OYSTER PROCESSING—EXISTING SOURCES WHICH PROCESS MORE THAN 1,000 LBS OF RAW MATERIAL PER DAY ON ANY DAY

18. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from hand-shucked oyster processing, from outfall(s)

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

| EFFLUENT CHARACTERISTICS | MONITORING REQUIREMENTS kg/day | | DISCHARGE LIMITATIONS kg/kg | | | Sample Frequency | Sample Type |
|--------------------------|-----------------------------------|-----------|--------------------------------|------------------|-----------|------------------|--|
| | Monthly Avg | Daily Max | Monthly Avg | Daily Max | Daily Min | | |
| Flow (MGD) | NA | NL | NA | NA | NA | 1/3 Months | Estimate |
| pH (S.U.) | NA | NA | NA | 9.0 | 6.0 | 1/3 Months | Grab |
| TSS | NL | NL | 16- 0 | 23- 0 | NA | 1/3 Months | Comp <u>Composite</u> |
| Oil and Grease | NL | NL | 0.77 | 1.1 | NA | 1/3 Months | Grab |
| Production | NA | NL | NA | NA | NA | 1/3 Months | Measure <u>Measurement</u> |

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

~~Comp~~ Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production—see Special Condition No. 5.

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS—HAND-SHUCKED OYSTER PROCESSING—ALL NEW SOURCES

19. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from hand-shucked oyster processing, from outfall(s)

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

| EFFLUENT CHARACTERISTICS | MONITORING REQUIREMENTS kg/day | | DISCHARGE LIMITATIONS kg/kg | | | Sample Frequency | Sample Type |
|--------------------------|-----------------------------------|-----------|--------------------------------|------------------|-----------|------------------|-------------------------------------|
| | Monthly Avg | Daily Max | Monthly Avg | Daily Max | Daily Min | | |
| Flow (MGD) | NA | NL | NA | NA | NA | 1/3 Months | Estimate |
| pH (S.U.) | NA | NA | NA | 9.0 | 6.0 | 1/3 Months | Grab |
| TSS | NL | NL | 16- 0 | 23- 0 | NA | 1/3 Months | Comp <u>Composite</u> |

Regulations

| | | | | | | | |
|----------------|----|----|------|-----|----|------------|----------------------------|
| Oil and Grease | NL | NL | 0.77 | 1.1 | NA | 1/3 Months | Grab |
| Production | NA | NL | NA | NA | NA | 1/3 Months | <u>Measure Measurement</u> |

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Comp Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production—see Special Condition No. 5.

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS—STEAMED AND CANNED OYSTER PROCESSING—ALL EXISTING SOURCES

20. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from mechanized oyster processing, from outfall(s) _____.

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

| EFFLUENT CHARACTERISTICS | MONITORING REQUIREMENTS kg/day | | DISCHARGE LIMITATIONS kg/kg | | | Sample Frequency | Sample Type |
|--------------------------|-----------------------------------|-----------|--------------------------------|-----------|-----------|------------------|----------------------------|
| | Monthly Avg | Daily Max | Monthly Avg | Daily Max | Daily Min | | |
| Flow (MGD) | NA | NL | NA | NA | NA | 1/3 Months | Estimate |
| pH (S.U.) | NA | NA | NA | 9.0 | 6.0 | 1/3 Months | Grab |
| TSS | NL | NL | 190 | 270 | NA | 1/3 Months | <u>Comp Composite</u> |
| Oil and Grease | NL | NL | 1.7 | 2.3 | NA | 1/3 Months | Grab |
| Production | NA | NL | NA | NA | NA | 1/3 Months | <u>Measure Measurement</u> |

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Comp Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production—see Special Condition No. 5.

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Regulations

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS—STEAMED AND CANNED OYSTER PROCESSING—ALL NEW SOURCES

21. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from mechanized oyster processing, from outfall(s) _____.

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

| EFFLUENT CHARACTERISTICS | MONITORING REQUIREMENTS kg/day | | DISCHARGE LIMITATIONS kg/kkg | | | Sample Frequency | Sample Type |
|--------------------------|-----------------------------------|-----------|---------------------------------|------------------|-----------|------------------|--|
| | Monthly Avg | Daily Max | Monthly Avg | Daily Max | Daily Min | | |
| Flow (MGD) | NA | NL | NA | NA | NA | 1/3 Months | Estimate |
| pH (S.U.) | NA | NA | NA | 9.0 | 6.0 | 1/3 Months | Grab |
| BOD ₅ | NL | NL | 17- 0 | 67- 0 | NA | 1/3 Months | Comp <u>Composite</u> |
| TSS | NL | NL | 39- 0 | 56- 0 | NA | 1/3 Months | Comp <u>Composite</u> |
| Oil and Grease | NL | NL | 0.42 | 0.84 | NA | 1/3 Months | Grab |
| Production | NA | NL | NA | NA | NA | 1/3 Months | Measure <u>Measurement</u> |

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

~~Comp Composite~~ = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production—see Special Condition No. 5.

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS—SCALLOP PROCESSING—ALL EXISTING SOURCES

22. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from scallop processing, from outfall(s) _____.

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

| EFFLUENT CHARACTERISTICS | MONITORING REQUIREMENTS kg/day | | DISCHARGE LIMITATIONS kg/kkg | | | Sample Frequency | Sample Type |
|--------------------------|-----------------------------------|-----------|---------------------------------|-----------|-----------|------------------|-------------|
| | Monthly Avg | Daily Max | Monthly Avg | Daily Max | Daily Min | | |
| Flow (MGD) | NA | NL | NA | NA | NA | 1/3 Months | Estimate |
| pH (S.U.) | NA | NA | NA | 9.0 | 6.0 | 1/3 Months | Grab |

Regulations

| | | | | | | | |
|----------------|----|----|------|-----|----|------------|----------------------------|
| TSS | NL | NL | 1.4 | 5.7 | NA | 1/3 Months | <u>Comp Composite</u> |
| Oil and Grease | NL | NL | 0.23 | 7.3 | NA | 1/3 Months | Grab |
| Production | NA | NL | NA | NA | NA | 1/3 Months | <u>Measure Measurement</u> |

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Comp Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production—see Special Condition No. 5.

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS—SCALLOP PROCESSING—ALL NEW SOURCES

23. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from scallop processing, from outfall(s) _____.

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

| EFFLUENT CHARACTERISTICS | MONITORING REQUIREMENTS kg/day | | DISCHARGE LIMITATIONS kg/kg | | | Sample Frequency | Sample Type |
|--------------------------|-----------------------------------|-----------|--------------------------------|-----------|-----------|------------------|----------------------------|
| | Monthly Avg | Daily Max | Monthly Avg | Daily Max | Daily Min | | |
| Flow (MGD) | NA | NL | NA | NA | NA | 1/3 Months | Estimate |
| pH (S.U.) | NA | NA | NA | 9.0 | 6.0 | 1/3 Months | Grab |
| TSS | NL | NL | 1.4 | 5.7 | NA | 1/3 Months | <u>Comp Composite</u> |
| Oil and Grease | NL | NL | 0.23 | 7.3 | NA | 1/3 Months | Grab |
| Production | NA | NL | NA | NA | NA | 1/3 Months | <u>Measure Measurement</u> |

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Comp Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production—see Special Condition No. 5.

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Regulations

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS—FARM-RAISED CATFISH PROCESSING—EXISTING SOURCES WHICH PROCESS MORE THAN 3,000 LBS OF RAW MATERIAL PER DAY ON ANY DAY

24. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from farm-raised catfish processing, from outfall(s)

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

| EFFLUENT CHARACTERISTICS | MONITORING REQUIREMENTS kg/day | | DISCHARGE LIMITATIONS kg/kkg | | | Sample Frequency | Sample Type |
|--------------------------|-----------------------------------|-----------|---------------------------------|-----------|-----------|------------------|--|
| | Monthly Avg | Daily Max | Monthly Avg | Daily Max | Daily Min | | |
| Flow (MGD) | NA | NL | NA | NA | NA | 1/3 Months | Estimate |
| pH (S.U.) | NA | NA | NA | 9.0 | 6.0 | 1/3 Months | Grab |
| TSS | NL | NL | 9.2 | 28 | NA | 1/3 Months | Comp <u>Composite</u> |
| Oil and Grease | NL | NL | 3.4 | 10-0 | NA | 1/3 Months | Grab |
| Production | NA | NL | NA | NA | NA | 1/3 Months | Measure <u>Measurement</u> |

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

~~Comp~~ Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production—see Special Condition No. 5.

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS—FARM-RAISED CATFISH PROCESSING—ALL NEW SOURCES

25. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from farm-raised catfish processing, from outfall(s)

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

| EFFLUENT CHARACTERISTICS | MONITORING REQUIREMENTS kg/day | | DISCHARGE LIMITATIONS kg/kkg | | | Sample Frequency | Sample Type |
|--------------------------|-----------------------------------|-----------|---------------------------------|-----------|-----------|------------------|-------------------------------------|
| | Monthly Avg | Daily Max | Monthly Avg | Daily Max | Daily Min | | |
| Flow (MGD) | NA | NL | NA | NA | NA | 1/3 Months | Estimate |
| pH (S.U.) | NA | NA | NA | 9.0 | 6.0 | 1/3 Months | Grab |
| BOD ₅ | NL | NL | 2.3 | 4.6 | NA | 1/3 Months | Comp <u>Composite</u> |

Regulations

| | | | | | | | |
|----------------|----|----|------|------|----|------------|----------------------------|
| TSS | NL | NL | 5.7 | 11.0 | NA | 1/3 Months | <u>Comp Composite</u> |
| Oil and Grease | NL | NL | 0.45 | 0.90 | NA | 1/3 Months | Grab |
| Production | NA | NL | NA | NA | NA | 1/3 Months | <u>Measure Measurement</u> |

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Comp Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production—see Special Condition No. 5.

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS—HERRING PROCESSING—EXISTING SOURCES

26. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from herring processing, from outfall(s) _____.

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

| EFFLUENT CHARACTERISTICS | MONITORING REQUIREMENTS kg/day | | DISCHARGE LIMITATIONS kg/kg | | | Sample Frequency | Sample Type |
|--------------------------|-----------------------------------|-----------|--------------------------------|-----------|-----------|------------------|----------------------------|
| | Monthly Avg | Daily Max | Monthly Avg | Daily Max | Daily Min | | |
| Flow (MGD) | NA | NL | NA | NA | NA | 1/3 Months | Estimate |
| pH (S.U.) | NA | NA | NA | 9.0 | 6.0 | 1/3 Months | Grab |
| TSS | NL | NL | 24 | 32 | NA | 1/3 Months | <u>Comp Composite</u> |
| Oil and Grease | NL | NL | 10 | 27 | NA | 1/3 Months | Grab |
| Production | NA | NL | NA | NA | NA | 1/3 Months | <u>Measure Measurement</u> |

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Comp Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production—see Special Condition No. 5.

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Regulations

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS—HERRING PROCESSING—ALL NEW SOURCES

27. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from herring processing, from outfall(s) _____.

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

| EFFLUENT CHARACTERISTICS | MONITORING REQUIREMENTS kg/day | | DISCHARGE LIMITATIONS kg/kg | | | Sample Frequency | Sample Type |
|--------------------------|-----------------------------------|-----------|--------------------------------|-----------|-----------|------------------|--|
| | Monthly Avg | Daily Max | Monthly Avg | Daily Max | Daily Min | | |
| Flow (MGD) | NA | NL | NA | NA | NA | 1/3 Months | Estimate |
| pH (S.U.) | NA | NA | NA | 9.0 | 6.0 | 1/3 Months | Grab |
| BOD ₅ | NL | NL | 15 | 16 | NA | 1/3 Months | Comp <u>Composite</u> |
| TSS | NL | NL | 5.2 | 7.0 | NA | 1/3 Months | Comp <u>Composite</u> |
| Oil and Grease | NL | NL | 1.1 | 2.9 | NA | 1/3 Months | Grab |
| Production | NA | NL | NA | NA | NA | 1/3 Months | Measure <u>Measurement</u> |

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

~~Comp~~ Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production—see Special Condition No. 5.

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

B. Special conditions.

1. No sewage shall be discharged from a point source to surface waters at this facility except under the provisions of another VPDES permit specifically issued for that purpose.

2. There shall be no chemicals added to the water or waste to be discharged, including sodium tripolyphosphate, other than those listed on the owner's accepted registration statement.

3. Wastewater should be reused or recycled to the maximum extent practicable.

4. The permittee shall comply with the following solids management plan:

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

b. All floors, machinery, conveyor belts, dock areas, etc. shall be dry swept or dry brushed prior to washdown.

c. All settling basins shall be cleaned frequently in order to achieve effective settling.

d. All solids resulting from the seafood processes covered under this general permit, other than oyster, clam or scallop shells, shall be handled, stored and disposed of so as to prevent a discharge to state waters of such solids or industrial wastes or other wastes from those solids.

e. The permittee shall install and properly maintain wastewater treatment necessary in order to remove organic solids present in the wastewater that may settle and accumulate on the substrate of the receiving waters in other than trace amounts.

f. All employees shall receive training relative to preventive measures taken to control the release of solids from the facility into surface waters.

5. Production to be reported and used in calculating effluent discharge levels in terms of kg/kkg shall be the weight in kilograms of raw material processed, in the form in which it is received at the processing plant, on the day of effluent sampling, except for the hand-shucked oyster, steamed and canned oyster, and scallop processing subcategories, for which production shall mean the weight of oyster or scallop meat after processing. The effluent levels in terms of kg/kkg shall be calculated by dividing the measured pollutant load in kg/day by the production level in kkg (thousands of kilograms).

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

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

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

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

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

7. Compliance reporting and recordkeeping under Part I A.

a. The quantification levels (QL) shall be less than or equal to the following concentrations:

| <u>Effluent Parameter</u> | <u>Quantification Level</u> |
|---------------------------|-----------------------------|
| <u>BOD</u> | <u>2.0 mg/l</u> |
| <u>TSS</u> | <u>1.0 mg/l</u> |
| <u>Oil and Grease</u> | <u>5.0 mg/l</u> |

The QL is defined as the lowest concentration used to calibrate a measurement system in accordance with the procedures published for the test method.

b. Recording results. Any concentration below the QL used in the analysis shall be recorded as < "QL" if it is less than the QL used in the analysis (the QL must be less than or equal to the QL in subdivision a of this subdivision. Otherwise the numerical value shall be recorded.

c. Monitoring results shall be recorded using the same number of significant digits as listed in the permit. Regardless of the rounding conventions used by the permittee (e.g., 5 always rounding up or to the nearest even number), the permittee shall use the convention consistently, and shall ensure that consulting laboratories employed by the permittee use the same convention.

8. The discharges authorized by this permit shall be controlled as necessary to meet water quality standards in 9VAC25-260.

9. If a new process is added after coverage under the general permit is obtained, an amended registration statement must be submitted at least 30 days prior to commencing operation of the new process.

Part II
Storm Water Pollution Prevention Plans

A storm water pollution prevention plan (SWPPP) shall be developed for each facility covered by this permit, which has storm water discharges and is classified under SIC Code 2091 or 2092.

The SWPPP shall be prepared in accordance with good engineering practices and shall identify potential sources of pollution that may reasonably be expected to affect the quality of storm water discharges from the facility. In addition, the plan shall describe and ensure the implementation of practices that will be used to reduce the pollutants in storm water discharges from the facility, and shall assure compliance with the terms and conditions of this permit. Permittees must implement the provisions of the SWPPP as a condition of this permit.

The SWPPP requirements of this general permit may be fulfilled by incorporating by reference other plans or documents such as an erosion and sediment control (ESC) plan, a spill prevention control and countermeasure (SPCC) plan developed for the facility under § 311 of the Clean Water Act or best management practices (BMP) programs otherwise

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required for the facility provided that the incorporated plan meets or exceeds the plan requirements of this section. If an ESC plan is being incorporated by reference, it shall have been approved by the locality in which the activity is to occur or by another appropriate plan approving authority authorized under the Erosion and Sediment Control Regulations, 4VAC50-30. All plans incorporated by reference into the SWPPP become enforceable under this permit.

A. Deadlines for plan preparation and compliance.

1. Facilities that were covered under the ~~2004~~ 2006 Seafood Processing General Permit. Owners of facilities that were covered under the ~~2004~~ 2006 Seafood Processing General Permit who are continuing coverage under this general permit shall update and implement any revisions to the SWPPP not later than December 30, ~~2006~~ 2011.

2. New facilities, facilities previously covered by an expiring individual permit, and existing facilities not currently covered by a VPDES permit. Owners of new facilities, facilities previously covered by an expiring individual permit, and existing facilities not currently covered by a VPDES permit who elect to be covered under this general permit must prepare and implement the SWPPP prior to submitting the registration statement.

3. New owners of existing facilities. Where the owner of an existing facility that is covered by this permit changes, the new owner of the facility must update and implement any revisions to the SWPPP within 60 days of the ~~ownership change~~ transfer of title.

4. Extensions. Upon a showing of good cause, the director may establish a later date in writing for the preparation and compliance with the SWPPP.

B. Contents of the plan. The plan shall include, at a minimum, the following items:

1. Pollution prevention team. The plan shall identify the staff individuals by name or title that comprise the facility's storm water pollution prevention team. The pollution prevention team is responsible for assisting the facility or plant manager in developing, implementing, maintaining, ~~and revising, and maintaining compliance with the facility's SWPPP. Responsibilities~~ Specific responsibilities of each staff individual on the team ~~must~~ shall be identified and listed.

2. Site description. The SWPPP shall include the following:

- a. Activities at the facility. A description of the nature of the industrial ~~activity(ies)~~ activities at the facility.
- b. General location map. A general location map (e.g., USGS quadrangle or other map) with enough detail to identify the location of the facility and the receiving waters within one mile of the facility.

c. Site map. A site map identifying the following:

- (1) The size of the property (in acres);
 - (2) The location and extent of significant structures and impervious surfaces (roofs, paved areas, and any other impervious areas);
 - (3) Locations of all storm water conveyances including ditches, pipes, swales, and inlets, and the ~~Directions~~ directions of storm water flow (e.g., use arrows to show which ways storm water will flow);
 - (~~2~~) (4) Locations of all existing structural and source control BMPs;
 - (~~3~~) (5) Locations of all surface water bodies, including wetlands;
 - (4) (~~6~~) (6) Locations of identified potential pollutant sources and where significant materials are exposed to precipitation;
 - (~~5~~) (7) Locations where major significant spills or leaks have occurred;
 - (~~6~~) (8) Locations of the following activities where such activities are exposed to precipitation: fueling stations; vehicle and equipment maintenance and/or cleaning areas; loading/unloading areas; locations used for the treatment, storage or disposal of wastes; and liquid storage tanks; processing and storage areas; access roads, rail cars and tracks; transfer areas for substances in bulk; and machinery;
 - (7) (9) Locations of storm water outfalls and an approximate outline of the area draining to each outfall, and location of municipal storm sewer systems (MS4s), if the storm water from the facility discharges to them;
 - (~~8~~) (10) Location and description of all nonstorm water discharges;
 - (9) ~~Locations of the following activities where such activities are exposed to precipitation: processing and storage areas; access roads, rail cars and tracks; the location of transfer of substance in bulk; and machinery;~~
 - (11) Location of any storage piles containing salt used for deicing or other commercial or industrial purposes; and
 - (~~10~~) (12) Location and source of runoff runoff to the site from adjacent property containing, where the runoff contains significant quantities of pollutants of concern to the facility (the permittee may shall include an evaluation with the SWPPP of how the quality of the storm water running onto the facility impacts the facility's storm water discharges) discharges.
- d. Receiving waters and wetlands. The name of ~~the~~ nearest all surface waters receiving water(s) discharges from the site, including intermittent streams, dry sloughs,

~~and arroyos and the areal extent and. Provide a description of wetland sites that may receive discharges from the facility. If the facility discharges through an MS4, identify the MS4 operator and the receiving water to which the MS4 discharges.~~

3. Summary of potential pollutant sources. The plan shall identify each separate area at the facility where industrial materials or activities are exposed to storm water. Industrial materials or activities include, but are not limited to: material handling equipment or activities, industrial machinery, raw materials, industrial production and processes, intermediate products, byproducts, final products, ~~or~~ and waste products. Material handling activities include, but are not limited to, the storage, loading and unloading, transportation, disposal, or conveyance of any raw material, intermediate product, final product or waste product. For each separate area identified, the description ~~must shall~~ include:

a. Activities in area. A list of the activities (e.g., material storage, equipment fueling and cleaning, cutting steel beams);

b. Pollutants. A list of the associated pollutant(s) or pollutant parameter(s) (e.g., crankcase oil, ~~iron~~, biochemical oxygen demand, pH, zinc, sulfuric acid, cleaning solvents, etc.) for each activity. The pollutant list ~~must shall~~ include all significant materials ~~that have been handled, treated, stored, or disposed in a manner to allow exposure that have been exposed~~ to storm water ~~between the time of in the three years before being covered under this permit and the present prior to the date this SWPP was prepared or amended. The list shall include any hazardous substance or oil at the facility.~~

4. Spills and leaks. The SWPPP ~~must shall~~ clearly identify areas where potential spills and leaks that can contribute pollutants to storm water discharges can occur and their ~~accompanying drainage points corresponding outfalls. For areas that are exposed to precipitation or that otherwise drain to a storm water conveyance at the facility to be covered under this permit, the~~ The plan must shall include a list of significant spills and leaks of toxic or hazardous pollutants that actually occurred at exposed areas, or that drained to a storm water conveyance during the three-year period prior to the date of the submission of a registration statement this SWPPP was prepared or amended. The list ~~must shall~~ be updated if significant spills or leaks occur in exposed areas of the facility during the term of the permit. Significant spills and leaks include releases of oil or hazardous substances in excess of reportable quantities, and may also include releases of oil or hazardous substances that are not in excess of reporting requirements.

5. Sampling data. The plan ~~must shall~~ include a summary of existing discharge sampling data taken at the facility,

and ~~must shall~~ also include a summary of sampling data collected during the term of this permit.

6. Storm water controls. ~~The SWPPP shall include a description of storm water management controls appropriate for the facility. The description of controls shall address the following minimum components:~~

a. ~~Description of existing and planned BMPs. The plan shall describe the type and location of existing nonstructural and structural best management practices (BMPs) selected for each of the areas where industrial materials or activities are exposed to storm water. All BMPs shall be implemented for all the areas identified in Part III B 3 Part II B 3 (summary of potential pollutant sources) should have a BMP(s) identified for the area's discharges. For areas where BMPs are not currently in place, include a description of appropriate BMPs that will be used to control pollutants in storm water discharges to prevent or control pollutants in storm water discharges from the facility. All reasonable steps shall be taken to control or address the quality of discharges from the site that may not originate at the facility. The SWPPP shall describe the type, location, and implementation of all BMPs for each area where industrial materials or activities are exposed to storm water. Selection of BMPs should shall take into consideration:~~

~~(1) The quantity and nature of the pollutants, and their potential to impact the water quality of receiving waters;~~

~~(2) Opportunities to combine the dual purposes of water quality protection and local flood control benefits, including physical impacts of high flows on streams (e.g., bank erosion, impairment of aquatic habitat, etc.);~~

~~(3) Opportunities to offset the impact of impervious areas of the facility on ground water recharge and base flows in local streams, taking into account the potential for ground water contamination.~~

~~(1) That preventing storm water from coming into contact with polluting materials is generally more effective, and less costly, than trying to remove pollutants from storm water;~~

~~(2) BMPs generally shall be used in combination with each other for most effective water quality protection;~~

~~(3) Assessing the type and quantity of pollutants, including their potential to impact receiving water quality, is critical to designing effective control measures;~~

~~(4) That minimizing impervious areas at the facility can reduce runoff and improve groundwater recharge and stream base flows in local streams (however, care must be taken to avoid ground water contamination);~~

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(5) Flow attenuation by use of open vegetated swales and natural depressions can reduce in-stream impacts of erosive flows;

(6) Conservation or restoration of riparian buffers will help protect streams from storm water runoff and improve water quality; and

(7) Treatment interceptors (e.g., swirl separators and sand filters) may be appropriate in some instances to minimize the discharge of pollutants.

b. ~~BMP types to be considered~~ Control measures. The permittee ~~must consider~~ shall implement the following types of structural, nonstructural and ~~other~~ BMPs ~~for implementation at~~ to prevent and control pollutants in the storm water discharges from the facility, unless it can be demonstrated and documented that such controls are not relevant to the discharges (e.g., there are no storage piles containing salt). The SWPPP shall describe how each BMP is, or will be, implemented. The BMP examples listed below are not intended to be an exclusive list of BMPs that may be used. The permittee is encouraged to keep abreast of new BMPs or new applications of existing BMPs to find the most cost effective means of permit compliance for the facility. If BMPs are being used or planned at the facility that are not listed here (e.g., replacing a chemical with a less toxic alternative, adopting a new or innovative BMP, etc.), descriptions of them shall be included in this section of the SWPPP.

(1) Nonstructural BMPs.

~~(a) Good housekeeping.~~ The permittee must keep all exposed areas of the facility in a clean, orderly manner where such exposed areas could contribute pollutants to storm water discharges. Common problem areas include around trash containers, storage areas and loading docks. Measures must also include a schedule for regular pickup and disposal of garbage and waste materials and routine inspections for leaks and conditions of drums, tanks and containers shall keep clean all exposed areas of the facility that are potential sources of pollutants to storm water discharges. Typical problem areas include areas around trash containers, storage areas, loading docks, and vehicle fueling and maintenance areas. The plan shall include a schedule for regular pickup and disposal of waste materials, along with routine inspections for leaks and conditions of drums, tanks, and containers. The introduction of raw, final or waste materials to exposed areas of the facility shall be minimized to the maximum extent practicable. The generation of dust, along with off-site vehicle tracking of raw, final or waste materials, or sediments, shall be minimized to the maximum extent practicable.

~~(b) Minimizing~~ (2) Eliminating and minimizing exposure. Where To the extent practicable, industrial

materials and activities should shall be located inside, or protected by a storm-resistant shelter covering to prevent exposure to rain, snow, snowmelt, or and runoff.

~~(c) (3) Preventive maintenance.~~ The permittee must shall have a preventive maintenance program that includes timely inspection and maintenance of storm water management devices (e.g., cleaning oil/water separators, catch basins), as well as inspection, testing, maintenance and repairing of facility equipment and systems to avoid breakdowns or failures that could result in discharges of pollutants to surface waters regular inspection, testing, maintenance, and repairing of all industrial equipment and systems to avoid breakdowns or failures that could result in leaks, spill, and other releases. This program is in addition to the specific BMP maintenance required under Part II C (Maintenance of BMPs).

~~(d) (4) Spill prevention and response procedures.~~ The plan must shall describe the procedures that will be followed for cleaning up spills or leaks. The procedures and necessary spill response equipment must be made available to those employees who may cause or detect a spill or leak. Where appropriate, the plan must include an explanation of existing or planned material handling procedures, storage requirements, secondary containment, and equipment (e.g., diversion valves), that are intended to minimize spills or leaks at the facility. Measures for cleaning up hazardous material spills or leaks must be consistent with applicable RCRA regulations at 40 CFR Part 264 (2005) and 40 CFR Part 265 (2005) preventing and responding to spills and leaks.

(a) Preventive measures include barriers between material storage and traffic areas, secondary containment provisions, and procedures for material storage and handling.

(b) Response procedures shall include (i) notification of appropriate facility personnel, emergency agencies, and regulatory agencies; and (ii) procedures for stopping, containing, and cleaning up spills. Measures for cleaning up hazardous material spills or leaks shall be consistent with applicable RCRA regulations at 40 CFR Part 264 (2005) and 40 CFR Part 265 (2005). Employees who may cause, detect, or respond to a spill or leak shall be trained in these procedures and have necessary spill response equipment available. If possible, one of these individuals shall be a member of the Pollution Prevention Team.

(c) Contact information for individuals and agencies that must be notified in the event of a spill shall be included in the SWPPP, and in other locations where it will be readily available.

~~(e) (5) Routine facility inspections.~~ Facility personnel who are familiar with the industrial activity, the BMPs

and the storm water pollution prevention plan shall be identified to inspect all areas of the facility where industrial materials or activities are exposed to storm water. These inspections are in addition to, or as part of, the comprehensive site evaluation and must include an evaluation of the existing storm water BMPs. The inspection frequency shall be specified in the plan based upon a consideration of the level of industrial activity at the facility, but shall be a minimum of quarterly unless more frequent intervals are specified elsewhere in the permit. Any deficiencies in the implementation of the SWPPP that are found must be corrected as soon as practicable, but not later than within 14 days of the inspection, unless permission for a later date is granted in writing by the director. The results of the inspections must be documented in the SWPPP, along with any corrective actions that were taken in response to any deficiencies or opportunities for improvement that were identified possess the knowledge and skills to assess conditions and activities that could impact storm water quality at the facility, and who can also evaluate the effectiveness of BMPs shall regularly inspect all areas of the facility where industrial materials or activities are exposed to storm water. These inspections are in addition to, or as part of, the comprehensive site evaluation required under Part II D. At least one member of the Pollution Prevention Team shall participate in the routine facility inspections. The inspection frequency shall be specified in the plan based upon a consideration of the level of industrial activity at the facility, but shall be a minimum of quarterly unless more frequent intervals are specified elsewhere in the permit or written approval is received from the department for less frequent intervals. Any deficiencies in the implementation of the SWPPP that are found shall be corrected as soon as practicable, but not later than within 30 days of the inspection, unless permission for a later date is granted in writing by the director. The results of the inspections shall be documented in the SWPPP, along with the date(s) and description(s) of any corrective actions that were taken in response to any deficiencies or opportunities for improvement that were identified.

(f) (6) Employee training. The SWPPP must describe the storm water employee training program for the facility. The description should include the topics to be covered, such as spill response, good housekeeping, and material management practices, and must identify periodic dates for such training (e.g., every six months during the months of July and January). Employee training must be provided for all employees who work in areas where industrial materials or activities are exposed to storm water, and for employees who are responsible for implementing activities identified in the SWPPP (e.g., inspectors, maintenance people). The training should inform employees of the components and goals of the

SWPPP permittee shall implement a storm water employee training program for the facility. The SWPPP shall include a schedule for all types of necessary training, and shall document all training sessions and the employees who received the training. Training shall be provided for all employees who work in areas where industrial materials or activities are exposed to storm water, and for employees who are responsible for implementing activities identified in the SWPPP (e.g., inspectors, maintenance personnel, etc.). The training shall cover the components and goals of the SWPPP, and include such topics as spill response, good housekeeping, material management practices, BMP operation and maintenance, etc. The SWPPP shall include a summary of any training performed.

(2) Structural BMPs.

(a) (7) Sediment and erosion control. The plan shall identify areas at the facility that, due to topography, land disturbance (e.g., ~~construction~~), construction, landscaping, site grading, or other factors, have a potential for ~~significant~~ soil erosion. The ~~plan must~~ permittee shall identify and implement structural, vegetative, and/or stabilization BMPs ~~that will be implemented to limit to prevent or control on-site and off-site erosion and sedimentation. Flow velocity dissipation devices shall be placed at discharge locations and along the length of any outfall channel if the flows would otherwise create erosive conditions.~~

(b) (8) Management of runoff. The plan shall describe the ~~traditional~~ storm water runoff management practices (~~permanent (i.e., permanent structural BMPs) other than those that control the generation or source(s) of pollutants) that currently exist or that are planned for the facility.~~ These types of BMPs are typically used to divert, infiltrate, reuse, or otherwise reduce pollutants in storm water discharges from the site. ~~The plan shall provide that all measures that the permittee determines to be reasonable and appropriate, or are required by a state or local authority shall be implemented and maintained. Factors for the permittee to consider when selecting appropriate BMPs should include:~~

(i) The industrial materials and activities that are exposed to storm water, and the associated pollutant potential of those materials and activities;

(ii) The beneficial and potential detrimental effects on surface water quality, ground water quality, receiving water base flow (dry weather stream flow), and physical integrity of receiving waters. Structural measures should be placed on upland soils, avoiding wetlands and floodplains, if possible.

(c) Example BMPs. BMPs that could be used include but are not limited to: storm water detention structures

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(including wet ponds); storm water retention structures; flow attenuation by use of open vegetated swales and natural depressions; infiltration of runoff on site; and sequential systems (which combine several practices).

(d) ~~Other Controls. Off-site vehicle tracking of raw, final, or waste materials or sediments, and the generation of dust must be minimized. Tracking or blowing of raw, final, or waste materials from areas of no exposure to exposed areas must be minimized. Velocity dissipation devices (or equivalent measures) must be placed at discharge locations and along the length of any outfall channel if they are necessary to provide a nonerosive flow velocity from the structure to a water course. Structural BMPs may require a separate permit under § 404 of the CWA and the Virginia Water Protection Permit Program Regulation (9VAC25-210) before installation begins.~~

C. Maintenance. All BMPs identified in the SWPPP ~~shall~~ must be maintained in effective operating condition. ~~If site inspections identify BMPs that are not operating effectively, maintenance must be performed before the next anticipated storm event, or as necessary to maintain the continued effectiveness of storm water controls. If maintenance prior to the next anticipated storm event is impracticable, maintenance must be scheduled and accomplished as soon as practicable. In the case of nonstructural BMPs, the effectiveness of the BMP must be maintained by appropriate means (e.g., spill response supplies available and personnel trained, etc.). Storm water BMPs identified in the SWPPP shall be observed during active operation (i.e., during a storm water runoff event) to ensure that they are functioning correctly. Where discharge locations are inaccessible, nearby downstream locations shall be observed. The observations shall be documented in the SWPPP.~~

The SWPPP shall include a description of procedures and a regular schedule for preventive maintenance of all BMPs, and shall include a description of the back-up practices that are in place should a runoff event occur while a BMP is off line. The effectiveness of nonstructural BMPs shall also be maintained by appropriate means (e.g., spill response supplies available and personnel trained, etc.).

If site inspections required by Part II B 6 b (5) (Routine facility inspections) or Part II D (Comprehensive site compliance evaluation) identify BMPs that are not operating effectively, repairs or maintenance shall be performed before the next anticipated storm event. If maintenance prior to the next anticipated storm event is not possible, maintenance shall be scheduled and accomplished as soon as practicable. In the interim, back-up measures shall be employed and documented in the SWPPP until repairs or maintenance is complete. Documentation shall be kept with the SWPPP of maintenance and repairs of BMPs, including the date or dates of regular maintenance, date or dates of discovery of areas in

need of repair or replacement, and for repairs, date or dates that the BMPs returned to full function, and the justification for any extended maintenance or repair schedules.

D. Comprehensive site compliance evaluation. The permittee shall conduct ~~facility inspections (site compliance evaluations) comprehensive site compliance evaluations~~ comprehensive site compliance evaluations at least once a year. The ~~inspections must~~ evaluations shall be done by qualified personnel who ~~may be either facility employees or outside constituents hired by the facility. The inspectors must be familiar with the industrial activity, the BMPs and the SWPPP, and must possess the skills to assess conditions at the facility that could impact storm water quality, and to assess the effectiveness of the BMPs that have been chosen to control the quality of the storm water discharges. If more frequent inspections are conducted, the SWPPP must specify the frequency of inspections possess the knowledge and skills to assess conditions and activities that could impact storm water quality at the facility, and who can also evaluate the effectiveness of BMPs. The personnel conducting the evaluations may be either facility employees or outside constituents hired by the facility.~~

1. Scope of the compliance evaluation. ~~Inspections must~~ Evaluations shall include all areas where industrial materials or activities are exposed to storm water and areas where spills and leaks have occurred within the past three years. ~~Inspectors should look for, as identified in Part II B~~ 3. The personnel shall evaluate:

a. Industrial materials, residue or trash ~~on the ground that may have or could contaminate or be washed away in come into contact with~~ storm water;

b. Leaks or spills from industrial equipment, drums, barrels, tanks or ~~similar~~ other containers that have occurred within the past three years;

c. Off-site tracking of industrial or waste materials or sediment where vehicles enter or exit the site;

d. Tracking or blowing of raw, final, or waste materials from areas of no exposure to exposed areas;

e. Evidence of, or the potential for, pollutants entering the drainage system;

f. Evidence of pollutants discharging to surface waters at all facility outfalls, and the condition of and around the outfall, including flow dissipation measures to prevent scouring;

g. Review of training performed, inspections completed, maintenance performed, quarterly visual examinations, and effective operation of BMPs; and

h. Results of both visual and any analytical monitoring done during the past year ~~must~~ shall be taken into consideration during the evaluation. Storm water BMPs identified in the SWPPP must be observed to ensure that

~~they are operating correctly. Where discharge locations or points are accessible, they must be inspected to see whether BMPs are effective in preventing significant impacts to receiving waters. Where discharge locations are inaccessible, nearby downstream locations must be inspected if possible.~~

2. Based on the results of the ~~inspection~~ evaluation, the SWPPP shall be modified as necessary ~~(e.g., show additional controls on the map required by Part II B 2 c; revise the description of controls required by Part II B 6 to include additional or modified BMPs designed to correct problems identified)~~. Revisions to the SWPPP shall be completed within ~~two weeks~~ 30 days following the ~~inspection~~ evaluation, unless permission for a later date is granted in writing by the director. If existing BMPs need to be modified or if additional BMPs are necessary, implementation ~~must~~ shall be completed before the next anticipated storm event, if practicable, but not more than ~~12 weeks~~ 60 days after completion of the comprehensive site evaluation, unless permission for a later date is granted in writing by the ~~director~~; department.

3. Compliance evaluation report. A report shall be written summarizing the scope of the ~~inspection~~ evaluation, ~~name(s) name or names of personnel making the inspection~~ evaluation, the ~~date(s) date or dates of the inspection~~ evaluation, and ~~major all observations relating to the implementation of the SWPPP, and actions taken shall be made and retained as part of the SWPPP for at least three years from the date of the inspection including elements stipulated in Part II D 1 (a) through (f) of this general permit. Major observations should~~ Observations shall include such things as: the location(s) location or locations of discharges of pollutants from the site; location or locations of previously unidentified sources of pollutants; location(s) location or locations of BMPs that need to be maintained or repaired; location(s) location or locations of failed BMPs that failed to operate as designed or proved inadequate for a particular location need replacement; and location(s) location or locations where additional BMPs are needed that did not exist at the time of inspection. The report shall identify any incidents of noncompliance that were observed. Where a report does not identify any incidents of noncompliance, the report shall contain a certification that the facility is in compliance with the SWPPP and this permit. The report shall be signed in accordance with Part III K; and maintained with the SWPPP.

4. Where compliance evaluation schedules overlap with routine inspections required under Part II B 6 b (5), the annual compliance evaluation may be used as one of the routine inspections.

F. E. Signature and plan review.

1. Signature/location. The ~~plan~~ SWPPP shall be signed in accordance with Part III K, dated, and retained on-site at the facility covered by this permit. All changes to the SWPPP, and other permit compliance documentation, must be signed and dated by the person preparing the change or documentation.

2. Availability. The permittee shall make the SWPPP, annual site compliance ~~inspection~~ evaluation report, and other information available to the department upon request.

3. Required modifications. The director may notify the permittee at any time that the ~~plan does~~ SWPPP, BMPs, or other components of the facility's storm water program do not meet one or more of the minimum requirements of this permit. The notification shall identify those specific provisions of the permit that are not being met, as well as the and may include required modifications to the storm water program, additional monitoring requirements, and special reporting requirements. The permittee shall make ~~the any~~ any required changes to the SWPPP within 60 days of receipt of such notification, unless permission for a later date is granted in writing by the director, and shall submit a written certification to the director that the requested changes have been made.

G. F. Maintaining an updated SWPPP.

1. The permittee shall review and amend the SWPPP as appropriate whenever:

~~1. a.~~ a. There is construction or a change in design, construction, operation, or maintenance at the facility that has a significant effect on the discharge, or the potential for the discharge, of pollutants from the facility;

b. Routine inspections or compliance evaluations determine that there are deficiencies in the BMPs;

~~2. During inspections, monitoring, or investigations c. Inspections by facility personnel or by local, state, or federal officials it is determined~~ determine that modifications the SWPPP is ineffective in eliminating or significantly minimizing pollutants from sources or is otherwise not achieving the general objectives of controlling pollutants in discharges from the facility. are necessary;

d. There is a spill, leak or other release at the facility; or

e. There is an unauthorized discharge from the facility.

2. SWPPP modifications shall be made within 30 calendar days after discovery, observation, or event requiring a SWPPP modification. Implementation of new or modified BMPs (distinct from regular preventive maintenance of existing BMPs described in Part II C) shall be initiated before the next storm event if possible, but no later than 60 days after discovery, or as otherwise provided or approved

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by the director. The amount of time taken to modify a BMP or implement additional BMPs shall be documented in the SWPPP.

3. If the SWPPP modification is based on a release or unauthorized discharge, include a description and date of the release, the circumstances leading to the release, actions taken in response to the release, and measures to prevent the recurrence of such releases. Unauthorized releases and discharges are subject to the reporting requirements of Part III G of this permit.

H. Special pollution prevention plan requirements.

~~1. Additional requirements for storm water discharges associated with industrial activity that discharge into or through municipal separate storm sewer systems.~~

~~a. In addition to the applicable requirements of this permit, facilities covered by this permit must comply with applicable requirements in municipal storm water management programs developed under VPDES permits issued for the discharge of the municipal separate storm sewer system that receives the facility's discharge, provided the permittee has been notified of such conditions.~~

~~b. Permittees that discharge storm water associated with industrial activity through a municipal separate storm sewer system, or a municipal system designated by the director shall make plans available to the municipal operator of the system upon request.~~

~~2. Additional requirements for storm water discharges associated with industrial activity from facilities subject to EPCRA § 313 reporting requirements. Any potential pollutant sources for which the facility has reporting requirements under EPCRA § 313 must be identified in the SWPPP.~~

Part III

Conditions Applicable To All VPDES Permits

A. Monitoring.

1. Samples and measurements taken as required by this permit shall be representative of the monitored activity.

2. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this permit.

3. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will ensure accuracy of measurements.

B. Records.

1. Records of monitoring information shall include:

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

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

C. Reporting monitoring results.

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

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

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

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

D. Duty to provide information. The permittee shall furnish to the department, within a reasonable time, any information that the board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this

permit or to determine compliance with this permit. The board may require the permittee to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of the State Water Control Law. The permittee shall also furnish to the department, upon request, copies of records required to be kept by this permit.

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

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

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

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

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

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

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

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

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

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

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

2. A written report shall be submitted within 5 days and shall contain:

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

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

3. The permittee shall report all instances of noncompliance not reported under Parts III I 1 or 2, in writing, at the time the next monitoring reports are

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submitted. The reports shall contain the information listed in Part III I 2.

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

J. Notice of planned changes.

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

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

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

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

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

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

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

K. Signatory requirements.

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

a. For a corporation: by a responsible corporate officer. For the purposes of this section, a responsible corporate

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

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

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

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

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

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

c. The written authorization is submitted to the department.

3. Changes to authorization. If an authorization under Part III K 2 is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part III K 2 shall be submitted to the department prior to

or together with any reports or information to be signed by an authorized representative.

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

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

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

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

M. Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall submit a new registration statement at least ~~180~~ 30 days before the expiration date of the existing permit, unless permission for a later date has been granted by the board. The board shall not grant permission for registration statements to be submitted later than the expiration date of the existing permit.

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

O. State law. Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to, any other state law or regulation or under authority preserved by § 510 of the federal Clean Water

Act. Except as provided in permit conditions on "bypass" (Part III U), and "upset" (Part III V) nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

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

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

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

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

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

U. Bypass.

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

2. Notice.

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

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b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in Part III I (reports of noncompliance).

3. Prohibition of bypass.

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

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

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

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

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

V. Upset.

1. An upset, defined in 9VAC25-31-10, constitutes an affirmative defense to an action brought for noncompliance with technology-based permit effluent limitations if the requirements of Part III V 2 are met. A determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is not a final administrative action subject to judicial review.

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

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

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

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

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

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

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

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

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

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

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

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

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

Y. Transfer of permits.

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

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

a. The current permittee notifies the department ~~at least~~ within 30 days ~~in advance~~ of the ~~proposed~~ transfer of the title to the facility or property;

b. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and

c. The board does not notify the existing permittee and the proposed new permittee of its intent to modify or

revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part III Y 2 b.

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

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

FORMS (9VAC25-115)

VPDES Change of Ownership Agreement Form (eff. 7/10).

VPDES CHANGE OF OWNERSHIP AGREEMENT FORM

VPDES Permit Number: VA _____

Name of Permitted Facility: _____

Location (City/County): _____

We, the undersigned, hereby request a transfer of ownership for the referenced permit.

Anticipated date of transfer: _____

CURRENT OWNER: I (We) hereby agree to the transfer of ownership modification to the referenced VPDES Permit.

Current Owner Name (as listed on the VPDES Permit Cover Page):

*Signed: _____ Date: _____

Printed Name: _____ Title: _____

Address: _____

NEW OWNER: I (We) hereby agree to the change of ownership modification to the referenced VPDES Permit, and agree to accept all conditions and responsibilities of the permit.

Transferred permit to be issued to: _____

*Signed: _____ Date: _____

Printed Name: _____ Title: _____

Address: _____

Telephone: (____) _____

*** This form must be signed by properly authorized individuals as specified in the VPDES Permit Regulation.**

◆ ————— ◆

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Emergency Regulation

Titles of Regulations: **12VAC30-50. Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12VAC30-50-165).**

12VAC30-80. Methods and Standards for Establishing Payment Rates; Other Types of Care (amending 12VAC30-80-30).

Statutory Authority: § 32.1-325 of the Code of Virginia; Title XIX of the Social Security Act (42 USC § 1396).

Effective Dates: July 1, 2010, through June 30, 2011.

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.

Preamble:

Section 2.2-4011 of the Administrative Process Act states that an agency may adopt regulations in an emergency situation: (i) upon consultation with the Attorney General after the agency has submitted a request stating in writing the nature of the emergency, and at the sole discretion of the Governor; (ii) in a situation in which Virginia statutory law, the Virginia appropriation act, federal law, or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of subdivision A 4 of § 2.2-4006; or (iii) in a situation in which an agency has an existing emergency regulation, additional emergency regulations may be issued as needed to address the subject matter of the initial emergency regulation provided the amending action does not extend the effective date of the original action.

The agency is proposing this regulatory action to comply with Items 297 UUU and WWW of Chapter 874 of the 2010 Acts of Assembly (2010 Appropriation Act). Specifically, the 2010 Appropriation Act states:

"UUU. Effective July 1, 2010, the Department of Medical Assistance Services (DMAS) shall amend the State Plan for Medical Assistance to modify reimbursement for Durable Medical Equipment (DME) to:

a. Reduce reimbursement for DME that has a Durable Medical Equipment Regional Carrier (DMERC) rate

from 100% of Medicare reimbursement to 90% of the Medicare level.

b. Reduce fee schedule rates for DME and supplies by category-specific amounts as recommended in the November 1, 2009, Report on Durable Medical Equipment Reimbursement to the Senate Finance and House Appropriations Committees. The Department of Medical Assistance Services shall also modify the pricing of incontinence supplies from case to item, which is the industry standard.

c. Establish rates for additional procedure codes where benchmark rates are available.

d. Reimburse at cost plus 30% for any item not on the fee schedule. Cost shall be no more than the net manufacturer's charge to the provider, less shipping and handling.

e. Determine alternate pricing for any code that does not have a rate.

f. Limit service day reimbursement to intravenous and oxygen therapy equipment.

2. The department shall promulgate regulations to implement this amendment within 280 days or less from the enactment of this act."

"WWW. Effective July 1, 2010, the Department of Medical Assistance Services (DMAS) shall amend the State Plan for Medical Assistance to modify the limit on incontinence supplies prior to requiring prior authorization. The department shall have the authority to implement this reimbursement change effective July 1, 2010, and prior to the completion of any regulatory process undertaken in order to effect such change."

Summary:

The amendments regarding payment methodology for DME and supplies include: (i) rate reductions to the durable medical equipment regional carrier (DMERC) rate; (ii) category specific rate reductions to the July 1996 rates; and (iii) development of rates for procedure codes that were once not priced and (iv) other changes.

Additionally, changes are made to the billing unit for incontinence supplies from a 'case' amount to an 'each' amount or single item such as an individual diaper or panty liner. As a result of the change in the billing unit, prior authorization limits will be changed and DMAS will now allow providers to break cases of diapers while leaving the sealed inner packages intact. Such sealed inner packages can contain 6, 10, or 12 individual diapers, for example, depending on diaper size and the manufacturer. Breaking cases will allow providers better control on the amount of items given to recipients every month. This

category of medically needed DME supplies represents the DME program's highest expenditure per year.

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:

"Durable medical equipment" or "DME" means medical supplies, equipment, and appliances suitable for use in the home consistent with 42 CFR 440.70(b)(3).

"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.

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 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 practitioner on the CMN. The CMN and any supporting verifiable documentation must be complete (signed and dated by the 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 practitioner.

6. The CMN shall not be changed, altered, or amended after the attending 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 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 practitioner. Supporting documentation may be attached to the CMN but the attending 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 practitioners shall not complete, or sign and date, CMNs once the post payment audit review has begun.

~~C. Preauthorization is required for incontinence supplies provided in quantities greater than two cases per month. Effective July 1, 2010, the billing unit for incontinence supplies (such as diapers, pull-ups, and panty liners) shall be by each item. For example, an item can be one diaper. Prior authorization shall be required for incontinence supplies requested in quantities greater than the allowable limit as contained in the Medicaid Memo Provider Manual Update, Subject: "Update to the Durable Medical Equipment and Supplies Provider Manual," June 16, 2010.~~

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);

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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 practitioner's prescription; dental adhesives; electric toothbrushes; cosmetic items, soaps, and lotions that do not require a 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.).

E. For coverage of blood glucose meters for pregnant women, refer to 12VAC30-50-510.

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 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.

G. The medical equipment and supply vendor must provide the equipment and supplies as prescribed by the 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.

H. Medicaid shall not provide reimbursement to the medical equipment and supply vendor for services provided prior to the date prescribed by the 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.

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 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 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.

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.

DOCUMENTS INCORPORATED BY REFERENCE (12VAC30-50)

Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition DSM-IV-TR, copyright 2000, American Psychiatric Association.

Length of Stay by Diagnosis and Operation, Southern Region, 1996, HCIA, Inc.

Guidelines for Perinatal Care, 4th Edition, August 1997, American Academy of Pediatrics and the American College of Obstetricians and Gynecologists.

Virginia Supplemental Drug Rebate Agreement Contract and Addenda.

Office Reference Manual (Smiles for Children), prepared by DMAS' Dental Benefits Administrator, copyright 2005 (www.dmas.virginia.gov/downloads/pdfs/dental-office_reference_manual_06-09-05.pdf).

Patient Placement Criteria for the Treatment of Substance-Related Disorders ASAM PPC-2R, Second Edition, copyright 2001, American Society of Addiction Medicine.

Medicaid Memo Provider Manual Update, Subject: "Update to the Durable Medical Equipment and Supplies Provider Manual," June 16, 2010, Department of Medical Assistance Services.

12VAC30-80-30. Fee-for-service providers.

A. Payment for the following services, except for physician services, shall be the lower of the state agency fee schedule (12VAC30-80-190 has information about the state agency fee schedule) or actual charge (charge to the general public):

1. Physicians' services. Payment for physician services shall be the lower of the state agency fee schedule or actual charge (charge to the general public). The following limitations shall apply to emergency physician services.

a. Definitions. The following words and terms, when used in this subdivision 1 shall have the following meanings when applied to emergency services unless the context clearly indicates otherwise:

"All-inclusive" means all emergency service and ancillary service charges claimed in association with the emergency department visit, with the exception of laboratory services.

"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.

"Emergency physician services" means services that are necessary to prevent the death or serious impairment of the health of the recipient. The threat to the life or health of the recipient necessitates the use of the most accessible hospital available that is equipped to furnish the services.

"Recent injury" means an injury that has occurred less than 72 hours prior to the emergency department visit.

b. Scope. DMAS shall differentiate, as determined by the attending physician's diagnosis, the kinds of care routinely rendered in emergency departments and reimburse physicians for nonemergency care rendered in emergency departments at a reduced rate.

(1) DMAS shall reimburse at a reduced and all-inclusive reimbursement rate for all physician services, including those obstetric and pediatric procedures contained in 12VAC30-80-160, rendered in emergency departments that DMAS determines are nonemergency care.

(2) Services determined by the attending physician to be emergencies shall be reimbursed under the existing methodologies and at the existing rates.

(3) Services determined by the attending physician that may be emergencies shall be manually reviewed. If such services meet certain criteria, they shall be paid under the methodology in subdivision 1 b (2) of this subsection.

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Services not meeting certain criteria shall be paid under the methodology in subdivision 1 b (1) of this subsection. Such criteria shall include, but not be limited to:

(a) The initial treatment following a recent obvious injury.

(b) Treatment related to an injury sustained more than 72 hours prior to the visit with the deterioration of the symptoms to the point of requiring medical treatment for stabilization.

(c) The initial treatment for medical emergencies including indications of severe chest pain, dyspnea, gastrointestinal hemorrhage, spontaneous abortion, loss of consciousness, status epilepticus, or other conditions considered life threatening.

(d) A visit in which the recipient's condition requires immediate hospital admission or the transfer to another facility for further treatment or a visit in which the recipient dies.

(e) Services provided for acute vital sign changes as specified in the provider manual.

(f) Services provided for severe pain when combined with one or more of the other guidelines.

(4) Payment shall be determined based on ICD-9-CM diagnosis codes and necessary supporting documentation.

(5) DMAS shall review on an ongoing basis the effectiveness of this program in achieving its objectives and for its effect on recipients, physicians, and hospitals. Program components may be revised subject to achieving program intent objectives, the accuracy and effectiveness of the ICD-9-CM code designations, and the impact on recipients and providers.

2. Dentists' services.

3. Mental health services including: (i) community mental health services; (ii) services of a licensed clinical psychologist; or (iii) mental health services provided by a physician.

a. Services provided by licensed clinical psychologists shall be reimbursed at 90% of the reimbursement rate for psychiatrists.

b. Services provided by independently enrolled licensed clinical social workers, licensed professional counselors or licensed clinical nurse specialists-psychiatric shall be reimbursed at 75% of the reimbursement rate for licensed clinical psychologists.

4. Podiatry.

5. Nurse-midwife services.

6. Durable medical equipment (DME) and supplies.

~~a. For those items that have a national Healthcare Common Procedure Coding System (HCPCS) code, the rate for durable medical equipment shall be set at the Durable Medical Equipment Regional Carrier (DMERC) reimbursement level.~~

~~b. The rate paid for all items of durable medical equipment except nutritional supplements shall be the lower of the state agency fee schedule that existed prior to July 1, 1996, less 4.5%, or the actual charge.~~

~~c. The rate paid for nutritional supplements shall be the lower of the state agency fee schedule or the actual charge.~~

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

"DMERC" means the Durable Medical Equipment Regional Carrier rate as published by Medicare at www.cms.gov/DMEPOSFeeSched/LSDMEPOSFEE/list.asp?filterType=none&filterByDID=-99&sortByDID=3&sortOrder=descending&intNumPerPage=10.

"HCPCS" means the Healthcare Common Procedure Coding System, Medicare's National Level II Codes, HCPCS 2006 (Eighteenth edition), as published by Ingenix, as may be periodically updated.

a. Reimbursement method.

(1) If the DME item has a DMERC rate, the reimbursement rate shall be the DMERC rate minus 10%.

(2) For DME items with no DMERC rate, the agency shall use the fee schedule amount. The reimbursement rates for durable medical equipment and supplies shall be listed in the DMAS Medicaid Durable Medical Equipment (DME) and Supplies Listing and updated periodically. The fee schedule is available on the agency website at www.dmas.virginia.gov.

(3) If a DME item has no DMERC rate or agency fee schedule rate, the reimbursement rate shall be the net manufacturer's charge to the provider, less shipping and handling, plus 30%. The net manufacturer's charge to the provider shall be the cost to the provider minus all available discounts to the provider.

b. DMAS shall have the authority to amend the fee schedule as it deems appropriate and with notice to providers. DMAS shall determine alternate pricing, based on agency research, for any code which does not have a DMERC rate.

~~d. c.~~ Certain durable medical equipment used for intravenous therapy and oxygen therapy shall be bundled under specified procedure codes and reimbursed as

determined by the agency. Certain services/durable medical equipment such as service maintenance agreements shall be bundled under specified procedure codes and reimbursed as determined by the agency.

(1) Intravenous therapies. The DME for a single therapy, administered in one day, shall be reimbursed at the established service day rate for the bundled durable medical equipment and the standard pharmacy payment, consistent with the ingredient cost as described in 12VAC30-80-40, plus the pharmacy service day and dispensing fee. Multiple applications of the same therapy shall be included in one service day rate of reimbursement. Multiple applications of different therapies administered in one day shall be reimbursed for the bundled durable medical equipment service day rate as follows: the most expensive therapy shall be reimbursed at 100% of cost; the second and all subsequent most expensive therapies shall be reimbursed at 50% of cost. Multiple therapies administered in one day shall be reimbursed at the pharmacy service day rate plus 100% of every active therapeutic ingredient in the compound (at the lowest ingredient cost methodology) plus the appropriate pharmacy dispensing fee.

(2) Respiratory therapies. The DME for oxygen therapy shall have supplies or components bundled under a service day rate based on oxygen liter flow rate or blood gas levels. Equipment associated with respiratory therapy may have ancillary components bundled with the main component for reimbursement. The reimbursement shall be a service day per diem rate for rental of equipment or a total amount of purchase for the purchase of equipment. Such respiratory equipment shall include, but not be limited to, oxygen tanks and tubing, ventilators, noncontinuous ventilators, and suction machines. Ventilators, noncontinuous ventilators, and suction machines may be purchased based on the individual patient's medical necessity and length of need.

(3) Service maintenance agreements. Provision shall be made for a combination of services, routine maintenance, and supplies, to be known as agreements, under a single reimbursement code only for equipment that is recipient owned. Such bundled agreements shall be reimbursed either monthly or in units per year based on the individual agreement between the DME provider and DMAS. Such bundled agreements may apply to, but not necessarily be limited to, either respiratory equipment or apnea monitors.

7. Local health services.

8. Laboratory services (other than inpatient hospital).

9. Payments to physicians who handle laboratory specimens, but do not perform laboratory analysis (limited to payment for handling).

10. X-Ray services.

11. Optometry services.

12. Medical supplies and equipment.

13. Home health services. Effective June 30, 1991, cost reimbursement for home health services is eliminated. A rate per visit by discipline shall be established as set forth by 12VAC30-80-180.

14. Physical therapy; occupational therapy; and speech, hearing, language disorders services when rendered to noninstitutionalized recipients.

15. Clinic services, as defined under 42 CFR 440.90.

16. Supplemental payments for services provided by Type I physicians.

a. In addition to payments for physician services specified elsewhere in this State Plan, DMAS provides supplemental payments to Type I physicians for furnished services provided on or after July 2, 2002. A Type I physician is a member of a practice group organized by or under the control of a state academic health system or an academic health system that operates under a state authority and includes a hospital, who has entered into contractual agreements for the assignment of payments in accordance with 42 CFR 447.10.

b. Effective July 2, 2002, the supplemental payment amount for Type I physician services shall be the difference between the Medicaid payments otherwise made for Type I physician services and Medicare rates. Effective August 13, 2002, the supplemental payment amount for Type I physician services shall be the difference between the Medicaid payments otherwise made for physician services and 143% of Medicare rates. This percentage was determined by dividing the total commercial allowed amounts for Type I physicians for at least the top five commercial insurers in CY 2004 by what Medicare would have allowed. The average commercial allowed amount was determined by multiplying the relative value units times the conversion factor for RBRVS procedures and by multiplying the unit cost times anesthesia units for anesthesia procedures for each insurer and practice group with Type I physicians and summing for all insurers and practice groups. The Medicare equivalent amount was determined by multiplying the total commercial relative value units for Type I physicians times the Medicare conversion factor for RBRVS procedures and by multiplying the Medicare unit cost times total commercial anesthesia units for anesthesia procedures for all Type I physicians and summing.

c. Supplemental payments shall be made quarterly.

Regulations

d. Payment will not be made to the extent that this would duplicate payments based on physician costs covered by the supplemental payments.

17. Supplemental payments to nonstate government-owned or operated clinics.

a. In addition to payments for clinic services specified elsewhere in the regulations, DMAS provides supplemental payments to qualifying nonstate government-owned or operated clinics for outpatient services provided to Medicaid patients on or after July 2, 2002. Clinic means a facility that is not part of a hospital but is organized and operated to provide medical care to outpatients. Outpatient services include those furnished by or under the direction of a physician, dentist or other medical professional acting within the scope of his license to an eligible individual. Effective July 1, 2005, a qualifying clinic is a clinic operated by a community services board. The state share for supplemental clinic payments will be funded by general fund appropriations.

b. The amount of the supplemental payment made to each qualifying nonstate government-owned or operated clinic is determined by:

(1) Calculating for each clinic the annual difference between the upper payment limit attributed to each clinic according to subdivision 17 d and the amount otherwise actually paid for the services by the Medicaid program;

(2) Dividing the difference determined in subdivision 17 b (1) for each qualifying clinic by the aggregate difference for all such qualifying clinics; and

(3) Multiplying the proportion determined in subdivision (2) of this subdivision 17 b by the aggregate upper payment limit amount for all such clinics as determined in accordance with 42 CFR 447.321 less all payments made to such clinics other than under this section.

c. Payments for furnished services made under this section may be made in one or more installments at such times, within the fiscal year or thereafter, as is determined by DMAS.

d. To determine the aggregate upper payment limit referred to in subdivision 17 b (3), Medicaid payments to nonstate government-owned or operated clinics will be divided by the "additional factor" whose calculation is described in Attachment 4.19-B, Supplement 4 (12VAC30-80-190 B 2) in regard to the state agency fee schedule for RBRVS. Medicaid payments will be estimated using payments for dates of service from the prior fiscal year adjusted for expected claim payments. Additional adjustments will be made for any program changes in Medicare or Medicaid payments.

18. Reserved.

19. Personal Assistance Services (PAS) for individuals enrolled in the Medicaid Buy-In program described in 12VAC30-60-200. These services are reimbursed in accordance with the state agency fee schedule described in 12VAC30-80-190. The state agency fee schedule is published on the Single State Agency Website.

B. Hospice services payments must be no lower than the amounts using the same methodology used under Part A of Title XVIII, and take into account the room and board furnished by the facility, equal to at least 95% of the rate that would have been paid by the state under the plan for facility services in that facility for that individual. Hospice services shall be paid according to the location of the service delivery and not the location of the agency's home office.

DOCUMENTS INCORPORATED BY REFERENCE (12VAC30-80)

Approved Drug Products with Therapeutic Equivalence Evaluations, 25th Edition, 2005, U.S. Department of Health and Human Services.

Healthcare Common Procedure Coding System (~~HCPCS~~), Medicare's National Level II Codes, 2004 HCPCS 2006 (Eighteenth edition), Medicare American Medical Association.

International Classification of Diseases, ICD-9-CM 2007, Physician, Volumes 1 and 2, 9th Revision-Clinical Modification, American Medical Association.

Durable Medical Equipment, Prosthetics/Orthotics & Supplies Fee Schedules, <http://www.cms.gov/DMEPOSFeeSched/LSDMEPOSFEE/list.asp?filterType=none&filterByDID=-99&sortByDID=3&sortOrder=descending&intNumPerPage=10>, July 2010, version 2, Centers for Medicare & Medicaid Services, U.S. Department of Health and Human Services.

Medicaid Durable Medical Equipment (DME) and Supplies Listing, Department of Medical Assistance Services.

VA.R. Doc. No. R10-2333; Filed July 1, 2010, 12:56 p.m.

Emergency Regulation

Titles of Regulations: 12VAC30-50. Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12VAC30-50-130).

12VAC30-60. Standards Established and Methods Used to Assure High Quality Care (amending 12VAC30-60-61, 12VAC30-60-143).

Statutory Authority: § 32.1-325 of the Code of Virginia; Title XIX of the Social Security Act (42 USC § 1396 et seq.).

Effective Dates: July 1, 2010, through June 30, 2011.

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.

Preamble:

Section 2.2-4011 of the Administrative Process Act states that an agency may adopt regulations in an emergency situation: (i) upon consultation with the Attorney General after the agency has submitted a request stating in writing the nature of the emergency, and at the sole discretion of the Governor; (ii) in a situation in which Virginia statutory law, the Virginia appropriation act, federal law, or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of subdivision A 4 of § 2.2-4006; or (iii) in a situation in which an agency has an existing emergency regulation, additional emergency regulations may be issued as needed to address the subject matter of the initial emergency regulation provided the amending action does not extend the effective date of the original action.

The agency is proposing this regulatory action to comply with Item 297 YY of Chapter 874 of the 2010 Acts of Assembly (2010 Appropriation Act), which gives the Department of Medical Assistance Services (DMAS) authority to make programmatic changes in the provision of intensive in-home services and community mental health services to ensure appropriate utilization and cost efficiency. In recent years the utilization of certain community-based mental health services has increased substantially. These changes are part of a review of the services to ensure that the services are appropriately utilized. Specifically, the 2010 Appropriation Act states:

"YY. The Department of Medical Assistance Services shall make programmatic changes in the provision of Intensive In-Home services and Community Mental Health services in order ensure appropriate utilization and cost efficiency. The department shall consider all available options including, but not limited to, prior authorization, utilization review and provider qualifications. The Department of Medical Assistance Services shall promulgate regulations to implement these changes within 280 days or less from the enactment date of this act."

The regulations affected by this action are Amount, Duration and Scope of Services and Standards Established and Methods Used to Assure High Quality of Care (12VAC30-50-130, 12VAC30-60-61, and 12VAC30-60-143): The services involved include skilled nursing facility services; early periodic screening, diagnosis, and treatment (EPSDT) services, and family planning services related to the EPSDT Program; community mental health

services for children; and mental health services utilization.

Summary:

This action implements the results of a review of mental health services for children and adults. The amendments (i) update the name of the Department of Mental Health, Mental Retardation, and Substance Abuse Services to the Department of Behavioral Health and Developmental Services; (ii) set forth rules and penalties related to the marketing of Medicaid mental health services; (iii) delete the allowance for a week of service for intensive in-home services without prior authorization; (iv) establish the penalties to be applied to providers of intensive in-home services and therapeutic day treatments for children and adolescents that violate DMAS marketing restrictions, which is intended to eliminate claims processing issues that delayed payments to providers; (v) require a statement that prior authorization is required for day treatment for children and adolescents; (vi) require that specific assessment elements be included as part of the initial assessment for children's mental health services; (vii) require that the initial assessment for intensive in-home services be conducted in the home and adopt caseload and supervision guidelines that were published by the Licensing Division of the Department of Behavioral Health and Developmental Services; (viii) specify staff ratios for day treatment for children and adolescents; and (ix) require coordination with providers of case management.

12VAC30-50-130. Skilled nursing facility services, EPSDT, school health services and family planning.

A. Skilled nursing facility services (other than services in an institution for mental diseases) for individuals 21 years of age or older.

Service must be ordered or prescribed and directed or performed within the scope of a license of the practitioner of the healing arts.

B. Early and periodic screening and diagnosis of individuals under 21 years of age, and treatment of conditions found.

1. Payment of medical assistance services shall be made on behalf of individuals under 21 years of age, who are Medicaid eligible, for medically necessary stays in acute care facilities, and the accompanying attendant physician care, in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical examination.

2. Routine physicals and immunizations (except as provided through EPSDT) are not covered except that well-child examinations in a private physician's office are covered for foster children of the local social services departments on specific referral from those departments.

Regulations

3. Orthoptics services shall only be reimbursed if medically necessary to correct a visual defect identified by an EPSDT examination or evaluation. The department shall place appropriate utilization controls upon this service.

4. Consistent with the Omnibus Budget Reconciliation Act of 1989 § 6403, early and periodic screening, diagnostic, and treatment services means the following services: screening services, vision services, dental services, hearing services, and such other necessary health care, diagnostic services, treatment, and other measures described in Social Security Act § 1905(a) to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services and which are medically necessary, whether or not such services are covered under the State Plan and notwithstanding the limitations, applicable to recipients ages 21 and over, provided for by the Act § 1905(a).

5. Community mental health services.

a. Intensive in-home services to children and adolescents under age 21 shall be time-limited interventions provided typically but not solely in the residence of a child who is at risk of being moved into an out-of-home placement or who is being transitioned to home from out-of-home placement due to a documented medical need of the child. These services provide crisis treatment; individual and family counseling; and communication skills (e.g., counseling to assist the child and his parents to understand and practice appropriate problem solving, anger management, and interpersonal interaction, etc.); case management activities and coordination with other required services; and 24-hour emergency response. These services shall be limited annually to 26 weeks. ~~After an initial period, prior~~ Prior authorization is required for Medicaid reimbursement.

b. Therapeutic day treatment shall be provided two or more hours per day in order to provide therapeutic interventions. Day treatment programs, limited annually to 780 units, provide evaluation; medication; education and management; opportunities to learn and use daily living skills and to enhance social and interpersonal skills (e.g., problem solving, anger management, community responsibility, increased impulse control, and appropriate peer relations, etc.); and individual, group and family psychotherapy. Authorization is required for Medicaid reimbursement.

c. Community-Based Services for Children and Adolescents under 21 (Level A).

(1) Such services shall be a combination of therapeutic services rendered in a residential setting. The residential services will provide structure for daily activities, psychoeducation, therapeutic supervision and psychiatric

treatment to ensure the attainment of therapeutic mental health goals as identified in the individual service plan (plan of care). Individuals qualifying for this service must demonstrate medical necessity for the service arising from a condition due to mental, behavioral or emotional illness that results in significant functional impairments in major life activities in the home, school, at work, or in the community. The service must reasonably be expected to improve the child's condition or prevent regression so that the services will no longer be needed. DMAS will reimburse only for services provided in facilities or programs with no more than 16 beds.

(2) In addition to the residential services, the child must receive, at least weekly, individual psychotherapy that is provided by a licensed mental health professional.

(3) Individuals must be discharged from this service when other less intensive services may achieve stabilization.

(4) Authorization is required for Medicaid reimbursement.

(5) Room and board costs are not reimbursed. Facilities that only provide independent living services are not reimbursed.

(6) Providers must be licensed by the Department of Social Services, Department of Juvenile Justice, or Department of Education under the Standards for Interdepartmental Regulation of Children's Residential Facilities (22VAC42-10).

(7) Psychoeducational programming must include, but is not limited to, development or maintenance of daily living skills, anger management, social skills, family living skills, communication skills, and stress management.

(8) The facility/group home must coordinate services with other providers.

d. Therapeutic Behavioral Services (Level B).

(1) Such services must be therapeutic services rendered in a residential setting that provides structure for daily activities, psychoeducation, therapeutic supervision and psychiatric treatment to ensure the attainment of therapeutic mental health goals as identified in the individual service plan (plan of care). Individuals qualifying for this service must demonstrate medical necessity for the service arising from a condition due to mental, behavioral or emotional illness that results in significant functional impairments in major life activities in the home, school, at work, or in the community. The service must reasonably be expected to improve the child's condition or prevent regression so that the services will no longer be needed. DMAS will reimburse

only for services provided in facilities or programs with no more than 16 beds.

(2) Authorization is required for Medicaid reimbursement.

(3) Room and board costs are not reimbursed. Facilities that only provide independent living services are not reimbursed.

(4) Providers must be licensed by the Department of ~~Mental Health, Mental Retardation, and Substance Abuse Services (DMHMRSAS)~~ Behavioral Health and Developmental Services (DBHDS) under the Standards for Interdepartmental Regulation of Children's Residential Facilities (22VAC42-10).

(5) Psychoeducational programming must include, but is not limited to, development or maintenance of daily living skills, anger management, social skills, family living skills, communication skills, and stress management. This service may be provided in a program setting or a community-based group home.

(6) The child must receive, at least weekly, individual psychotherapy and, at least weekly, group psychotherapy that is provided as part of the program.

(7) Individuals must be discharged from this service when other less intensive services may achieve stabilization.

6. Inpatient psychiatric services shall be covered for individuals younger than age 21 for medically necessary stays for the purpose of diagnosis and treatment of mental health and behavioral disorders identified under EPSDT when such services are rendered by:

a. A psychiatric hospital or an inpatient psychiatric program in a hospital accredited by the Joint Commission on Accreditation of Healthcare Organizations; or a psychiatric facility that is accredited by the Joint Commission on Accreditation of Healthcare Organizations, the Commission on Accreditation of Rehabilitation Facilities, the Council on Accreditation of Services for Families and Children or the Council on Quality and Leadership.

b. Inpatient psychiatric hospital admissions at general acute care hospitals and freestanding psychiatric hospitals shall also be subject to the requirements of 12VAC30-50-100, 12VAC30-50-105, and 12VAC30-60-25. Inpatient psychiatric admissions to residential treatment facilities shall also be subject to the requirements of Part XIV (12VAC30-130-850 et seq.) of this chapter.

c. Inpatient psychiatric services are reimbursable only when the treatment program is fully in compliance with 42 CFR Part 441 Subpart D, as contained in 42 CFR

441.151 (a) and (b) and 441.152 through 441.156. Each admission must be preauthorized and the treatment must meet DMAS requirements for clinical necessity.

7. Hearing aids shall be reimbursed for individuals younger than 21 years of age according to medical necessity when provided by practitioners licensed to engage in the practice of fitting or dealing in hearing aids under the Code of Virginia.

C. School health services.

1. School health assistant services are repealed effective July 1, 2006.

2. School divisions may provide routine well-child screening services under the State Plan. Diagnostic and treatment services that are otherwise covered under early and periodic screening, diagnosis and treatment services, shall not be covered for school divisions. School divisions to receive reimbursement for the screenings shall be enrolled with DMAS as clinic providers.

a. Children enrolled in managed care organizations shall receive screenings from those organizations. School divisions shall not receive reimbursement for screenings from DMAS for these children.

b. School-based services are listed in a recipient's Individualized Education Program (IEP) and covered under one or more of the service categories described in § 1905(a) of the Social Security Act. These services are necessary to correct or ameliorate defects of physical or mental illnesses or conditions.

3. Service providers shall be licensed under the applicable state practice act or comparable licensing criteria by the Virginia Department of Education, and shall meet applicable qualifications under 42 CFR Part 440. Identification of defects, illnesses or conditions and services necessary to correct or ameliorate them shall be performed by practitioners qualified to make those determinations within their licensed scope of practice, either as a member of the IEP team or by a qualified practitioner outside the IEP team.

a. Service providers shall be employed by the school division or under contract to the school division.

b. Supervision of services by providers recognized in subdivision 4 of this subsection shall occur as allowed under federal regulations and consistent with Virginia law, regulations, and DMAS provider manuals.

c. The services described in subdivision 4 of this subsection shall be delivered by school providers, but may also be available in the community from other providers.

d. Services in this subsection are subject to utilization control as provided under 42 CFR Parts 455 and 456.

Regulations

e. The IEP shall determine whether or not the services described in subdivision 4 of this subsection are medically necessary and that the treatment prescribed is in accordance with standards of medical practice. Medical necessity is defined as services ordered by IEP providers. The IEP providers are qualified Medicaid providers to make the medical necessity determination in accordance with their scope of practice. The services must be described as to the amount, duration and scope.

4. Covered services include:

a. Physical therapy, occupational therapy and services for individuals with speech, hearing, and language disorders, performed by, or under the direction of, providers who meet the qualifications set forth at 42 CFR 440.110. This coverage includes audiology services;

b. Skilled nursing services are covered under 42 CFR 440.60. These services are to be rendered in accordance to the licensing standards and criteria of the Virginia Board of Nursing. Nursing services are to be provided by licensed registered nurses or licensed practical nurses but may be delegated by licensed registered nurses in accordance with the regulations of the Virginia Board of Nursing, especially the section on delegation of nursing tasks and procedures. the licensed practical nurse is under the supervision of a registered nurse.

(1) The coverage of skilled nursing services shall be of a level of complexity and sophistication (based on assessment, planning, implementation and evaluation) that is consistent with skilled nursing services when performed by a licensed registered nurse or a licensed practical nurse. These skilled nursing services shall include, but not necessarily be limited to dressing changes, maintaining patent airways, medication administration/monitoring and urinary catheterizations.

(2) Skilled nursing services shall be directly and specifically related to an active, written plan of care developed by a registered nurse that is based on a written order from a physician, physician assistant or nurse practitioner for skilled nursing services. This order shall be recertified on an annual basis.

c. Psychiatric and psychological services performed by licensed practitioners within the scope of practice are defined under state law or regulations and covered as physicians' services under 42 CFR 440.50 or medical or other remedial care under 42 CFR 440.60. These outpatient services include individual medical psychotherapy, group medical psychotherapy coverage, and family medical psychotherapy. Psychological and neuropsychological testing are allowed when done for purposes other than educational diagnosis, school admission, evaluation of an individual with mental retardation prior to admission to a nursing facility, or any

placement issue. These services are covered in the nonschool settings also. School providers who may render these services when licensed by the state include psychiatrists, licensed clinical psychologists, school psychologists, licensed clinical social workers, professional counselors, psychiatric clinical nurse specialist, marriage and family therapists, and school social workers.

d. Personal care services are covered under 42 CFR 440.167 and performed by persons qualified under this subsection. The personal care assistant is supervised by a DMAS recognized school-based health professional who is acting within the scope of licensure. This practitioner develops a written plan for meeting the needs of the child, which is implemented by the assistant. The assistant must have qualifications comparable to those for other personal care aides recognized by the Virginia Department of Medical Assistance Services. The assistant performs services such as assisting with toileting, ambulation, and eating. The assistant may serve as an aide on a specially adapted school vehicle that enables transportation to or from the school or school contracted provider on days when the student is receiving a Medicaid-covered service under the IEP. Children requiring an aide during transportation on a specially adapted vehicle shall have this stated in the IEP.

e. Medical evaluation services are covered as physicians' services under 42 CFR 440.50 or as medical or other remedial care under 42 CFR 440.60. Persons performing these services shall be licensed physicians, physician assistants, or nurse practitioners. These practitioners shall identify the nature or extent of a child's medical or other health related condition.

f. Transportation is covered as allowed under 42 CFR 431.53 and described at State Plan Attachment 3.1-D. Transportation shall be rendered only by school division personnel or contractors. Transportation is covered for a child who requires transportation on a specially adapted school vehicle that enables transportation to or from the school or school contracted provider on days when the student is receiving a Medicaid-covered service under the IEP. Transportation shall be listed in the child's IEP. Children requiring an aide during transportation on a specially adapted vehicle shall have this stated in the IEP.

g. Assessments are covered as necessary to assess or reassess the need for medical services in a child's IEP and shall be performed by any of the above licensed practitioners within the scope of practice. Assessments and reassessments not tied to medical needs of the child shall not be covered.

5. DMAS will ensure through quality management review that duplication of services will be monitored. School divisions have a responsibility to ensure that if a child is

receiving additional therapy outside of the school, that there will be coordination of services to avoid duplication of service.

D. Family planning services and supplies for individuals of child-bearing age.

1. Service must be ordered or prescribed and directed or performed within the scope of the license of a practitioner of the healing arts.

2. Family planning services shall be defined as those services that delay or prevent pregnancy. Coverage of such services shall not include services to treat infertility nor services to promote fertility.

12VAC30-60-61. Services related to the Early and Periodic Screening, Diagnosis and Treatment Program (EPSDT); community mental health services for children.

A. Intensive in-home services for children and adolescents.

1. Individuals qualifying for this service must demonstrate a clinical necessity for the service arising from mental, behavioral or emotional illness which results in significant functional impairments in major life activities. Individuals must meet at least two of the following criteria on a continuing or intermittent basis:

a. Have difficulty in establishing or maintaining normal interpersonal relationships to such a degree that they are at risk of hospitalization or out-of-home placement because of conflicts with family or community.

b. Exhibit such inappropriate behavior that repeated interventions by the mental health, social services or judicial system are necessary.

c. Exhibit difficulty in cognitive ability such that they are unable to recognize personal danger or recognize significantly inappropriate social behavior.

2. At admission, an appropriate assessment is made by the LMHP or the QMHP and approved by the LMHP, documenting that service needs can best be met through intervention provided typically but not solely in the client's residence. The assessment must include the elements specified by DMAS. An Individual Service Plan (ISP) must be fully completed within 30 days of initiation of services.

3. Services must be directed toward the treatment of the eligible child and delivered primarily in the family's residence with the child present. The assessment must be done face to face in the child's home. In some circumstances, such as lack of privacy or unsafe conditions, the assessment and provision of services may be provided in the community if by the needs assessment and ISP the rationale is supported in the clinical record.

4. These services shall be provided when the clinical needs of the child put the child at risk for out-of-home placement:

a. When services that are far more intensive than outpatient clinic care are required to stabilize the child in the family situation, or

b. When the child's residence as the setting for services is more likely to be successful than a clinic.

5. Services may not be billed when provided to a family while the child is not residing in the home.

6. Services shall also be used to facilitate the transition to home from an out-of-home placement when services more intensive than outpatient clinic care are required for the transition to be successful. The child and responsible parent/guardian must be available and in agreement to participate in the transition.

7. At least one parent or responsible adult with whom the child is living must be willing to participate in the intensive in-home services with the goal of keeping the child with the family.

8. The enrolled provider must be licensed by the Department of ~~Mental Health, Mental Retardation and Substance Abuse Services~~ Behavioral Health and Developmental Services (DBHDS) as a provider of intensive in-home services.

9. Services must be provided by an LMHP or a QMHP as defined in 12VAC30-50-226. Reimbursement shall not be provided for such services when they have been rendered by a QPPMH as defined in 12VAC30-50-226.

10. The billing unit for intensive in-home service is one hour. Although the pattern of service delivery may vary, intensive in-home services is an intensive service provided to individuals for whom there is a plan of care in effect which demonstrates the need for a minimum of three hours a week of intensive in-home service, and includes a plan for service provision of a minimum of three hours of service delivery per client/family per week in the initial phase of treatment. It is expected that the pattern of service provision may show more intensive services and more frequent contact with the client and family initially with a lessening or tapering off of intensity toward the latter weeks of service. Service plans must incorporate a discharge plan which identifies transition from intensive in-home to less intensive or nonhome based services.

11. The provider must ensure that the maximum staff-to-caseload ratio fully meets the needs of the individual. For full time staff, the staff to client ratio shall not exceed five cases per staff. The ratio for half-time staff to clients is 1 to 3. Staff that work less than half-time must be cleared with the licensing specialist for more than one case. A case load may be 1:6 staff to client ratio if the staff is transitioning one of the clients off of the case load for up to 30 days.

Regulations

12. A full-time clinical supervisor may not have more than 10 QMHP to supervise. A half-time clinical supervisor may not have more than five QMHPs to supervise.

~~42-~~ 13. Since case management services are an integral and inseparable part of this service, case management services may not be billed separately for periods of time when intensive in-home services are being provided.

~~43-~~ 14. Emergency assistance shall be available 24 hours per day, seven days a week.

15. Providers shall comply with DMAS marketing requirements. Providers that violate the DMAS marketing requirements will be assessed financial penalties for the first two violations. A provider that violates the marketing requirements for a third time shall have his provider's participation agreement for this service terminated. The DMAS marketing requirements are published in the Medicaid Special Memo, dated June 9, 2010, Changes to Community Mental Health Rehabilitation Services.

16. If an individual receiving services is also receiving case management services, the provider must collaborate with the case manager and provide notification of the provision of services. In addition, the provider must send monthly updates to the case manager on the individual's progress. A discharge summary must be sent to the case manager within 30 days of the service discontinuation date.

B. Therapeutic day treatment for children and adolescents.

1. Therapeutic day treatment is appropriate for children and adolescents who meet one of the following:

a. Children and adolescents who require year-round treatment in order to sustain behavior or emotional gains.

b. Children and adolescents whose behavior and emotional problems are so severe they cannot be handled in self-contained or resource emotionally disturbed (ED) classrooms without:

(1) This programming during the school day; or

(2) This programming to supplement the school day or school year.

c. Children and adolescents who would otherwise be placed on homebound instruction because of severe emotional/behavior problems that interfere with learning.

d. Children and adolescents who (i) have deficits in social skills, peer relations or dealing with authority; (ii) are hyperactive; (iii) have poor impulse control; (iv) are extremely depressed or marginally connected with reality.

e. Children in preschool enrichment and early intervention programs when the children's emotional/behavioral problems are so severe that they

cannot function in these programs without additional services.

2. Such services must not duplicate those services provided by the school.

3. Individuals qualifying for this service must demonstrate a clinical necessity for the service arising from a condition due to mental, behavioral or emotional illness which results in significant functional impairments in major life activities. Individuals must meet at least two of the following criteria on a continuing or intermittent basis:

a. Have difficulty in establishing or maintaining normal interpersonal relationships to such a degree that they are at risk of hospitalization or out-of-home placement because of conflicts with family or community.

b. Exhibit such inappropriate behavior that repeated interventions by the mental health, social services or judicial system are necessary.

c. Exhibit difficulty in cognitive ability such that they are unable to recognize personal danger or recognize significantly inappropriate social behavior.

4. The enrolled provider of therapeutic day treatment for child and adolescents services must be licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services to provide day support services.

5. Services must be provided by an LMHP, a QMHP or a QPPMH who is supervised by a QMHP or LMHP.

6. The minimum staff-to-youth ratio shall ensure that adequate staff is available to meet the needs of the youth identified on the ISP.

7. The program must operate a minimum of two hours per day and may offer flexible program hours (i.e., before or after school or during the summer). One unit of service is defined as a minimum of two hours but less than three hours in a given day. Two units of service shall be defined as a minimum of three but less than five hours in a given day. Three units of service shall be defined as five or more hours of service in a given day.

8. Time for academic instruction when no treatment activity is going on cannot be included in the billing unit.

9. Services shall be provided following a diagnostic assessment that is authorized by an LMHP. Services must be provided in accordance with an ISP which must be fully completed within 30 days of initiation of the service.

10. If an individual receiving services is also receiving case management services, the provider must collaborate with the case manager and provide notification of the provision of services. In addition, the provider must send monthly updates to the case manager on the individual's progress. A

discharge summary must be sent to the case manager within 30 days of the service discontinuation date.

11. Providers shall comply with DMAS marketing requirements. Providers that violate the DMAS marketing requirements will be assessed financial penalties for the first two violations. A provider that violates the marketing requirements for a third time shall have his provider's participation agreement for this service terminated. The DMAS marketing requirements are published in the Medicaid Special Memo, dated June 9, 2010, Changes to Community Mental Health Rehabilitation Services.

C. Community-Based Services for Children and Adolescents under 21 (Level A).

1. The staff ratio must be at least 1 to 6 during the day and at least 1 to 10 while asleep. The program director supervising the program/group home must be, at minimum, a qualified mental health professional (as defined in 12VAC35-105-20) with a bachelor's degree and have at least one year of direct work with mental health clients. The program director must be employed full time.

2. At least 50% of the direct care staff must meet DMAS paraprofessional staff criteria, defined in 12VAC30-50-226.

3. Authorization is required for Medicaid reimbursement. DMAS shall monitor the services rendered. All Community-Based Services for Children and Adolescents under 21 (Level A) must be authorized prior to reimbursement for these services. Services rendered without such authorization shall not be covered. Reimbursement shall not be made for this service when other less intensive services may achieve stabilization.

4. Services must be provided in accordance with an Individual Service Plan (ISP) (plan of care), which must be fully completed within 30 days of authorization for Medicaid reimbursement.

D. Therapeutic Behavioral Services for Children and Adolescents under 21 (Level B).

1. The staff ratio must be at least 1 to 4 during the day and at least 1 to 8 while asleep. The clinical director must be a licensed mental health professional. The caseload of the clinical director must not exceed 16 clients including all sites for which the clinical director is responsible. The program director must be full time and be a qualified mental health professional with a bachelor's degree and at least one year's clinical experience.

2. At least 50% of the direct care staff must meet DMAS paraprofessional staff criteria, as defined in 12VAC30-50-226. The program/group home must coordinate services with other providers.

3. All Therapeutic Behavioral Services (Level B) must be authorized prior to reimbursement for these services. Services rendered without such prior authorization shall not be covered.

4. Services must be provided in accordance with an ISP (plan of care), which must be fully completed within 30 days of authorization for Medicaid reimbursement.

E. Utilization review. Utilization reviews for Community-Based Services for Children and Adolescents under 21 (Level A) and Therapeutic Behavioral Services for Children and Adolescents under 21 (Level B) shall include determinations whether providers meet all DMAS requirements.

12VAC30-60-143. Mental health services utilization criteria.

A. Utilization reviews shall include determinations that providers meet the following requirements:

1. The provider shall meet the federal and state requirements for administrative and financial management capacity.

2. The provider shall document and maintain individual case records in accordance with state and federal requirements.

3. The provider shall ensure eligible recipients have free choice of providers of mental health services and other medical care under the Individual Service Plan.

4. The providers shall comply with DMAS marketing requirements. Providers that violate the DMAS marketing requirements will be assessed financial penalties for the first two violations. A provider that violates the marketing requirements for a third time shall have his provider's participation agreement for this service terminated. The DMAS marketing requirements are published in the Medicaid Special Memo, dated June 9, 2010, Changes to Community Mental Health Rehabilitation Services.

5. If an individual receiving services is also receiving case management services, the provider must collaborate with the case manager and provide notification of the provision of services. In addition, the provider must send monthly updates to the case manager on the individual's progress. A discharge summary must be sent to the case manager within 30 days of the service discontinuation date.

B. Day treatment/partial hospitalization services shall be provided following a diagnostic assessment and be authorized by the physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker, or licensed clinical nurse specialist-psychiatric. An ISP shall be fully completed by either the LMHP or the QMHP as defined at 12VAC30-50-226 within 30 days of service initiation.

Regulations

1. The enrolled provider of day treatment/partial hospitalization shall be licensed by ~~DMHMRSAS~~ DBHDS as providers of day treatment services.

2. Services shall be provided by an LMHP, a QMHP, or a qualified paraprofessional under the supervision of a QMHP or an LMHP as defined at 12VAC30-50-226.

3. The program shall operate a minimum of two continuous hours in a 24-hour period.

4. Individuals shall be discharged from this service when other less intensive services may achieve or maintain psychiatric stabilization.

C. Psychosocial rehabilitation services shall be provided to those individuals who have experienced long-term or repeated psychiatric hospitalization, or who experience difficulty in activities of daily living and interpersonal skills, or whose support system is limited or nonexistent, or who are unable to function in the community without intensive intervention or when long-term services are needed to maintain the individual in the community.

1. Psychosocial rehabilitation services shall be provided following an assessment which clearly documents the need for services. The assessment shall be completed by an LMHP, or a QMHP, and approved by a LMHP within 30 days of admission to services. An ISP shall be completed by the LMHP or the QMHP within 30 days of service initiation. Every three months, the LMHP or the QMHP must review, modify as appropriate, and update the ISP.

2. Psychosocial rehabilitation services of any individual that continue more than six months must be reviewed by an LMHP who must document the continued need for the service. The ISP shall be rewritten at least annually.

3. The enrolled provider of psychosocial rehabilitation services shall be licensed by ~~DMHMRSAS~~ DBHDS as a provider of psychosocial rehabilitation or clubhouse services.

4. Psychosocial rehabilitation services may be provided by an LMHP, a QMHP, or a qualified paraprofessional under the supervision of a QMHP or an LMHP.

5. The program shall operate a minimum of two continuous hours in a 24-hour period.

6. Time allocated for field trips may be used to calculate time and units if the goal is to provide training in an integrated setting, and to increase the client's understanding or ability to access community resources.

D. Admission to crisis intervention services is indicated following a marked reduction in the individual's psychiatric, adaptive or behavioral functioning or an extreme increase in personal distress.

1. The crisis intervention services provider shall be licensed as a provider of outpatient services by ~~DMHMRSAS~~ DBHDS.

2. Client-related activities provided in association with a face-to-face contact are reimbursable.

3. An Individual Service Plan (ISP) shall not be required for newly admitted individuals to receive this service. Inclusion of crisis intervention as a service on the ISP shall not be required for the service to be provided on an emergency basis.

4. For individuals receiving scheduled, short-term counseling as part of the crisis intervention service, an ISP must be developed or revised to reflect the short-term counseling goals by the fourth face-to-face contact.

5. Reimbursement shall be provided for short-term crisis counseling contacts occurring within a 30-day period from the time of the first face-to-face crisis contact. Other than the annual service limits, there are no restrictions (regarding number of contacts or a given time period to be covered) for reimbursement for unscheduled crisis contacts.

6. Crisis intervention services may be provided to eligible individuals outside of the clinic and billed, provided the provision of out-of-clinic services is clinically/programmatically appropriate. Travel by staff to provide out-of-clinic services is not reimbursable. Crisis intervention may involve contacts with the family or significant others. If other clinic services are billed at the same time as crisis intervention, documentation must clearly support the separation of the services with distinct treatment goals.

7. An LMHP, a QMHP, or a certified prescriber must conduct a face-to-face assessment. If the QMHP performs the assessment, it must be reviewed and approved by an LMHP or a certified prescriber within 72 hours of the face-to-face assessment. The assessment shall document the need for and the anticipated duration of the crisis service. Crisis intervention will be provided by an LMHP, a certified prescriber, or a QMHP.

8. Crisis intervention shall not require an ISP.

9. For an admission to a freestanding inpatient psychiatric facility for individuals younger than age 21, federal regulations (42 CFR 441.152) require certification of the admission by an independent team. The independent team must include mental health professionals, including a physician. Preadmission screenings cannot be billed unless the requirement for an independent team, with a physician's signature, is met.

10. Services must be documented through daily notes and a daily log of time spent in the delivery of services.

E. Case management services (pursuant to 12VAC30-50-226).

1. Reimbursement shall be provided only for "active" case management clients, as defined. An active client for case management shall mean an individual for whom there is a plan of care in effect which requires regular direct or client-related contacts or activity or communication with the client or families, significant others, service providers, and others including a minimum of one face-to-face client contact within a 90-day period. Billing can be submitted only for months in which direct or client-related contacts, activity or communications occur.

2. The Medicaid eligible individual shall meet the ~~DMHMRSAS~~ DBHDS criteria of serious mental illness, serious emotional disturbance in children and adolescents, or youth at risk of serious emotional disturbance.

3. There shall be no maximum service limits for case management services. Case management shall not be billed for persons in institutions for mental disease.

4. The ISP must document the need for case management and be fully completed within 30 days of initiation of the service, and the case manager shall review the ISP every three months. The review will be due by the last day of the third month following the month in which the last review was completed. A grace period will be granted up to the last day of the fourth month following the month of the last review. When the review was completed in a grace period, the next subsequent review shall be scheduled three months from the month the review was due and not the date of actual review.

5. The ISP shall be updated at least annually.

6. The provider of case management services shall be licensed by ~~DMHMRSAS~~ DBHDS as a provider of case management services.

F. Intensive community treatment (ICT) for adults.

1. An assessment which documents eligibility and need for this service shall be completed by the LMHP or the QMHP prior to the initiation of services. This assessment must be maintained in the individual's records.

2. An individual service plan, based on the needs as determined by the assessment, must be initiated at the time of admission and must be fully developed by the LMHP or the QMHP and approved by the LMHP within 30 days of the initiation of services.

3. ICT may be billed if the client is brought to the facility by ICT staff to see the psychiatrist. Documentation must be present to support this intervention.

4. The enrolled ICT provider shall be licensed by the ~~DMHMRSAS~~ DBHDS as a provider of intensive community services or as a program of assertive

community treatment, and must provide and make available emergency services 24-hours per day, seven days per week, 365 days per year, either directly or on call.

5. ICT services must be documented through a daily log of time spent in the delivery of services and a description of the activities/services provided. There must also be at least a weekly note documenting progress or lack of progress toward goals and objectives as outlined on the ISP.

G. Crisis stabilization services.

1. This service must be authorized following a face-to-face assessment by an LMHP, a certified prescriber, or a QMHP. This assessment must be reviewed and approved by a licensed mental health professional within 72 hours of the assessment.

2. The assessment must document the need for crisis stabilization services and anticipated duration of need.

3. The Individual Service Plan (ISP) must be developed or revised within 10 business days of the approved assessment or reassessment. The LMHP, certified prescriber, or QMHP shall develop the ISP.

4. Room and board, custodial care, and general supervision are not components of this service.

5. Clinic option services are not billable at the same time crisis stabilization services are provided with the exception of clinic visits for medication management. Medication management visits may be billed at the same time that crisis stabilization services are provided but documentation must clearly support the separation of the services with distinct treatment goals.

6. Individuals qualifying for this service must demonstrate a clinical necessity for the service arising from a condition due to an acute crisis of a psychiatric nature which puts the individual at risk of psychiatric hospitalization.

7. Providers of crisis stabilization shall be licensed by ~~DMHMRSAS~~ DBHDS as providers of outpatient services.

H. Mental health support services.

1. At admission, an appropriate face-to-face assessment must be made and documented by the LMHP or the QMHP, indicating that service needs can best be met through mental health support services. The assessment must be performed by the LMHP, or the QMHP, and approved by the LMHP, within 30 days of the date of admission. The LMHP or the QMHP will complete the ISP within 30 days of the admission to this service. The ISP must indicate the specific supports and services to be provided and the goals and objectives to be accomplished. The LMHP or QMHP will supervise the care if delivered by the qualified paraprofessional.

Regulations

2. Every three months, the LMHP or the QMHP must review, modify as appropriate, and update the ISP. The ISP must be rewritten at least annually.
3. Only direct face-to-face contacts and services to individuals shall be reimbursable.
4. Any services provided to the client that are strictly academic in nature shall not be billable. These include, but are not limited to, such basic educational programs as instruction in reading, science, mathematics, or GED.
5. Any services provided to clients that are strictly vocational in nature shall not be billable. However, support activities and activities directly related to assisting a client to cope with a mental illness to the degree necessary to develop appropriate behaviors for operating in an overall work environment shall be billable.
6. Room and board, custodial care, and general supervision are not components of this service.
7. This service is not billable for individuals who reside in facilities where staff are expected to provide such services under facility licensure requirements.
8. Provider qualifications. The enrolled provider of mental health support services must be licensed by ~~DMHMRSAS~~ DBHDS as a provider of supportive in-home services, intensive community treatment, or as a program of assertive community treatment. Individuals employed or contracted by the provider to provide mental health support services must have training in the characteristics of mental illness and appropriate interventions, training strategies, and support methods for persons with mental illness and functional limitations.
9. Mental health support services, which continue for six consecutive months, must be reviewed and renewed at the end of the six-month period of authorization by an LMHP who must document the continued need for the services.
10. Mental health support services must be documented through a daily log of time involved in the delivery of services and a minimum of a weekly summary note of services provided.

DOCUMENTS INCORPORATED BY REFERENCE (12VAC30-60)

Virginia Medicaid Nursing Home Manual, Department of Medical Assistance Services.

Virginia Medicaid Rehabilitation Manual, Department of Medical Assistance Services.

Virginia Medicaid Hospice Manual, Department of Medical Assistance Services.

Virginia Medicaid School Division Manual, Department of Medical Assistance Services.

Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV-TR), copyright 2000, American Psychiatric Association.

Patient Placement Criteria for the Treatment of Substance-Related Disorders (ASAM PPC-2R), Second Edition, copyright 2001, American Society on Addiction Medicine, Inc.

Medicaid Special Memo, Subject: "Changes to Community Mental Health Rehabilitative Services - July 1, 2010 & September 1, 2010," dated June 9, 2010, Department of Medical Assistance Services.

VA.R. Doc. No. R10-2437; Filed July 1, 2010, 12:53 p.m.

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TITLE 14. INSURANCE

STATE CORPORATION COMMISSION

Proposed Regulation

REGISTRAR'S NOTICE: The State Corporation Commission is exempt from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

Title of Regulation: **14VAC5-211. Rules Governing Health Maintenance Organizations (amending 14VAC5-211-70, 14VAC5-211-160).**

Statutory Authority: §§ 12.1-13 and 38.2-223 of the Code of Virginia.

Public Hearing Information: A public hearing will be held upon request.

Public Comment Deadline: August 16, 2010.

Agency Contact: Althelia Battle, Chief Insurance Market Examiner, Bureau of Insurance, State Corporation Commission, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9154, FAX (804) 371-9944, or email al.battle@scc.virginia.gov.

Summary:

This action conforms the regulation to amendments made to (i) § 38.2-3541 of the Code of Virginia regarding group health insurance continuation and conversion requirements and (ii) § 38.2-3412.1 of the Code of Virginia regarding mental health parity.

AT RICHMOND, JUNE 29, 2010

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. INS-2010-00118

Ex Parte: In the matter of
Adopting Amendments to the
Rules Governing Health
Maintenance Organizations

ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia provides that the State Corporation Commission ("Commission") shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction, and § 38.2-223 of the Code of Virginia provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of Title 38.2 of the Code of Virginia.

The rules and regulations issued by the Commission pursuant to § 38.2-223 of the Code of Virginia are set forth in Title 14 of the Virginia Administrative Code.

The Bureau of Insurance ("Bureau") has submitted to the Commission proposed amendments to Chapter 211 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Health Maintenance Organizations" ("Rules"), which amend the Rules at 14 VAC 5-211-70 and 14 VAC 5-211-160.

The proposed amendments to the Rules are necessary in Section 70 at the request of the Virginia Association of Health Plans to conform amendments to § 38.2-3541 of the Code of Virginia passed by the 2010 General Assembly with regard to group health insurance continuation and conversion requirements. Amendments to Section 160 of the Rules are necessary to conform it to amendments to § 38.2-3412.1 of the Code of Virginia regarding mental health parity.

The Commission is of the opinion that the proposed amendments to 14 VAC 5-211-70 and 14 VAC 5-211-160 should be considered for adoption.

THEREFORE, IT IS ORDERED THAT:

- (1) The proposed amendments to the "Rules Governing Health Maintenance Organizations," which amend the Rules at 14 VAC 5-211-70 and 14 VAC 5-211-160, be attached hereto and made a part hereof.
- (2) All interested persons who desire to comment in support of or in opposition to, or request a hearing to oppose the adoption of the proposed amendments, shall file such comments or hearing request on or before August 16, 2010, with the Clerk of the Commission, Document

Control Center, P.O. Box 2118, Richmond, Virginia 23218 and shall refer to Case No. INS-2010-00118. Interested persons desiring to submit comments electronically may do so by following the instructions available at the Commission's website: <http://www.scc.virginia.gov/caseinfo.htm>.

(3) If no written request for a hearing on the proposed amendments is filed on or before August 16, 2010, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposed amendments, may adopt the amendments proposed by the Bureau of Insurance.

(4) AN ATTESTED COPY hereof, together with a copy of the proposed amendments, shall be sent by the Clerk of the Commission to the Bureau of Insurance in care of Deputy Commissioner Jacqueline K. Cunningham, who forthwith shall give further notice of the proposed adoption of the amendments by mailing a copy of this Order, together with the proposed amendments, to all insurers licensed by the Commission as health maintenance organizations in the Commonwealth of Virginia, as well as all interested parties.

(5) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, together with the proposed amendments, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(6) The Commission's Division of Information Resources shall make available this Order and the attached proposed amendments on the Commission's website: <http://www.scc.virginia.gov/case>.

(7) The Bureau of Insurance shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of paragraph (4) above.

14VAC5-211-70. Conversion of coverage.

A. A health care plan shall offer to its group contract holders, for an enrollee whose eligibility for coverage terminates under the group contract, the options to convert to an individual policy or continue coverage as set forth in this section. The group contract holder shall select one of the following options:

1. Conversion of coverage within 31 days after issuance of the written notice required in subsection C of this section, but in no event beyond the 60-day period following the date of termination of the enrollee's coverage under the group contract, to an individual contract that provides benefits which, at a minimum, meet the requirements of basic or limited health care services as applicable, in accordance with this chapter. Coverage shall not be refused on the basis that the enrollee no longer resides or is employed in the health maintenance organization's service

Regulations

area. The conversion contract shall cover the enrollee covered under the group contract as of the date of termination of the enrollee's coverage under the group contract. Coverage shall be provided without additional evidence of insurability, and no preexisting condition limitations or exclusions may be imposed other than those remaining unexpired under the contract from which conversion is exercised. A probationary or waiting period set forth in the conversion contract shall be deemed to commence on the effective date of coverage under the original contract.

2. Continuation of coverage under the existing group contract for a period of at least ~~90 days~~ 12 months immediately following the date of termination of the enrollee's eligibility for coverage under the group policy. Coverage shall be provided without additional evidence of insurability. ~~The premium for continuing group coverage shall be at the current rate applicable to the group contract subject to the following requirements:~~

a. The application and payment for the extended coverage is made to the group contract holder within 31 days after issuance of the written notice required in subsection C of this section, but in no event beyond the 60-day period following the date of the termination of the person's eligibility;

b. Each premium for the extended coverage is timely paid to the group contract holder on a monthly basis during the 12-month period; and

c. The premium for continuing the group coverage shall be at the insurer's current rate applicable to the group policy plus any applicable administrative fee not to exceed 2.0% of the current rate.

B. A conversion contract or continuation of coverage shall not be required to be made available when:

1. The enrollee is covered by or is eligible for benefits under Title XVIII of the Social Security Act (42 USC § 1395 et seq.) known as Medicare;

2. The enrollee is covered by or is eligible for substantially the same level of hospital, medical, and surgical benefits under state or federal law;

3. The enrollee is covered by substantially the same level of benefits under any policy, contract, or plan for individuals in a group;

4. The enrollee has not been continuously covered during the three-month period immediately preceding the enrollee's termination of coverage;

5. The enrollee was terminated by the health care plan for any of the reasons stated in 14VAC5-211-230 A 1, 2, 3, or 6; or

6. The enrollee was terminated from a plan administered by the Department of Medical Assistance Services that provided benefits pursuant to Title XIX or XXI of the Social Security Act (42 USC § 1396 et seq. or § 1397 aa et seq.).

C. The group contract holder shall provide each enrollee or other person covered under the policy written notice of the availability of the option chosen and the procedures and timeframes for obtaining continuation or conversion of the group contract. The notice shall be provided within 14 days of the group contract holder's knowledge of the enrollee's or other covered person's loss of eligibility under the group contract.

Part IV Services

14VAC5-211-160. Basic health care services.

A health maintenance organization shall provide, or arrange for the provision of, as a minimum, basic health care services. These services shall include the following:

1. Inpatient hospital and physician services. Medically necessary hospital and physician services affording inpatient treatment to enrollees in a licensed hospital for a minimum of 90 days per contract or calendar year. Hospital services include room and board; general nursing care; special diets when medically necessary; use of operating room and related facilities; use of intensive care unit and services; x-ray, laboratory, and other diagnostic tests; drugs, medications, biologicals, anesthesia, and oxygen services; special duty nursing when medically necessary; short-term physical therapy, radiation therapy, and inhalation therapy; administration of whole blood and blood plasma; and short-term rehabilitation services. Physician services include medically necessary health care services performed, prescribed, or supervised by physicians within a hospital for registered bed patients;

2. Outpatient medical services. Medically necessary health care services performed, prescribed or supervised by physicians for enrollees, which may be provided in a nonhospital based health care facility, at a hospital, in a physician's office, or in the enrollee's home, and shall include consultation and referral services. Outpatient medical services shall also include diagnostic services, treatment services, short-term physical therapy and rehabilitation services the provision of which the health maintenance organization determines can be expected to result in the significant improvement of a member's condition within a period of 90 days, laboratory services, x-ray services, and outpatient surgery;

3. Diagnostic laboratory and diagnostic and therapeutic radiologic services;

4. Preventive health services. Services provided with the goal of early detection and minimization of the ill effects and causes of disease or disability, including well-child care from birth, eye and ear examinations for children age 17 and under to determine the need for vision and hearing correction, periodic health evaluations, and immunizations;

5. In-area and out-of-area emergency services, including medically necessary ambulance services, available on an inpatient or an outpatient basis 24 hours per day, seven days per week;

6. Mental health and substance use disorder services as follows:

a. Medically necessary services for the treatment of biologically based mental illnesses as defined in § 38.2-3412.1:01 of the Code of Virginia; and

~~Treatment~~ b. Except for a group contract issued to a large employer as defined in § 38.2-3431 of the Code of Virginia, services for the treatment of all other mental health and substance abuse services use disorders shall at a minimum include:

~~a-~~ (1) Inpatient services or partial hospitalization for an adult for a minimum period of 20 days per enrollee per contract year;

~~b-~~ (2) Inpatient services or partial hospitalization for a child or adolescent for a minimum period of 25 days per enrollee per contract year; and

~~e-~~ (3) Twenty outpatient visits per enrollee per contract year. A medication management visit shall be covered in the same manner as a medication management visit for the treatment of a physical illness and shall not be counted as an outpatient treatment visit in the calculation of the benefit set forth ~~is~~ in this subdivision.

The limits of the benefits set forth in this subdivision shall not be more restrictive than for any other illness, however, the coinsurance applicable to any outpatient visit beyond the first five visits covered per contract year shall not exceed 50%. If all covered expenses for outpatient services apply toward any deductible required by a policy or contract, the visit shall not count toward the outpatient visit benefit maximum set forth in the policy or contract. Definitions set forth in § 38.2-3412.1 of the Code of Virginia shall be applicable to terms used in this subsection.

Group contracts issued to a large employer as defined in § 38.2-3431 of the Code of Virginia shall provide mental health and substance use disorder benefits on parity with the medical and surgical benefits contained in the plan in accordance with the Mental Health Parity and Addiction Equity Act of 2008 (P.L. 110-343).

7. Medically necessary dental services as a result of accidental injury, regardless of the date of such injury. Contracts may require that treatment be sought within 60 days of the accident for injuries occurring on or after the effective date of coverage.

VA.R. Doc. No. R10-2356; Filed June 29, 2010, 4:22 p.m.

GOVERNOR

EXECUTIVE ORDER NUMBER 13 (2010)

Continuing Certain Declarations of State of Emergency

Pursuant to the authority granted to me as Governor, including but not limited to Article V of the Constitution of Virginia and Section 2.2 of the Code of Virginia, I hereby continue the following executive orders that have previously been issued until June 30, 2012:

Executive Order Number Fifty-six, Declaration of a State of Emergency for the Entire Commonwealth due to Hurricane Isabel, issued on September 16, 2004, by Governor Warner, as continued in Executive Order Number Eighty-eight, issued on June 13, 2005, by Governor Warner, as continued in Executive Order Number Twenty-six, issued on June 23, 2006, by Governor Kaine; and Executive Order Number Eighty-four, issued on July 1, 2009, by Governor Kaine.

Executive Order Number Fifty-four, Declaration of a State of Emergency to Assist Rockbridge County and the Town of Goshen Due to a Critical Water Shortage, issued on June 20, 2007, as continued in Executive Order Number Seventy-four, issued on July 3, 2008; and Executive Order Number Eighty-four, issued on July 1, 2009.

Executive Order Number Sixty-four, Declaration of State of Emergency Arising from Heavy Winds and Severe Storms Throughout Virginia, issued on March 5, 2008, as continued in Executive Order Number Seventy-four, issued on July 3, 2008; and Executive Order Number Eighty-four, issued on July 1, 2009.

Executive Order Number Seventy-five, Declaration of a State of Emergency in Support of the Emergency Management Assistance Compact to Respond to the Impact of Hurricane Gustav in the Gulf Coast States, issued on September 4, 2008; as continued in Executive Order Number Eighty-four, issued on July 1, 2009.

Executive Order Number Seventy-six, Declaration of a State of Emergency Due to the Threat of Significant Flooding and Wind Damage caused by Hurricane Hanna, issued on September 4, 2008.

Executive Order Number Seventy-seven, Declaration of a State of Emergency in Support of the Emergency Management Assistance Compact To Respond to the Impact Of Hurricane Gustav and Hurricane Ike in the Gulf Coast States, issued on September 18, 2008, as continued in Executive Order Number Eighty-four, issued on July 1, 2009.

Executive Order Number Eighty, Declaration of a State of Emergency to Support the 56th Presidential Inauguration, issued on January 13, 2009.

Executive Order Number Eighty-One, Declaration of a State of Emergency due to a Severe Winter Weather Event throughout the Commonwealth, issued on March 4, 2009.

Executive Order Number One Hundred and One, Declaration of a State of Emergency Due to a Severe Weather Event throughout the Commonwealth, issued on November 13, 2009.

This Executive Order shall be effective upon its signing and shall remain in full force and effect until June 30, 2012, unless sooner amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 29th day of June 2010.

/s/ Robert F. McDonnell
Governor

EXECUTIVE ORDER NUMBER 14 (2010)

Development and Review of Regulations Proposed By State Agencies

Importance of the Initiative

By virtue of the authority vested in me as Governor under Article V of the Constitution of the Commonwealth of Virginia and under the laws of the Commonwealth, including, but not limited, to Sections 2.2-4013 and 2.2-4017 of the Code of Virginia, and subject to my continuing and ultimate authority and responsibility to act in such matters, I hereby establish policies and procedures for review of all new, revised, and existing regulations proposed by state agencies, which shall include for purposes of this executive order all agencies, boards, commissions and other entities of the Commonwealth within the executive branch that issue regulations. Nothing in this Executive Order shall be construed to limit my authority under Section 2.2-4013 to require an additional 30-day final adoption period, or to exercise any other rights and prerogatives existing under Virginia law.

General Policy

The executive branch agencies of the Commonwealth must consider, review, and promulgate many regulations each year. This Executive Order sets out procedures and requirements to ensure the efficiency and quality of Virginia's regulatory process. All references to days mean calendar days.

All state employees who draft, provide policy analysis for, or review regulations shall carefully consider and apply the principles outlined below during the regulatory development and review process. All regulatory activity should be undertaken with the least possible intrusion in the lives of the citizens of the Commonwealth consistent with public health, safety, and welfare. Proposed and final regulations shall

reflect the Governor's initiative that state government operate more efficiently and effectively. Where applicable and to the extent permitted by law, it shall be the policy of the Commonwealth that, unless otherwise mandated by law, only regulations that are necessary to interpret the law or to protect the public health, safety, or welfare shall be promulgated.

A. Agencies shall identify the nature and significance of the problem a regulation is intended to address, including, where applicable, why private markets and institutions cannot adequately address the problem.

B. Agencies shall identify and assess the least costly means including reasonably available alternatives in lieu of regulation for achieving the goals of a regulation. This shall include where feasible and consistent with public health, safety, and welfare:

- a. The use of economic incentives to encourage the desired outcomes (such as user fees or marketable permits);
- b. The use of information disclosure requirements, rather than regulatory mandates, so that the public can make more informed choices; and
- c. The use of performance standards in place of mandating specific techniques or behavior.

C. Regulatory development shall be based on the best reasonably available and reliable, scientific, economic, and other information concerning the need for, and consequences of, the intended regulation. Agencies shall specifically cite the best reasonably available scientific, economic, and other information in support of regulatory proposals.

D. Regulations shall be designed to achieve their intended objective in the most efficient, cost-effective manner.

E. Regulations shall be clearly written and easily understandable by the individuals and entities affected.

F. All legal requirements related to public participation and all public participation guidelines shall be strictly followed to ensure that citizens have reasonable access and opportunity to present their comments and concerns. Use of the Virginia Regulatory Town Hall web site (Town Hall) should be specifically offered in each instance. Agencies shall establish procedures that provide for a timely written response to all comments and the inclusion of suggested changes that would improve the quality of the regulation.

G. In addition to requirements set out in the Virginia Administrative Process Act (APA) (Section 2.2-4006 et seq. of the Code of Virginia), agencies shall post all rulemaking actions on the Town Hall to ensure that the public is adequately informed of rulemaking activity.

H. Agencies, as well as reviewing entities, shall endeavor to perform their tasks in the regulatory process as expeditiously as the regulatory subject matter will allow and shall adhere to the time frames set out in this Executive Order.

I. Each agency head will be held accountable for ensuring that the policies and objectives specified in this Executive Order are put into effect. Agency heads shall ensure that information requested by the Department of Planning and Budget (DPB) or the Office of the Governor in connection with this Executive Order is provided on a timely basis. Incomplete packages may be returned to the appropriate agency by DPB.

J. Regulations shall not be considered perpetual and will be subject to periodic evaluation and review and modification, as appropriate, in accordance with the APA, and policy initiatives of the Governor.

K. Public comment will be encouraged for all regulations. DPB shall work with state agencies to promote use of the Town Hall to facilitate public comment.

L. Regulatory development shall be conducted in accordance with statutory provisions related to impact on small businesses. DPB shall work with state agencies to address these requirements during the regulatory review process, including notifications as appropriate to the Joint Commission on Administrative Rules.

M. Agencies shall actively seek input for proposed regulations from interested parties, stakeholders, citizens and members of the General Assembly.

N. During regulatory development, agencies shall consider the impact on existing and potential Virginia employers and their ability to maintain and increase the number of jobs in the Commonwealth, as well as the cost of compliance by the general public.

Applicability

The review process in this Executive Order applies to rulemaking initiated by agencies of the Commonwealth of Virginia in accordance with Article 2 of the APA.

With the exception of the requirements governing the periodic review of existing regulations, the posting of meeting agenda and minutes, and the posting of guidance documents, the requirements of this Executive Order may not apply to regulations exempt from Article 2 of the APA. A Cabinet Secretary, the Governor, or his Chief of Staff may request in writing that an agency comply with all or part of the requirements of this Executive Order for regulations exempt from Article 2 of the APA. Copies of such requests shall be forwarded to the Governor's Policy Office and DPB. In addition, a Cabinet Secretary may request in writing that certain Article 2 exempt regulations be further exempted from all or part of the requirements of this Executive Order.

These procedures shall apply in addition to those already specified in the APA, the agencies' public participation guidelines, and the agencies' basic authorizing statutes.

Any failure to comply with the requirements set forth herein shall in no way affect the validity of a regulation, create any cause of action or provide standing for any person under Article 5 of the APA (Section 2.2-4025 et seq. of the Code of Virginia), or otherwise challenge the actions of a government entity responsible for adopting or reviewing regulations.

Regulatory Review Process

Regulations shall be subject to executive branch review as specified herein. For each stage of the regulatory development process, agencies shall complete the agency background document provided by DPB to describe the regulatory action and inform the public about the substance and reasons for the rulemaking. All agency regulatory packages shall be submitted via the Town Hall.

Agencies shall submit regulatory packages to the Registrar on the Town Hall within 14 days of being authorized to do so. The Chief of Staff or Counselor to the Governor may grant exceptions to this requirement for good cause.

A. Standard Rulemaking Process

1. Notice of Intended Regulatory Action (NOIRA) Stage

DPB shall review the submission of a Notice of Intended Regulatory Action to determine whether it complies with all requirements of this Executive Order and applicable statutes and whether the contemplated regulatory action comports with the policy of the Commonwealth as set forth herein. The NOIRA shall include the nature of the regulatory changes being considered and the relevant sections of the Virginia Administrative Code. Within 14 days of receiving a complete NOIRA review package from the agency, the Director of DPB shall advise the appropriate Secretary and the Governor of DPB's determination. The agency shall be authorized to submit the NOIRA to the Registrar for publication when at least one of the following conditions is met:

- a. The Governor approves the NOIRA for publication, or
- b. Fourteen days have elapsed since DPB's notice of its determination to the appropriate Secretary and Governor and neither the Governor nor the Secretary has objected to the NOIRA.

If the Director of DPB advises the appropriate Secretary and the Governor that the NOIRA presents issues requiring further review, the NOIRA shall be forwarded to the Secretary. The Secretary shall review the NOIRA within 14 days and forward a recommendation to the Governor. The Chief of Staff or Counselor to the Governor is hereby authorized to approve NOIRAs on behalf of the Governor.

Public comments received following publication of the NOIRA should be encouraged and carefully considered in development of the proposed stage of a regulation.

2. Proposed Stage

Following the initial public comment period required by Section 2.2-4007.01 of the Code of Virginia and taking into account the comments received, the agency shall prepare a regulatory review package. Agencies should complete the proposed stage after the close of the NOIRA comment period as expeditiously as the subject matter will allow. However, the agency must submit the package to DPB within 180 days following the close of the NOIRA comment period, unless a waiver is granted.

If a regulatory package is submitted to DPB, and DPB determines that the package is not substantially complete, then DPB shall notify the agency within 10 days. At that time, the agency must withdraw the package from the Town Hall and resubmit the package only after all important missing elements identified by DPB have been added.

A proposed regulatory action shall be in as close to final form as possible, including completed review by all appropriate regulatory advisory panels or negotiated rulemaking panels. A proposed stage shall not address new issues that were not disclosed to the public when the NOIRA was published.

In addition to the information required on the regulation background form, the agency shall also include in the regulatory package a memorandum from the Office of the Attorney General (OAG) certifying that the agency has legal authority to promulgate the regulation being proposed. The OAG may also provide any appropriate comments for consideration by the Governor with respect to the proposed regulation. This process for feedback shall be managed in a manner similar to the process that has traditionally been used for soliciting the Attorney General's advice and recommendations on enrolled legislation.

DPB shall review the proposed regulation package to determine whether it complies with all requirements of this Executive Order and applicable statutes and whether the contemplated regulatory action comports with the policy of the Commonwealth as set forth herein. Per § 2.2-4007.04 of the Code of Virginia, within 45 days of receiving a complete proposed regulation package from the agency, DPB shall prepare a policy analysis and economic impact analysis, and advise the affected Secretary of DPB's determination. The Secretary shall review the proposed regulation package within 14 days and forward a recommendation to the Governor. The Chief of Staff or the Counselor to the Governor is hereby authorized to approve proposed regulations on behalf of the Governor. Within 14 days of receiving notification that the Governor has approved the proposed regulation package, the agency shall submit the proposed regulation package to the Registrar for publication, unless an exception to this requirement is granted for good cause by the Chief of Staff or Counselor to the Governor.

3. Final Stage

Following the public comment period required by Section 2.2-4007.03 of the Code of Virginia and taking into account the comments received, the agency shall revise the proposed regulation as necessary. Agencies should complete the proposed stage after the close of the proposed stage comment period as expeditiously as the subject matter will allow. However, the agency must submit the package to DPB within 180 days following the close of the proposed stage comment period, unless a waiver is granted by the Chief of Staff or the Counselor to the Governor.

If any change with substantial impact – as determined by DPB – has been made to the regulatory text between the proposed and final stages, the agency shall obtain a letter from the OAG certifying that the agency has authority to make the additional changes. The OAG may also provide any appropriate comments for consideration by the Governor with respect to the final regulation. This process for feedback shall be managed in a manner similar to the process that has traditionally been used for soliciting the Attorney General's advice and recommendations on enrolled legislation.

DPB shall review the final stage package to determine whether it complies with all requirements of this Executive Order and applicable statutes and whether the regulatory action comports with the policy of the Commonwealth as set forth herein. In particular, DPB shall assess the effect of any substantive changes made since the publication of the proposed regulation and the responsiveness of the agency to public comment. Within 14 days of receiving a complete final regulation package from the agency, the Director of DPB shall advise the affected Secretary and the Governor of DPB's determination.

After DPB's review, the final regulation shall be forwarded to the appropriate Secretary and the Governor. The Secretary shall make a recommendation to the Governor within 14 days. The agency shall be authorized to submit the final regulation to the Registrar for publication when the Governor approves the final stage for publication.

B. Fast-Track Rulemaking Process

The fast-track rulemaking process is for rules that are expected to be noncontroversial. A package would clearly qualify as a fast-track if the proposal appears to be (1) non-controversial and the promulgating entity has no discretion over the proposal, or (2) appears to be non-controversial and the areas of board/agency discretion are minor, or (3) appears to be non-controversial and no individual or entity is adversely affected. On the other hand, a regulatory proposal would not be appropriate for the fast-track process if it is controversial and the promulgating entity has discretion over at least some of the significant details. All situations other than those described above would be presented by DPB to the

Governor's office for a determination as to whether the regulatory proposal may proceed as a fast-track.

In addition to the information required on the agency background document when the proposed action has the effect of enhancing regulatory oversight, the agency shall also include in the regulatory package a memorandum from the OAG certifying that the agency has legal authority to promulgate the proposed regulation.

DPB shall review the fast-track regulation to determine whether the regulatory change is appropriately within the intended scope of fast-track regulatory authority and whether it complies with all other requirements of this Executive Order and applicable statutes and whether the contemplated regulatory action comports with the policy of the Commonwealth. If there is any question as to whether a package should be allowed to proceed on a fast-track basis, DPB shall request the Governor's office to make this determination. The period to determine whether a regulatory proposal is appropriate for the fast-track process shall not exceed 10 days from the time DPB receives a complete regulatory package.

After a package has been determined to be appropriate for the fast-track process, DPB shall have 30 days to prepare a policy analysis and economic impact analysis of the proposed regulation. After DPB's review, the fast-track regulation shall be forwarded to the appropriate Secretary and the Governor. The Secretary shall make a recommendation to the Governor within 14 days. The agency shall be authorized to submit the fast-track regulation to the Registrar for publication when the Governor approves the fast-track regulatory package for publication.

For purposes of repealing all or part of regulations in accordance with the fast-track rulemaking process provided by Section 2.2-4012.1, such recommendation may be initiated by the Agency Head, DPB or the Governor's Policy Director. The Chief of Staff or Counselor to the Governor has authority to approve the modification once the requirements of the Code have been met.

C. Emergency Rulemaking Process

In addition to the information required on the background form, the agency shall also include in the regulatory package for any emergency regulation a memorandum from the OAG certifying that the agency has legal authority to promulgate the emergency regulation.

DPB shall review the emergency regulation package to determine whether it complies with all requirements of this Executive Order and applicable statutes and whether the contemplated regulatory action comports with the policy of the Commonwealth as set forth herein. Within 14 days of receiving a complete emergency regulation package from the agency, the Director of DPB shall advise the Secretary of DPB's determination. The Secretary shall review the

Governor

emergency regulation package within 14 days and forward a recommendation to the Governor. Upon receiving notification that the Governor has approved the emergency regulation package, the agency may then submit the emergency regulation package to the Registrar for publication.

Periodic Review of Existing Regulations

Each existing regulation in the state shall be reviewed at least once every four years by the promulgating agency unless specifically exempted from periodic review by the Governor. The review shall ensure that each regulation complies with the principles set out in this Executive Order. In addition, each periodic review shall include an examination by the OAG to ensure statutory authority for the regulation and that the regulation does not exceed the authority to regulate granted as set out in the enabling legislation. The periodic review of a regulation shall be reported to the appropriate Secretary and Counselor to the Governor on a form established by DPB.

Agencies shall cooperate with reviews of regulations by the OAG, including but not limited to, reasonable requests for data and other supporting information as may be necessary to conduct the review.

Prior to the commencement date of the periodic review for a regulation, an agency shall post on the Town Hall a notice of the periodic review. The agency shall provide for a minimum of 21 days of public comment commencing on the posted date for the review. No later than 60 days after the close of the public comment period, the agency shall post a completed periodic review report on the Town Hall.

When a regulation has undergone a comprehensive review as part of a regulatory action and when the agency has solicited public comment on the regulation, a periodic review shall not be required until four years after the effective date of this regulatory action.

The Governor may request a periodic review of a regulation at any time deemed appropriate. Such a request may outline specific areas to be addressed in the review. In the case of such a request, the agency shall follow the procedures for periodic review as established herein or such other procedures as may be stipulated by the Governor.

Petitions for Rulemaking

Agencies shall post petitions for rulemaking and written decisions to grant or deny the petitioner's request on the Town Hall in accordance with the time frames established in Section 2.2-4007 of the Code of Virginia.

Waivers from Process Deadlines

The Chief of Staff or the Counselor to the Governor may waive the deadlines an agency must meet when submitting proposed and final regulatory packages. A waiver shall only be granted when an agency has demonstrated a compelling

need for extending the deadlines set out herein. An agency shall submit a waiver request as soon as possible prior to the expiration of a deadline. Such requests shall be submitted on forms prepared by DPB.

Electronic Availability of Meeting Agenda and Minutes

Executive branch agencies that promulgate regulations and keep minutes of regulatory meetings shall post such minutes of their public meetings on the Town Hall in accordance with the time frames established in Section 2.2-3707 and 2.2-3707.1 of the Code of Virginia. In addition, agencies shall post the notice of, and agenda for, a public meeting on the Town Hall at least 7 days prior to the date of the meeting, except if it is necessary to hold an emergency meeting in which case the agenda shall be posted as soon as possible.

Electronic Availability of Guidance Documents

Agencies shall make all guidance documents, as defined by Section 2.2-4001 of the Code of Virginia, available to the public on the Town Hall. Any guidance document currently available in electronic format shall be posted on the Town Hall. Any changes to a guidance document shall be reflected on the Town Hall within 10 days of the change.

Effective Date of the Executive Order

This Executive Order rescinds Executive Order Number One Hundred and Seven (2009) issued by Governor Timothy M. Kaine. This Executive Order shall become effective upon its signing and shall remain in full force and effect until June 30, 2014, unless amended or rescinded by further Executive Order.

Given under my hand and under the Seal of the Commonwealth of Virginia on this 29th day of June 2010.

/s/ Robert F. McDonnell
Governor

EXECUTIVE ORDER NUMBER 15 (2010)

State Employee Fraud, Waste, and Abuse Hotline

Importance of the Initiative

Efficiency and economy in government and wise stewardship of taxpayer dollars demands constant vigilance to prevent fraud, waste, and abuse in the operation of state government. The State Employee Fraud, Waste, and Abuse Hotline has been an invaluable tool for helping ensure economy and efficiency. It is incumbent on the leadership of state government to make the best possible use of this tool for ensuring integrity in government and wise use of taxpayer money.

By virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and under the laws of the Commonwealth, including but not limited to Chapter 1 of Title 2.2 of the Code of Virginia, and subject to my

continuing and ultimate authority and responsibility to act in such matters, I hereby direct the State Internal Auditor to continue the anonymous State Employee Fraud, Waste, and Abuse Hotline (hereinafter known as the "Hotline") to encourage state employees to report situations where fraud, waste, or abuse may be occurring in Virginia's Executive Branch agencies and institutions, including institutions of higher education.

State employees should continue to have the opportunity to report possible instances of fraud, waste, or abuse anonymously and without fear of retribution by using the Hotline. The State Internal Auditor shall be responsible for administering the Hotline. Through the Hotline, the State Internal Auditor shall:

- Provide assistance to Executive Branch agency heads in fulfilling their responsibilities for maintaining appropriate internal controls to protect against fraud, waste, and abuse.
- Make available to state employees a variety of means to report fraud, waste, and abuse in the Commonwealth's government business, one of which will be an anonymous toll-free telephone number, and also including, but not limited to, any other communications through the Governor's office, Cabinet Secretaries, agency heads, U.S. Mail, e-mail, fax, and the Internet.
- Make appropriate efforts to publicize the availability of the hotline and ways of accessing it. The Auditor shall e-mail all State employees at least annually to advise them of the Hotline and other means of reporting such problems.
- Implement a process for handling allegations of fraud, waste, and abuse received via the Hotline.
- Deliver ongoing training to state agency heads and managers on prevention of waste, fraud, and abuse.
- Ensure that instances of potential criminal conduct are referred forthwith to the appropriate law enforcement agency.

The State Internal Auditor, through the Executive Branch's network of internal auditing programs and agency fraud, waste, and abuse coordinators, shall ensure that investigation and resolution activities are undertaken in response to allegations received through the Hotline. The State Internal Auditor may allow an internal auditing program at an executive branch agency to contract with a private firm in order to perform the investigations in a timely manner. Any such private firm shall comply with the applicable policies and procedures and the work must be supervised and approved by the contracting internal auditing program.

The State Internal Auditor shall undertake investigation and resolution activities in the most cost-effective manner

possible. Responsibility for investigation or resolution activities shall be assigned to other investigative staffs when appropriate to avoid unnecessary duplication. Executive Branch agencies responsible for promulgating central administrative (e.g., personnel) policies will provide input on the interpretation of the policies applicable to investigations in order to ensure consistent and proper application of those policies so that appropriate conclusions are reached and recommendations made.

The State Internal Auditor shall review the reported corrective actions taken to rectify an actual fraud, waste, or abuse identified. If corrective actions are deemed insufficient, then the State Internal Auditor will conduct such follow-up as may be necessary to ensure that acceptable corrective actions are developed.

The State Internal Auditor shall conduct follow-up reviews to ensure that corrective action has been implemented. The results of such reviews shall be reported to the Governor's Chief of Staff and to the relevant cabinet secretary.

All executive branch agencies of the Commonwealth shall cooperate with, and assist, the State Internal Auditor and all investigators to the fullest extent. During the course of a Hotline investigation, investigators will have access to electronic and paper files, records, and documents, as well as personnel, facilities, property, and any other things necessary to conduct an investigation. This includes access to electronic and paper files maintained by the Virginia Information Technologies Agency (VITA) for other Executive Branch agencies as well as access to administrative investigative reports generated by an agency's in-house investigative unit that are germane to the Hotline investigations.

Under no circumstances shall anyone directly or indirectly interfere with a Hotline investigation, or induce or coerce others not to cooperate with investigators. Any attempt to directly or indirectly interfere with a Hotline investigation is also prohibited and is subject to appropriate disciplinary action under the Standards of Conduct promulgated by the Department of Human Resource Management.

Under no circumstances shall anyone, directly or indirectly, attempt to identify or retaliate against someone suspected of calling or cooperating with the Hotline. This includes threatening to effect any reprisal; or taking, or directing others to take, or recommending, processing, or approving, any personnel action, or any other retaliatory actions, or attempts to do the same. Any such actions will be subject to appropriate disciplinary actions under the Standards of Conduct.

The Governor's Chief of Staff shall be responsible for addressing any instances of alleged interference with an investigation or retaliation against employees using the Hotline.

Governor

This Executive Order rescinds Executive Order Number Twelve (2006), State Employee Fraud, Waste, and Abuse Hotline, issued by Governor Timothy M. Kaine.

Effective Date of the Executive Order

This Executive Order shall be effective upon its signing and shall remain in full force and effect unless sooner amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 29th day of June 2010.

/s/ Robert F. McDonnell
Governor

EXECUTIVE ORDER NUMBER 16 (2010)

Designation of Executive Branch Officers and Employees Required to File Financial Disclosure Statements

Importance of the Initiative

The State and Local Government Conflict of Interest Act reflects the Commonwealth's continuing commitment that the judgment of public officers and employees will not be compromised or affected by inappropriate conflicts between the personal economic interests and the official duties of Virginia's public servants.

In furtherance of the purposes of the State and Local Government Conflict of Interests Act, Section 2.2-3100 et seq. of the Code of Virginia (hereinafter, "the Act"), and by virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and under the laws of the Commonwealth, including but not limited to Sections 2.2-104, 2.2-110, and 2.2-3114 of the Code of Virginia, and subject always to my continuing and ultimate authority and responsibility to act in such matters and to reserve powers, I hereby delegate to the Secretary of the Commonwealth the power and duty to implement the Act and to designate offices or positions in Executive Branch agencies, institutions, boards, commissions, councils and authorities through the following policies and procedures:

1. All non-salaried citizen members of Executive Branch advisory boards, commissions, councils and authorities are hereby designated to file the financial disclosure form included in Section 2.2-3118.

2. In order that all appropriate Executive Branch officers and employees may be designated to file the statement of economic interests set out in the Act, each of the Governor's Secretaries and the head of each agency, institution, board, commission, council and authority within the Executive Branch shall submit to the Office of the Secretary of the Commonwealth by October 1st, a report identifying:

a. Each position, whether classified or non-classified, which involves substantive responsibility for inspection, investigation, licensure, or other regulation of the activities of private firms, organizations, or professions; and

b. Each position, whether classified or non-classified, which involves substantive responsibility for procurement, audit, investment, or other activities that could be subject to abuse or improper influence as a result of the personal economic interests of the officeholder or employee.

3. The Secretary of the Commonwealth shall prepare from the reports submitted pursuant to Paragraph 2 of this order a comprehensive list of officers and employees, including their position titles, who shall be required to file the statement of economic interests set out in the Act. The Secretary of the Commonwealth, with the assistance and cooperation of the parties listed in Paragraph 2, shall maintain this list, shall review and revise it annually to reflect the creation and abolition of offices and positions, and shall annually inform each officer and employee listed of his or her obligation to file the statement of economic interests in accordance with Section 2.2-3114 of the Code of Virginia.

4. The Governor's Secretaries and the head of each agency, institution, board, commission, council and authority within the Executive Branch shall assist the Secretary of the Commonwealth in compiling the information required by this Executive Order, in ensuring that appropriate additions to and deletions from the list of those designated to file the statement of economic interests are recommended in a timely fashion, and in ensuring that designated officers and employees file their statements of economic interests in accordance with Section 2.2-3114 of the Code of Virginia.

5. The head of each agency, institution, board, commission, council and authority within the Executive Branch shall be responsible for acquiring a statement of economic interests from each new officer or employee so long as the officer or employee is hired for a position previously designated. Agency heads shall also be responsible for ensuring that appropriate employees receive the necessary orientation course on the State and Local Government Conflict of Interests Act in accordance with the provisions Section 2.2-3128 of the Code of Virginia.

6. The head of each agency, institution, board, commission, council and authority within the Executive Branch shall communicate to the officers, employees, and members within his or her jurisdiction the importance and necessity of maintaining the highest standards of conduct, and avoiding even the appearance of impropriety arising out of personal economic interests and the conduct of the business of the Commonwealth.

Effective Date of the Executive Order

This Executive Order rescinds Executive Order Number 16 (2006), issued by Governor Timothy M. Kane.

This Executive Order shall be effective upon its signing and shall remain in full force and effect until June 30, 2014, unless amended or rescinded by further Executive Order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 29th day of June 2010.

/s/ Robert F. McDonnell
Governor

EXECUTIVE ORDER NUMBER 17 (2010)

Assigning Responsibility for Participation in the Federal "Superfund" Program

Importance of the Initiative

By virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and under the laws of the Commonwealth, including but not limited to Section 2.2-104 of the Code of Virginia, and subject to my continuing and ultimate authority and responsibility to act in such matters, I hereby assign responsibilities for the administration and coordination of state response actions under the Federal Comprehensive Environmental Response Compensation and Liability Act of 1980 ("Superfund") program, as amended, to the following executive branch agencies and officials:

1. The Secretary of Public Safety or the Secretary's designee shall be responsible for entering into cooperative agreements with the United States Environmental Protection Agency (EPA) regarding the immediate response to the release of, or substantial threat of a release of, hazardous substances that threaten the public health, welfare, and environment.
2. The State Coordinator of the Department of Emergency Management, under the direction of the Secretary of Public Safety, shall be responsible for developing the Virginia Oil and Hazardous Materials Emergency Response Plan and other requisite documents.
3. The Director of the Department of Environmental Quality, under the direction of the Secretary of Natural Resources, shall be responsible for entering into cooperative agreements and other agreements and contracts with EPA, the United States Department of Defense, and other federal agencies for the Superfund Site Assessment, Removal and Remedial Programs. Such agreements and contracts shall provide for the investigation and assessment of releases of hazardous substances into the environment, and for remedial actions providing permanent resolution of the release of hazardous substances into the environment, except removals that involve immediate response to the release of hazardous substances that threaten the public

health, welfare, and environment. Before signing any cooperative agreement, the Director of the Department of Environmental Quality shall assure the adherence to any applicable requirements of the general law and the provisions of the current Appropriation Act.

4. The Director of the Department of Environmental Quality is authorized to sign, on behalf of the Commonwealth, the hazardous waste capacity assurance plan mandated by the Superfund Amendments and Reauthorization Act and any amendments thereto.

5. The Secretary of Natural Resources shall act on behalf of the public as trustee for natural resources. The Secretary of Natural Resources shall assess damage to natural resources in the case of injury to, destruction of, or loss of natural resources. Funds recovered by the Secretary of Natural Resources as trustee shall be available only to restore, rehabilitate, or acquire the equivalent of such natural resources.

6. The Secretary of Natural Resources and the Secretary of Public Safety are authorized to develop memoranda of understanding which set forth the working relationships between and among state agencies with responsibilities under the Executive Order and applicable statutes.

Effective Date of the Executive Order

This Executive Order rescinds Executive Order Number 20 (2006), issued by Governor Timothy M. Kane. This Executive Order shall be effective upon its signing and shall remain in full force and effect until June 30, 2014, unless sooner amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 29th day of June 2010.

/s/ Robert F. McDonnell
Governor

EXECUTIVE ORDER NUMBER 18 (2010)

Continuation of the Virginia Coastal Zone Management Program

Importance of the Initiative

By virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and under the laws of the Commonwealth, including but not limited to Sections 2.2-103 and 2.2-104 of the Code of Virginia, and subject to my continuing and ultimate authority and responsibility to act in such matters, I hereby continue the Virginia Coastal Zone Management Program (hereinafter known as "the Program").

The Program's mission is to create more vital and sustainable coastal communities and ecosystems. I direct all state agencies to carry out their legally established duties consistent with this Program and in a manner that promotes

Governor

coordination among all government agencies. The Department of Environmental Quality shall serve as the lead agency for this networked program and shall be responsible for allocation and assignment of all federal funds received for the Virginia Coastal Zone Management Program Implementation Grant.

POLICY GOALS

State agencies having responsibility for the Commonwealth's coastal resources shall promote the Coastal Zone Management Program consistent with the following goals:

Coastal Resource Protection

Goal 1: To protect and restore coastal resources, habitats, and species of the Commonwealth. These include, but are not limited to, wetlands, subaqueous lands and vegetation, beaches, sand dune systems, barrier islands, underwater or maritime cultural resources, riparian forested buffers, and endangered or threatened species.

Goal 2: To restore and maintain the quality of all coastal waters for human and ecosystem health through protection from adverse effects of excess nutrients, toxics, pathogens, and sedimentation.

Goal 3: To protect air quality.

Goal 4: To reduce or prevent losses of coastal habitat, life, and property caused by shoreline erosion, storms, and other coastal hazards in a manner that balances environmental and economic considerations.

Coastal Resource Sustainable Use

Goal 5: To provide for sustainable wild fisheries and aquaculture.

Goal 6: To promote sustainable ecotourism and to increase and improve public access to coastal waters and shorefront lands compatible with resource protection goals.

Goal 7: To promote renewable energy production and provide for appropriate extraction of energy and mineral resources consistent with proper environmental practices.

Coastal Management Coordination

Goal 8: To ensure sustainable development on coastal lands and support access for water-dependent development through effective coordination of governmental planning processes.

Goal 9: To avoid and minimize coastal resource use conflicts through research, planning, and a forum for coordination and facilitation among government agencies, interest groups, and citizens.

Goal 10: To promote informed decision-making by maximizing the availability of up-to-date educational information, technical advice, and scientific data including the use of new tools such as marine spatial planning.

IMPLEMENTATION AND ENFORCEMENT

The following agencies shall have primary responsibility for implementing the enforceable policies of Virginia's Coastal Zone Management Program as approved by the National Oceanic and Atmospheric Administration:

Responsible Agency and Enforceable Policies

Department of Environmental Quality (DEQ)

Point source water pollution management and nontidal wetlands management

Air pollution

Department of Conservation and Recreation (DCR)

Nonpoint source pollution management

Coastal Lands Management

Marine Resources Commission (MRC)

Primary sand dunes management

Tidal wetlands management

Subaqueous lands management

Fisheries management (shared with DGIF)

Department of Game and Inland Fisheries (DGIF)

Fisheries management (shared with MRC)

Department of Health

Shoreline sanitation

The following agencies are responsible for assisting with the program:

Department of Agriculture and Consumer Services

Department of Forestry

Department of Historic Resources

Department of Mines, Minerals & Energy

Department of Transportation

Virginia Economic Development Partnership

Virginia Institute of Marine Science

In addition, other agencies that conduct activities that may affect coastal resources shall conduct such activities in a manner consistent with and supportive of Virginia's Coastal Zone Management Program. For purposes of this Program, the Coastal Area shall mean Tidewater Virginia as defined in Section 28.2-100 of the Code of Virginia.

The Director of the Department of Environmental Quality (DEQ) shall monitor all state actions that affect coastal resources. When, in the judgment of the DEQ Director, a state agency, regulatory board, or commission is ready to act in a

manner that appears to be inconsistent with the Program or has established a pattern of actions that appears to be inconsistent with the Program, the Director shall discuss the situation with the head of such agency, board, or commission to determine if a consistency problem in fact exists.

If after discussion, the head of such agency, board, or commission and the Director of DEQ are in disagreement about the existence of a consistency problem, the Director will inform the Secretary of Natural Resources of the disagreement. The Secretary shall then determine if a state interagency consistency problem exists.

If the head of such agency, board, or commission and the Director of DEQ agree that a consistency problem exists, they shall attempt to resolve the problem. If they cannot resolve the problem, the Director shall advise the Secretary that an unresolved interagency consistency problem exists.

Upon notification of the existence of an unresolved consistency problem, the Secretary shall review the problem, determine how it should best be resolved, and affect such resolution within the Secretariat of Natural Resources or consult with other Cabinet Secretaries to resolve a consistency problem with agencies, boards, or commissions not within the Secretariat of Natural Resources. If unable to resolve the problem, the Secretary shall report to the Governor and recommend appropriate action. The Governor shall have the ultimate responsibility for resolving any interagency consistency problem that cannot be resolved by the Secretary of Natural Resources or Chief of Staff.

Any person having authority to resolve consistency problems under the terms of this Executive Order shall resolve those problems in a manner that furthers the goals and objectives of the Program as set forth above and in accordance with existing state law, regulations, and administrative procedures.

Effective Date of the Executive Order

This Executive Order rescinds Executive Order Number Twenty One (2006), issued by Governor Timothy M. Kaine. This Executive Order shall be effective upon its signing and shall remain in full force and effect until June 30, 2014, unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia on this 29th day of June 2010.

/s/ Robert F. McDonnell
Governor

GENERAL NOTICES/ERRATA

DEPARTMENT OF CONSERVATION AND RECREATION

Total Maximum Daily Load for Lewis Creek in Russell County and the Town of Honaker

The Virginia Department of Conservation and Recreation (DCR) seeks written and oral comments from interested persons on the development of an implementation plan (IP) for total maximum daily loads (TMDLs) to address the water quality impairment on Lewis Creek in Russell County and the Town of Honaker. This stream was identified as impaired due to a violation of Virginia's general standard for aquatic life and therefore does not support the aquatic life standard. The impaired segment is 4.84 miles in length and extends from the Lewis Creek and Stone Branch confluence downstream to the confluence with the Clinch River. The TMDL for Lewis Creek was completed and approved by EPA in 2004 and is available on the Department of Environmental Quality's (DEQ) website at <http://www.deq.virginia.gov/tmdl>.

Section 62.1-44.19.7 C of the Code of Virginia requires the development of an implementation plan for approved TMDLs. The plan should provide measurable goals and the date of expected achievement of water quality objectives. The plan should also include the corrective actions needed and their associated costs, benefits, and environmental impacts.

The final public meeting on the development of the implementation plan for the Lewis Creek impairment will be held on Thursday, July 22, 2010, from 6 p.m. to 8 p.m. at the Town of Honaker office. The purpose of the meeting is to discuss the proposed sediment reductions and to present the draft plan.

The public comment period for this phase of the IP development will end on August 23, 2010. Questions or information requests should be addressed to Martha Chapman. Written comments and inquires should include the name, address, and telephone number of the person submitting the comments and should be sent to Martha Chapman, Virginia Department of Conservation and Recreation, Abingdon Regional Office, 252 West Main Street, Suite 3, Abingdon, VA 24210, telephone (276) 676-5529, email martha.chapman@dcr.virginia.gov.

STATE CORPORATION COMMISSION

Bureau of Financial Institutions

AT RICHMOND, JUNE 22, 2010

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. BFI-2010-00144

Ex Parte: In re: annual assessment of licensed money order sellers and money transmitters

ORDER DIRECTING RESPONSE TO COMMENTS

On May 17, 2010, the State Corporation Commission ("Commission") entered an Order to Take Notice relative to certain revisions to Chapter 120 of Title 10 of the Virginia Administrative Code that have been proposed by the Bureau of Financial Institutions ("Bureau"). The Commission's Order to Take Notice directed persons desiring to comment upon or request a hearing relative to the proposed revisions to file such comments and/or requests for hearing, in writing, on or before June 18, 2010.

On June 18, 2010, the Commission received written comments from Randy Mersky on behalf of Global Express Money Orders, Inc. Mr. Mersky suggested that a hearing be held to consider the proposed revisions.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that the comments filed by Mr. Mersky on June 18, 2010, should be considered and that it would be beneficial to receive a written response from the Bureau to Mr. Mersky's comments.

Accordingly, IT IS ORDERED THAT on or before June 28, 2010, the Bureau shall file a written response to the comments that were filed by Mr. Mersky in connection with this matter.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to the Commission's Office of General Counsel and to the Bureau of Financial Institutions.

DEPARTMENT OF CRIMINAL JUSTICE SERVICES

Changes to the Compulsory Minimum Training Standards for Entry Level Court Security Officer

The Committee on Training of the Criminal Justice Services Board has approved changes to the compulsory minimum training standards for entry level court security officer training as part of its annual review under 6VAC20-50-25. Copies of the changes may be obtained at: www.dcjs.virginia.gov/standardsTraining/compulsoryMinimumTraining/jail.cfm.

Contact Information: Judith Kirkendall, Office of Planning, Training and Research, Department of Criminal Justice Services, 1100 Bank Street, Richmond, VA telephone (804) 786-8003, FAX (804) 225-3853, or email judith.kirkendall@dcjs.virginia.gov.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Proposed Consent Order for Dominion Campground, Inc.

An enforcement action has been proposed for Dominion Campground, Inc. for alleged violations in Spotsylvania County at the Dominion Campground Sewage Treatment Plant. The amended consent order describes a settlement to resolve permit effluent violations at the Dominion Campground Sewage Treatment Plant. A description of the proposed action is available at the Department of Environmental Quality (DEQ) office named below or online at www.deq.virginia.gov. Daniel Burstein will accept comments by email at daniel.burstein@deq.virginia.gov, FAX (703) 583-3821, or postal mail at Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from July 20, 2010, to August 19, 2010.

Total Maximum Daily Load for Hunting Creek, Cameron Run, and Holmes Run

Announcement of a total maximum daily load (TMDL) study to restore water quality in the bacteria impaired waters of Hunting Creek, Cameron Run, and Holmes Run.

Purpose of notice: The Virginia Department of Environmental Quality (DEQ) and the Virginia Department of Conservation and Recreation (DCR) announce a public meeting regarding the Hunting Creek, Cameron Run, and Holmes Run Bacteria TMDL Studies.

Public meeting: Thursday, July 29, 2010, 7 p.m., City of Alexandria, Charles E. Beatley Central Library, Main Community Room, 5005 Duke Street, Alexandria, VA 22304-2903.

Meeting description: This meeting is the third public meeting for this project. The purpose of this meeting is to discuss the study with community members and present the project results.

Description of study: Portions of Hunting Creek, Cameron Run, and Holmes Run have been identified as impaired on the Clean Water Act § 303(d) list for not supporting the primary contact recreation use due to elevated levels of *E. coli* bacteria. Virginia agencies are working to identify the sources of bacteria contamination in these stream segments. The Hunting Creek, Cameron Run, and Holmes Run watersheds are located within Arlington County, the City of Alexandria, the City of Falls Church, and Fairfax County. Below are

descriptions of the impaired segments that will be addressed in this study:

| Stream Name | Impairments | Area | Upstream Limit | Downstream Limit |
|-------------------------|--|-------------------|--|--|
| Hunting Creek (Tidal) | Recreational use Impairment due to <i>E. coli</i> bacteria | 0.53 square miles | Route 241 (Telegraph Road) Bridge Crossing | Confluence with the Potomac River |
| Cameron Run (Non-Tidal) | Recreational use Impairment due to <i>E. coli</i> bacteria | 2.08 miles | Confluence with Backlick Run | Route 241 (Telegraph Road) Bridge Crossing |
| Holmes Run (Non-Tidal) | Recreational use Impairment due to <i>E. coli</i> bacteria | 3.58 miles | Mouth of Lake Barcroft | Confluence with Backlick Run |

During this study, DEQ will develop a TMDL for each of the impaired stream segments. A TMDL is the total amount of a pollutant a water body can receive and still meet water quality standards. To restore water quality, pollutant levels have to be reduced to the TMDL allocated amount.

How to comment: The public comment period on the draft TMDL report will extend from July 19, 2010, to August 18, 2010. DEQ accepts written comments by email, fax, or postal mail. Written comments should include the name, address, and telephone number of the person commenting, and be received by DEQ during the comment period. Please send all comments to the contact listed below.

Contact for additional information: Katie Conaway, Virginia Department of Environmental Quality, 13901 Crown Court, Woodbridge, VA 22193, telephone (703) 583-3804, email katie.conaway@deq.virginia.gov.

Proposed Consent Order for the Town of Monterey

An enforcement action has been proposed for the Town of Monterey for alleged violations in Highland County. A proposed consent order amendment describes a settlement to resolve certain consent order violations including effluent limitation violations and failure to complete the new plant upgrade in accord with the order at its sewage treatment plant. 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 at 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, VA 22801, from July 19, 2010, to August 18, 2010.

General Notices/Errata

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 June 17, 2010, June 21, 2010, and June 29, 2010. The orders may be viewed at the State Lottery Department, 900 East Main Street, Richmond, VA, or at the office of the Registrar of Regulations, 910 Capitol Street, 2nd Floor, Richmond, VA.

Director's Order Number Fifty-Eight (10)

"On The Spot Awards" Virginia Lottery Retailer Incentive Program Rules (effective June 17, 2010)

Director's Order Number Fifty-Nine (10)

Virginia Lottery's "Redskins Legacy Sweepstakes" Final Rules for Game Operation (effective June 18, 2010)

Director's Order Number Sixty (10)

Virginia's Instant Game Lottery 1138; "Dreamin' of Dollar\$" Final Rules for Game Operation (effective June 18, 2010)

Director's Order Number Sixty-One (10)

"Virginia Lottery's "Redskins Legacy Stay In The Game Sweepstakes" Final Rules for Game Operation (effective June 28, 2010)

DEPARTMENT OF MINES, MINERALS AND ENERGY

DMME Seeks Candidates to Serve as Arbitrators to Resolve Conflicting Claims for Coalbed Methane Gas Ownership

The Virginia Department of Mines, Minerals and Energy (DMME) is seeking qualified candidates to serve as arbitrators to administer a new program to resolve disputes over ownership of coalbed methane gas.

During its most recent session, the General Assembly passed House Bill 1344 creating a voluntary arbitration program to determine ownership of coalbed methane. That legislation establishes the qualifications individuals must possess in order to serve as an arbitrator.

In order to qualify, an individual must be an attorney licensed in the Commonwealth of Virginia with at least 10 years of experience in real estate law. Substantial expertise in mineral title examination is also required. Additionally, candidates will be required to certify that they have not derived more than 10% of their income during any of the preceding three years from any party to the arbitration, or their family members or other affiliated entities. Candidates shall also disclose to the board whether they have been engaged within the preceding three years by any person in matters under the

Virginia Gas and Oil Act subject to the jurisdiction of the board or the department.

Circuit courts will use this list of qualified candidates maintained by DMME when appointing arbitrators to hear and resolve disputes regarding coalbed methane ownership.

More information concerning the process of selecting qualified arbitrators, including a form that potential candidates can complete online, is posted on DMME's website at www.dmme.virginia.gov. Questions may also be directed to Michael Skiffington, DMME Program Support Manager, at (804) 692-3212.

Contact Information: Michael Skiffington, Regulatory Coordinator, Department of Mines, Minerals and Energy, 1100 Bank Street, 8th Floor, Richmond, VA 23219-3402, telephone (804) 692-3212, FAX (804) 692-3237, TDD (800) 828-1120, or email mike.skiffington@dmme.virginia.gov.

STATE BOARD OF SOCIAL SERVICES

Notices of Periodic Review

22VAC40-700, Child Protective Services Central Registry Information

22VAC40-720, Child Protective Services Release of Information to Family Advocacy Representatives of the United States Armed Forces

Pursuant to Executive Order Number 107 (2009), the Department of Social Services (DSS) is currently reviewing the regulations listed above to determine if they should be terminated, amended, or retained in their current form. The review will be guided by the principles listed in Executive Order Number 14 (2010) and in DSS's Plan for Review of Existing Agency Regulations.

DSS seeks public comment regarding the regulations' interference in private enterprise and life, essential need of the regulation, less burdensome and intrusive alternatives to the regulations, specific and measurable goals that the regulations are intended to achieve, and whether the regulations are clearly written and easily understandable.

Written comments may be submitted until August 9, 2010, to Mary Wilson, Child Protective Services Policy Specialist, Division of Family Services, Department of Social Services, 801 East Main Street, Richmond, VA 23219, or by facsimile to (804) 726-7499, or by email to mary.m.wilson@dss.virginia.gov.

STATE WATER CONTROL BOARD

Proposed Consent Special Order for the Town of Alberta

An enforcement action has been proposed for the Town of Alberta for alleged violations of the town's wastewater treatment plant in Alberta, Virginia. The State Water Control Board proposes to issue a consent special order to the Town of Alberta to address noncompliance with Virginia pollutant discharge elimination system (VPDES) regulations. A description of the proposed action is available at the Department of Environmental Quality (DEQ) office named below or online at www.deq.virginia.gov. Cynthia Akers will accept comments by email at e.cynthia.akers@deq.virginia.gov, FAX (804) 527-5106, or postal mail to Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060 from July 19, 2010, to August 20, 2010.

Proposed Special Order for Eagle Transport of Virginia, Inc.

An enforcement action has been proposed for Eagle Transport of Virginia, Inc. for violations in Bluefield, Virginia. The special order by consent describes a settlement for violations related to an oil discharge to groundwater and soils. A description of the proposed action is available at the Department of Environmental Quality (DEQ) office named below or online at www.deq.virginia.gov. Dallas R. Sizemore will accept comments by email at dallas.sizemore@deq.virginia.gov, FAX (276) 676-4899, or postal mail at Department of Environmental Quality, Southwest Regional Office, P.O. Box 1688, Abingdon, VA 24212, from July 19, 2010, to August 18, 2010. The office is located at 355 Deadmore Street, Abingdon, VA.

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

STATE BOARD OF EDUCATION

Title of Regulation: **8VAC20-40. Regulations Governing Educational Services for Gifted Students (amending 8VAC20-40-10, 8VAC20-40-20, 8VAC20-40-40, 8VAC20-40-60, 8VAC20-40-70; adding 8VAC20-40-55; repealing 8VAC20-40-30, 8VAC20-40-50).**

Publication: 26:22 VA.R. 2598-2604 July 5, 2010.

Correction to Final Regulation:

Page 2598, column 2, Effective Date, change "August 4, 2010" to "July 21, 2010"

VA.R. Doc. No. R07-94; Filed July 6, 2010, 11:57 a.m.

