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TABLE OF CONTENTS

Register Information Page	439
Publication Schedule and Deadlines	440
Notices of Intended Regulatory Action	441
Regulations	442
4VAC20-1090. Pertaining to Licensing Requirements and License Fees (Final).....	442
4VAC20-1230. Pertaining to Restrictions on Shellfish (Final).....	444
4VAC20-1240. Fisherman Identification Program (Final)	447
9VAC5-520. Biomass Energy Generator General Permit for a Pilot Test Facility (Rev. Cg) (Proposed).....	448
9VAC25-630. Virginia Pollution Abatement General Permit Regulation for Poultry Waste Management (Final)	460
9VAC25-800. Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Discharges Resulting from the Application of Pesticides to Surface Waters (Proposed)	477
9VAC25-810. General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Coin-Operated Laundry (Final).....	495
12VAC30-20. Administration of Medical Assistance Services (Notice of Extension of Emergency Regulation).....	504
12VAC35-220. Certification Requirements for Early Intervention Professionals and Early Intervention Specialists (Notice of Extension of Emergency Regulation).....	505
14VAC5-395. Rules Governing Settlement Agents (Final).....	506
18VAC110-20. Regulations Governing the Practice of Pharmacy (Final)	507
Governor	508
General Notices/Errata	510

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, and notices of public hearings on regulations.

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.

A 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. **26:20 VA.R. 2510-2515 June 7, 2010**, refers to Volume 26, Issue 20, pages 2510 through 2515 of the *Virginia Register* issued on June 7, 2010.

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; **Bill Janis**, Vice Chairman; **James M. LeMunyon**; **Ryan T. McDougle**; **Robert L. Calhoun**; **Frank S. Ferguson**; **E.M. Miller, Jr.**; **Thomas M. Moncure, Jr.**; **Jane M. Roush**; **Patricia L. West**.

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>).

October 2010 through December 2011

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
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 28, 2010 (Tuesday)	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
27:22	June 15, 2011	July 4, 2011
27:23	June 29, 2011	July 18, 2011
27:24	July 13, 2011	August 1, 2011
27:25	July 27, 2011	August 15, 2011
27:26	August 10, 2011	August 29, 2011
28:1	August 24, 2011	September 12, 2011
28:2	September 7, 2011	September 26, 2011
28:3	September 21, 2011	October 10, 2011
28:4	October 5, 2011	October 24, 2011
28:5	October 19, 2011	November 7, 2011
28:6	November 2, 2011	November 21, 2011
28:7	November 15, 2011 (Tuesday)	December 5, 2011

*Filing deadlines are Wednesdays unless otherwise specified.

NOTICES OF INTENDED REGULATORY ACTION

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Withdrawal of Notice of Intended Regulatory Action

Notice is hereby given that the State Water Control Board has **WITHDRAWN** the Notice of Intended Regulatory Action to promulgate **9VAC25-870, Plasticulture Operations Regulation; 9VAC25-20, Fees for Permits and Certificates; 9VAC25-31, Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation; 9VAC25-32, Virginia Pollution Abatement (VPA) Permit Regulation; and 9VAC25-151, Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Storm Water Discharges Associated with Industrial Activity** that was published in 26:10 VA.R. 1320 January 18, 2010. The State Water Control Board, at its meeting on September 27-28, 2010, directed that this regulatory action be withdrawn.

Agency Contact: Melanie Davenport, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4038, or email melanie.davenport@deq.virginia.gov.

VA.R. Doc. No. R10-2273; Filed October 6, 2010, 4:17 p.m.

REGULATIONS

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

Symbol Key

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

TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

REGISTRAR'S NOTICE: The following regulations filed by the Marine Resources Commission are exempt from the Administrative Process Act in accordance with § 2.2-4006 A 11 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Final Regulation

Title of Regulation: 4VAC20-1090. Pertaining to Licensing Requirements and License Fees (amending 4VAC20-1090-30).

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

Effective Date: January 1, 2011.

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

Summary:

The amendments increase the saltwater recreational fishing license fees for Virginia residents to help fund the Fisherman Identification Program, 4VAC20-1240, which becomes effective January 1, 2011.

4VAC20-1090-30. License fees.

The following listing of license fees applies to any person who purchases a license for the purposes of harvesting for commercial purposes, or fishing for recreational purposes, during any calendar year.

1. COMMERCIAL LICENSES.	
Commercial Fisherman Registration License	\$190.00
Commercial Fisherman Registration License for a person 70 years or older	\$90.00
Delayed Entry Registration.	\$190.00
Delayed Entry Registration License for a person 70 years or older	\$90.00
Seafood Landing License for each boat or vessel	\$175.00

For each Commercial Fishing Pier over or upon subaqueous beds (mandatory)	\$83.00
Seafood Buyer's License -- For each boat or motor vehicle	\$63.00
Seafood Buyer's License -- For each place of business	\$126.00
Clam Aquaculture Product Owner's Permit	\$10.00
Oyster Aquaculture Product Owner's Permit	\$10.00
Clam Aquaculture Harvester's Permit	\$5.00
Oyster Aquaculture Harvester's Permit	\$5.00
Nonresident Harvester's License	\$444.00
OYSTER HARVESTING AND SHUCKING LICENSES	
For each person taking oysters by hand, or with ordinary tongs	\$10.00
For each single-rigged patent tong boat taking oysters	\$35.00
For each double-rigged patent tong boat taking oysters	\$70.00
Oyster Dredge Public Ground	\$50.00
Oyster Hand Scrape	\$50.00
To shuck and pack oysters, for any number of gallons under 1,000	\$12.00
To shuck and pack oysters, for 1,000 gallons, up to 10,000	\$33.00
To shuck and pack oysters, for 10,000 gallons, up to 25,000	\$74.00
To shuck and pack oysters, for 25,000 gallons, up to 50,000	\$124.00
To shuck and pack oysters, for 50,000 gallons, up to 100,000	\$207.00
To shuck and pack oysters, for 100,000 gallons, up to 200,000	\$290.00
To shuck and pack oysters, for 200,000 gallons or over	\$456.00

BLUE CRAB HARVESTING AND SHEDDING LICENSES, EXCLUSIVE OF CRAB POT LICENSES	
For each person taking or catching crabs by dip nets	\$13.00
For ordinary trotlines	\$13.00
For patent trotlines	\$51.00
For each single-rigged crab-scrape boat	\$26.00
For each double-rigged crab-scrape boat	\$53.00
For up to 210 peeler pots	\$36.00
For up to 20 tanks and floats for shedding crabs	\$9.00
For more than 20 tanks or floats for shedding crabs	\$19.00
For each crab trap or crab pound	\$8.00
CRAB POT LICENSES	
For up to 85 crab pots	\$48.00
For over 85 but not more than 127 crab pots	\$79.00
For over 127 but not more than 170 crab pots	\$79.00
For over 170 but not more than 255 crab pots	\$79.00
For over 255 but not more than 425 crab pots	\$127.00
HORSESHOE CRAB AND LOBSTER LICENSES	
For each person harvesting horseshoe crabs by hand	\$16.00
For each boat engaged in fishing for, or landing of, lobster using less than 200 pots	\$41.00
For each boat engaged in fishing for, or landing of, lobster using 200 pots or more	\$166.00
CLAM HARVESTING LICENSES	
For each person taking or harvesting clams by hand, rake or with ordinary tongs	\$24.00
For each single-rigged patent tong boat taking clams	\$58.00
For each double-rigged patent tong boat taking clams	\$84.00

For each boat using clam dredge (hand)	\$19.00
For each boat using clam dredge (power)	\$44.00
For each boat using hydraulic dredge to catch soft shell clams	\$83.00
For each person taking surf clams	\$124.00
CONCH (WHELK) HARVESTING LICENSES	
For each boat using a conch dredge	\$58.00
For each person taking channeled whelk by conch pot	\$51.00
FINFISH HARVESTING LICENSES	
Each pound net	\$41.00
Each stake gill net of 1,200 feet in length or under, with a fixed location	\$24.00
All other gill nets up to 600 feet	\$16.00
All other gill nets over 600 feet and up to 1,200 feet	\$24.00
Each person using a cast net or throw net or similar device	\$13.00
Each fyke net head, weir, or similar device	\$13.00
For fish trotlines	\$19.00
Each person using or operating a fish dip net	\$9.00
On each haul seine used for catching fish, under 500 yards in length	\$48.00
On each haul seine used for catching fish, from 500 yards in length to 1,000 yards in length	\$146.00
For each person using commercial hook and line	\$31.00
For each person using commercial hook and line for catching striped bass only	\$31.00
On each boat or vessel under 70 gross tons fishing with purse net, per gross ton, but not more than \$249	\$4.00
On each boat or vessel over 70 gross tons fishing with purse net, per gross ton. Provided the maximum license fee for such vessels shall not be more than \$996	\$8.00
For up to 100 fish pots or eel pots	\$19.00
For over 100 but not more than 300 fish pots or eel pots	\$24.00

Regulations

For over 300 fish pots or eel pots	\$62.00
2. COMMERCIAL GEAR FOR RECREATIONAL USE.	
Up to five crab pots	\$36.00
Crab trotline (300 feet maximum)	\$10.00
One crab trap or crab pound	\$6.00
One gill net up to 300 feet in length	\$9.00
Fish dip net	\$7.00
Fish cast net	\$10.00
Up to two eel pots	\$10.00
3. SALTWATER RECREATIONAL FISHING LICENSE.	
Individual, resident	\$12.50 <u>\$17.50</u>
Individual, nonresident	\$25.00
Temporary 10-Day, resident	\$5.00 <u>\$10.00</u>
Temporary 10-Day, nonresident	\$10.00
Recreational boat, resident	\$38.00 <u>\$48.00</u>
Recreational boat, nonresident, provided a nonresident may not purchase a recreational boat license unless his boat is registered in Virginia	\$76.00
Head Boat/Charter Boat, resident, six or less passengers	\$190.00
Head Boat/Charter Boat, nonresident, six or less passengers	\$380.00
Head Boat/Charter Boat, resident, more than six passengers, plus \$5.00 per person over six	\$190.00
Head Boat/Charter Boat, nonresident, more than six passengers, plus \$5.00 per person over six	\$380.00
Rental Boat, resident, per boat, with maximum fee of \$635 <u>\$703</u>	\$9.00 <u>\$14.00</u>
Rental Boat, nonresident, per boat, with maximum fee of \$1270	\$18.00
Commercial Fishing Pier (Optional)	\$571.00 <u>\$632.00</u>
Disabled Resident Lifetime Saltwater License	\$5.00 <u>\$10.00</u>

Disabled Nonresident Lifetime Saltwater License	\$10.00
Reissuance of Saltwater Recreational Boat License	\$5.00
Combined Sportfishing License to fish in all inland waters and tidal waters of the Commonwealth during open season:	
Residents	\$30.00 <u>\$35.00</u>
Nonresidents	\$60.50
Combined Sportfishing Trip License to fish in all inland waters and tidal waters of the Commonwealth during open season, for five consecutive days:	
Residents	\$16.00 <u>\$21.00</u>
Nonresidents	\$26.00
Individual Resident Lifetime License	\$250.00 <u>\$276.00</u>
Individual Nonresident Lifetime License	\$500.00
Individual Resident Lifetime License age 45 - 50	\$120.00 <u>\$132.00</u>
Individual Nonresident Lifetime License age 45 - 50	\$240.00
Individual Resident Lifetime License age 51 - 55	\$90.00 <u>\$99.00</u>
Individual Nonresident Lifetime License 51 - 55	\$180.00
Individual Resident Lifetime License age 56 - 60	\$60.00 <u>\$66.00</u>
Individual Nonresident Lifetime License age 56 - 60	\$120.00
Individual Resident Lifetime License age 61 - 64	\$30.00 <u>\$35.00</u>
Individual Nonresident Lifetime License age 61 - 64	\$60.00

V.A.R. Doc. No. R11-2559; Filed September 29, 2010, 4:19 p.m.

Final Regulation

Title of Regulation: **4VAC20-1230. Pertaining to Restrictions on Shellfish (amending 4VAC20-1230-10 through 4VAC20-1230-40; adding 4VAC20-1230-35).**

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

Effective Date: January 1, 2011.

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

Summary:

These amendments (i) establish the use and assorted requirements for identification tags for tracking shellfish from point of origin to the final destination, (ii) add a definition of "container" and delete the definition of "time to refrigeration," (iii) clarify that shading is not required for vessels transporting clam seed for replanting, and (iv) clarify the penalties for violations of the chapter.

4VAC20-1230-10. Purpose.

The purpose of this chapter is to establish a method of identifying the original harvest area of any shellfish, harvest times, and handling procedures, for shellfish harvested during the months of May through September in order to protect the health of the public.

4VAC20-1230-20. Definitions.

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

"Container" means any bag, sack, tote, or conveyance, such as a boat or truck, or other receptacle that contains shellfish to be held or transported.

"Harvest" means the act of removing any shellfish from a designated harvest area and placing that harvest shellfish on or in a man-made conveyance or other means of transport.

"Mechanical refrigeration" means storage in a container that is approved by the Virginia Department of Health Division of Shellfish Sanitation and capable of cooling to and maintaining an ambient temperature of 45°F or less.

"Oysters" mean those oysters greater than 2-1/2 inches in shell length.

"Shading" means to shelter by intercepting the direct rays of the sun to protect the shellfish from heat, using a tarp or cover.

"Shellfish" means all species of bivalve molluscan shellfish.

~~"Time to refrigeration" means the amount of time from when the harvested shellstock is no longer within the water column to when it is refrigerated.~~

4VAC20-1230-30. Public health and warm water harvest restrictions.

A. It shall be unlawful for any person to have any cat, dog, or other animal on board a vessel during the harvest of shellfish.

B. From May 1 through September 30, any vessel used for the harvest of shellfish, from either public or private grounds, shall provide adequate air flow through and shading over the area that serves as storage for the shellfish. All shellfish in the vessel shall be offloaded every day. Shading shall not be required for vessels transporting clam seed for replanting.

C. From May 1 through September 30, all land-based deliveries of shellfish requiring more than 30 minutes from landing that shellfish shall be made aboard trucks or conveyances equipped with mechanical refrigeration having an ambient temperature of 45°F or less before loading begins, except that shellfish may be thoroughly iced according to procedures approved by the Virginia Department of Health (VDH) Division of Shellfish Sanitation. Mechanically refrigerated containers shall be in operation from the time of loading to the time of offloading. Any operator of a truck that is delivering shellfish using a truck not owned by a certified shellfish dealer shall possess a truck refrigeration certificate issued by the VDH Division of Shellfish Sanitation. Upon receipt of any shellfish at the shore-based plant, certified shellfish dealers must immediately place any shellfish received from the harvester under mechanical refrigeration.

D. From June 15 through August 31, it shall be unlawful for any person or person aboard a vessel to leave the dock or shore prior to one hour before sunrise to harvest or attempt to harvest oysters from private grounds.

E. From May 1 through June 14, it shall be unlawful for any person or person aboard a vessel to harvest oysters from public or private grounds after 11 a.m., and oysters harvested before 11 a.m. shall be offloaded and placed in VDH Division of Shellfish Sanitation-approved mechanical refrigeration or storage containers with ice by 11 a.m. that same day.

F. From June 15 through August 31, it shall be unlawful for any person or person aboard a vessel to harvest oysters from public or private grounds after 10 a.m., and oysters harvested before 10 a.m. shall be offloaded and placed in VDH Division of Shellfish Sanitation-approved mechanical refrigeration or storage containers with ice by 10 a.m. that same day.

G. From September 1 through September 30, it shall be unlawful for any person or person aboard a vessel to harvest oysters from public or private grounds after noon, and oysters harvested before noon shall be offloaded and placed in VDH Division of Shellfish Sanitation-approved mechanical refrigeration or storage containers with ice by noon that same day.

H. Except as described in subsections K and L of this section, oysters may be harvested after the designated harvesting time in subsections E, F, and G of this section, provided (i) the total time, from the time the vessel leaves the dock or shore until the oysters are offloaded from the vessel and placed in VDH Division of Shellfish Sanitation-approved mechanical refrigeration or storage containers with ice, shall

Regulations

not exceed five hours; (ii) there is a Virginia Marine Resources Commission-approved Global Positioning System tracking device on board the harvest vessel that is in continuous operation from the time that vessel leaves the dock or shore until the vessel returns to the dock and the oysters are offloaded from that vessel; and (iii) the harvester has applied for and been granted a permit by the Virginia Marine Resources Commission to harvest oysters after these designated harvesting times, and the harvester has designated a single landing site for that permit.

~~I. Any person who violates subsection H of this section shall be subject to immediate forfeiture of his Virginia Marine Resources Commission harvesting permit until such time that person appears before the commission.~~

~~J. I.~~ From May 1 through September 30, a Bulk Seed Permit shall be obtained from the Virginia Marine Resources Commission for the harvest of any seed oysters that are greater than 2-1/2 inches. Any person who harvests any seed oysters greater than 2-1/2 inches and is not in possession of a Bulk Seed Permit issued by the Virginia Marine Resources Commission shall be in violation of this chapter.

~~K. J.~~ Any person may handle oysters as part of a cage aquaculture operation for husbandry purposes after the designated harvesting times described in subsections E, F, and G of this section, provided that person possesses a valid Cage Aquaculture Husbandry Permit from the Virginia Marine Resources Commission. Any person who handles oysters in cage oyster aquaculture operations after the designated harvesting times described in subsections E, F, and G of this section and does not possess a Cage Oyster Aquaculture Husbandry Permit issued by the Virginia Marine Resources Commission shall be in violation of this chapter.

~~L. K.~~ Oysters may be harvested in open areas of the James River and its adjacent tributaries, upstream from the Monitor Merrimac Memorial Bridge Tunnel, in addition to the designated harvesting times in subsections E, F, and G of this section, provided (i) there is a VDH Division of Shellfish Sanitation-approved refrigeration unit or ice storage area on board the harvesting vessel; (ii) the harvester has applied for and been issued a VDH Division of Shellfish Sanitation Vessel approval certificate that is required to be on board the vessel at all times during the harvest of oysters and has designated a single landing site for that permit; and (iii) the oysters are placed in an operating refrigeration unit or ice is applied to the oysters from the start of harvest and throughout the harvest period until the oysters are offloaded.

4VAC20-1230-35. Shellfish identification.

A. Any person harvesting shellfish for commercial purposes shall affix a tag to each container of shellfish before the shellfish are removed from that harvester's boat. The shellfish tag shall remain in place while the shellfish are transported to a certified dealer and shall remain affixed to each container of

shellfish until the container is emptied or shipped and retagged by a dealer. For any quantities of harvested shellfish sold in bulk that are loose and not containerized aboard a boat, the harvester shall prepare a single tag for that quantity of shellfish that shall accompany that quantity of shellfish during transport, from the landing site to the dealer facilities.

B. The shellfish tag shall be durable, waterproof, and approved by the Marine Resources Commission, prior to use, and shall be at least 13.8 square inches in size.

C. The shellfish tag shall contain all of the following indelible and legible information, in the following order:

1. The harvester's VMRC identification number (last four digits) or VMRC oyster aquaculture harvester permit number or clam aquaculture harvester permit number;

2. The date of harvest;

3. The most accurate identification of the harvest location or aquaculture site, including the abbreviated name of the state of harvest and the commission's designation of the growing area by indexing, administrative, or geographic designation;

4. The type and quantity of harvested shellfish; and

5. The following statement, in bold capitalized letters: "THIS TAG IS REQUIRED TO BE ATTACHED UNTIL THE CONTAINER IS EMPTY OR IS RETAGGED AND THEREAFTER KEPT ON FILE FOR 90 DAYS."

D. When multiple containers of shellfish are harvested from a single harvest area in any one day and placed in a bulk container, the lot may be tagged with a single bulk tag that shall accompany the shellfish during transport from the landing site to the dealer facility. In addition to the information required in subsection C of this section, the bulk tag shall also include:

1. The following statement in bold capitalized letters: "ALL SHELLFISH CONTAINERS IN THIS LOT HAVE THE SAME HARVEST DATE AND AREA OF HARVEST" and

2. The number of individual containers in the lot.

4VAC20-1230-40. Penalty.

A. In addition to the penalty prescribed by law, any person violating any provision of this chapter shall destroy, in the presence of a marine police officer, all shellfish in his possession, or, at the direction of the marine police officer, shall place the shellfish overboard on the nearest oyster sanctuary or closed shellfish area and shall cease harvesting on that day. All harvesting apparatus shall be may be subject to seizure, and, pursuant to § 28.2-232 of the Code of Virginia, all licenses and permits shall be may be subject to immediate forfeiture, until that person appears revocation

following a hearing before the Marine Resources Commission.

B. As set forth in § 28.2-903 of the Code of Virginia, any person violating any provision of this chapter shall be guilty of a Class 3 misdemeanor, and a second or subsequent violation of any provision of this chapter committed by the same person within 12 months of a prior violation is a Class 1 misdemeanor.

VA.R. Doc. No. R11-2540; Filed September 29, 2010, 4:10 p.m.

Final Regulation

Title of Regulation: **4VAC20-1240. Fisherman Identification Program (adding 4VAC20-1240-10 through 4VAC20-1240-40).**

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

Effective Date: January 1, 2011.

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

Summary:

This chapter establishes a Fisherman Identification Program (FIP) to comply with the federal National Marine Fisheries Service's Saltwater Angler Registry Program. Federal regulations establishing the program require all anglers fishing in federal waters, or fishing in state waters for anadromous fish species, to register with the federal registry. Persons who purchase a Virginia saltwater recreational fishing license are not required to register with the FIP because the Marine Resources Commission will send a listing of those licensees to the National Marine Fisheries Service. However, resident and nonresident anglers, age 16 and older, fishing in Virginia tidal waters who have not purchased a saltwater recreational fishing license will be required to register with the FIP.

CHAPTER 1240

FISHERMAN IDENTIFICATION PROGRAM

4VAC20-1240-10. Purpose.

The purpose of this regulation is to establish a Fisherman Identification Program which, in combination with the Saltwater Fishing License Program, will provide a complete listing of anglers fishing for marine and anadromous fish species in tidal waters. The listing is used to contact fishermen as part of statistical surveys that estimate recreational fishing catches and effort.

4VAC20-1240-20. Definitions.

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

"Anadromous species" means any striped bass *Morone saxatilis*, American shad *Alosa sapidissima*, hickory shad *Alosa mediocris*, blueback herring *Alosa aestivalis*, or alewife *Alosa pseudoharengus*.

4VAC20-1240-30. Registration requirement; exception; procedures; confidentiality.

A. It shall be unlawful for any resident or nonresident, 16 years of age or older, to take or catch any marine or anadromous fish species recreationally in any tidal waters of the Commonwealth without first obtaining, annually, a Fisherman Identification Program (FIP) number, except as provided in subsection B of this section.

B. Any person who purchases a Virginia saltwater recreational fishing license under Article 1.1 (§ 28.2-302.1 et seq.) of Chapter 3 of Title 28.2 of the Code of Virginia, or a saltwater recreational fishing license issued by the Potomac River Fisheries Commission, is not required to obtain a FIP number for the term of that license. Any person fishing aboard a charter boat or head boat that is licensed by the Virginia Marine Resources Commission or the Potomac River Fisheries Commission is not required to obtain a FIP number.

C. The FIP number may be obtained by the fisherman at no cost by calling a toll-free number and providing the required FIP information over the telephone or by entering the required information online via an Internet access portal designated by the Marine Resources Commission for that purpose. The required FIP information shall include name, date of birth, address, and telephone number. No person shall be considered as registered under the FIP unless all of that person's FIP-required information is a part of the commission's telephone or Internet database.

D. Any person registered in the Fisherman Identification Program must be able to produce his FIP number upon request by any police officer. Failure to provide a valid FIP number for the current year shall constitute a violation of this regulation.

4VAC20-1240-40. Penalty.

As set forth in § 28.2-903 of the Code of Virginia, any person violating any provision of this chapter shall be guilty of a Class 3 misdemeanor, and a second or subsequent violation of any provision of this chapter committed by the same person within 12 months of a prior violation is a Class 1 misdemeanor.

VA.R. Doc. No. R11-2604; Filed September 29, 2010, 4:13 p.m.

Regulations

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Proposed Regulation

REGISTRAR'S NOTICE: The following regulation filed by the State Air Pollution 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 Air Pollution Control Board pursuant to Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1, 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: 9VAC5-520. Biomass Energy Generator General Permit for a Pilot Test Facility (Rev. Cg) (adding 9VAC5-520-10 through 9VAC5-520-230).

Statutory Authority: § 10.1-1308.1 of the Code of Virginia; § 110(a) of the Clean Air Act (40 CFR Part 51).

Public Hearing Information:

December 1, 2010 - 9:30 a.m. - Department of Environmental Quality, 2nd Floor Conference Room, 629 East Main Street, Richmond, VA

Public Comment Deadline: January 5, 2011.

Agency Contact: Mary E. Major, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, FAX (804) 698-4510, or email memajor@deq.virginia.gov.

Summary:

The regulation will create a mechanism for sources to construct and test to determine the type and quantity of emissions from a qualified energy generator that meets the requirements of the regulation. It applies to qualified energy generators that generate no more than five megawatts of electricity, or produce the equivalent amount of energy in the form of fuel, steam, or other energy product per year from biomass. Biomass includes organic material available on a renewable or recurring basis, including:

1. Forest-related materials, including mill residues, logging residues, forest thinnings, slash, brush, low-commercial value materials or undesirable species, and woody material harvested for the purpose of forest fire

fuel reduction or forest health and watershed improvement;

2. Agricultural-related materials, including orchard trees, vineyard, grain or crop residues, including straws, aquatic plants and agricultural processed co-products and waste products, including fats, oils, greases, whey, and lactose;

3. Animal waste, including manure and slaughterhouse and other processing waste;

4. Solid woody waste materials, including landscape trimmings, waste pallets, crates, and manufacturing, construction, and demolition wood wastes, excluding pressure-treated, chemically treated or painted wood wastes and wood contaminated with plastic;

5. Crops and trees planted for the purpose of being used to produce energy;

6. Landfill gas, wastewater treatment gas, and biosolids, including organic waste byproducts generated during the wastewater treatment process; and

7. Municipal solid waste, excluding tires and medical and hazardous waste.

The regulation does not require any owner to apply for coverage under the general permit but provides the opportunity for an owner to apply for coverage if the source meets the requirements of the regulation.

CHAPTER 520

BIOMASS ENERGY GENERATOR GENERAL PERMIT FOR A PILOT TEST FACILITY

Part I

Definitions

9VAC5-520-10. General.

A. For the purpose of this chapter or any orders issued by the board, the words or terms shall have the meanings given them in 9VAC5-510-20.

B. Unless specifically defined in the Virginia Air Pollution Control Law or in this chapter, terms used shall have the meaning given them by 9VAC5-80-1110 (Permits for New and Modified Stationary Sources), 9VAC5-10-20 (Regulations for the Control and Abatement of Air Pollution), or 9VAC5-170-20 (Regulation for General Administration); or commonly ascribed to them by recognized authorities, in that order of priority.

9VAC5-520-20. Terms defined.

"Agricultural processed co-products" means residual plant materials or products extracted from plant materials. This does not include products created as a result of a chemical reaction in which the plant materials have been intentionally

chemically altered such as, but not limited to, biodiesel or glycerin.

"Biomass" means organic material that is available on a renewable or recurring basis, including:

1. Forest-related materials, including uncontaminated mill residues, logging residues, forest thinning, slash, brush, low-commercial value materials or undesirable species, and woody material harvested for the purpose of forest fire fuel reduction or forest health and watershed improvement;

2. Agricultural-related materials, including orchard trees, vineyard, grain or crop residues, including straws, aquatic plants and agricultural processed co-products and waste products, including fats, oils, greases, whey, and lactose;

3. Animal waste, including manure and slaughterhouse and other animal processing waste;

4. Solid woody waste materials, including landscape trimmings, waste pallets, crates and manufacturing, construction, and demolition wood wastes, excluding pressure-treated, chemically treated or painted wood wastes, and wood contaminated with plastic;

5. Crops and trees planted for the purpose of being used to produce energy;

6. Landfill gas, wastewater treatment gas, and biosolids, including organic waste byproducts generated during the wastewater treatment process; and

7. Municipal solid waste, excluding tires and medical and hazardous waste.

"Biomass pilot test facility" means a facility that (i) is being operated to obtain emissions testing data in order to determine if a source is subject to any new source review permit program, and (ii) includes the qualified energy generator and any fuel preparation, storage, and handling emission units.

"Biosolids" means a sewage sludge that has received an established treatment for required pathogen control and is treated or managed to reduce vector attraction to a satisfactory level and contains acceptable levels of pollutants, such that it is acceptable for use for land application, marketing, or distribution in accordance with 9VAC25-32 (Virginia Pollution Abatement Permit Program Regulation).

"Construct and test" means to construct a biomass pilot test facility and associated equipment including a qualified energy generator, and to then conduct appropriate testing in accordance with 9VAC5-520-180 in order to determine the uncontrolled emissions rate from the facility. If the facility is determined to be exempt from all new source review permit programs in accordance with 9VAC5-520-170, the biomass pilot test facility may continue to operate in accordance with the terms and conditions of 9VAC5-520-180 J 2.

"Construction wood waste" means solid wood waste that is produced or generated during construction, renovation, remodeling, or repair of houses, commercial buildings, and other structures.

"Clean wood" means uncontaminated natural wood. Clean wood includes, but is not limited to, byproducts of harvesting activities conducted for forest management or commercial logging, or uncontaminated mill residues consisting of bark, chips, edgings, sawdust, shavings, or slabs. It does not include wood that has been treated with glues, binders, or resins.

"Contaminated" means, in reference to wood, wood products, or wood residues, those that are painted, pigment-stained, chemically treated (other than with fungicide, glue, binder or resin), or pressure-treated with preservative compounds including, but not limited to, chromate copper arsenate, pentachlorophenol, or creosote.

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

"Demolition wood waste" means solid woody waste resulting from the destruction of structures and includes the same materials as construction wood waste.

"Exempt facility" means a biomass pilot test facility that has uncontrolled emissions below the permit emissions threshold values in 9VAC5-520-170 and is not required to obtain any new source review permit but must operate according to the terms and conditions set forth in 9VAC5-520-180 J 2.

"Garbage" means readily putrescible discarded materials composed of animal, vegetable, or other organic matter.

"General permit" means, for a biomass pilot test facility, the terms and conditions in Part IV (9VAC5-520-160 et seq.) of this chapter that meet the requirements of Part II (9VAC5-520-30 et seq.) and Part III (9VAC5-520-90 et seq.) of this chapter and issued under the provisions of 9VAC5-80-1250.

"Hazardous waste" means a hazardous waste as defined in 9VAC20-60 (Hazardous Waste Management Regulations).

"Landfill" means a sanitary landfill, an industrial waste landfill, or a construction/demolition/debris landfill as defined in Part I (9VAC20-80-10 et seq.) of 9VAC20-80 (Solid Waste Management Regulations).

"Landscape trimmings" means trees, tree branches, bushes, shrubs, and clippings from tree branches, bushes, and shrubs that come from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands. Landscape trimmings do not include collected leaves, grass, or grass clippings.

"Major new source review (NSR) permit" means a permit issued under the major new source review program.

Regulations

"Major new source review (major NSR) program" means a preconstruction review and permit program (i) for new major stationary sources or major modifications (physical changes or changes in the method of operation), (ii) established to implement the requirements of §§ 112, 165, and 173 of the federal Clean Air Act and associated regulations, and (iii) codified in Article 1 (9VAC5-80-50 et seq.), Article 3 (9VAC5-80-360 et seq.), Article 7 (9VAC5-80-1400 et seq.), Article 8 (9VAC5-80-1605 et seq.), and Article 9 (9VAC5-80-2000 et seq.) of Part II of 9VAC5-80 (Permits for Stationary Sources).

"Manufacturing wood waste" means uncontaminated solid woody waste and wood residue that is generated by one or more manufacturing processes. Such waste includes, but is not limited to, bark, sawdust, chips, scraps, slabs, millings, and shavings, but does not include process waste, byproduct, or co-product in which the wood or residue has been chemically treated, such as that resulting from pulp and paper production or from cellulose production.

"Minor new source review (NSR) permit" means a permit issued under the minor new source review program.

"Minor new source review (minor NSR) program" means a preconstruction review and permit program (i) for regulated air pollutants from new stationary sources or projects that are not subject to review under the major new source review program, (ii) established to implement the requirements of §§ 110(a)(2)(C) and 112 of the federal Clean Air Act and associated regulations, and (iii) codified in Article 6 (9VAC5-80-1100 et seq.) of Part II of this chapter. The minor NSR program may also be used to implement the terms and conditions designated as state-only enforceable; however, those terms and conditions shall not be applicable federal requirements.

"Municipal solid waste" means household, commercial/retail, or institutional waste. Household waste includes garbage, trash, and refuse discarded by residential dwellings, hotels, motels, and other similar permanent or temporary housing. Commercial/retail waste includes all solid waste discarded by stores, offices, restaurants, warehouses, nonmanufacturing activities at industrial facilities, and other similar establishments or facilities. Institutional waste includes materials discarded by schools, hospitals (nonmedical), nonmanufacturing activities at prisons and government facilities, and other similar establishments or facilities. Household, commercial/retail, and institutional waste does include yard waste. Household, commercial/retail, and institutional waste does not include used oil, sewage sludge, wood pallets, construction and demolition wastes, clean wood, industrial process or manufacturing wastes, medical waste, or motor vehicles (including motor vehicle parts or vehicle fluff).

"New source review (NSR) permit" means a permit issued under the new source review program.

"New source review (NSR) program" means a preconstruction review and permit program (i) for new stationary sources or modifications (physical changes or changes in the method of operation); (ii) established to implement the requirements of §§ 110(a)(2)(C), 112 (relating to permits for hazardous air pollutants), 165 (relating to permits in prevention of significant deterioration areas), and 173 (relating to permits in nonattainment areas) of the federal Clean Air Act and associated regulations; and (iii) codified in Article 6 (9VAC5-80-1100 et seq.), Article 7 (9VAC5-80-1400 et seq.), Article 8 (9VAC5-80-1605 et seq.), and Article 9 (9VAC5-80-2000 et seq.) of Part II of 9VAC5-80 (Permits for Stationary Sources).

"Nitrogen oxides" or "NO_x" means all oxides of nitrogen except nitrous oxide, as measured by the applicable reference method, or an equivalent or alternative method.

"Permit emission thresholds" means the value at which a permitting applicability determination can be made for a biomass pilot test facility based upon the quantity of emissions from that facility in accordance with the requirements of 9VAC5-520-170.

"Permittee" means the owner of an affected emissions unit covered under the general permit.

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

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

"PM_{2.5}" means fine particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured by the applicable reference method or an equivalent method.

"PM_{2.5} emissions" means finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers emitted to the ambient air as measured by the applicable reference method or an equivalent or alternative method.

"PM₁₀" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by the applicable reference method or an equivalent method.

"PM₁₀ emissions" means finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the ambient air as measured by the applicable reference method or an equivalent or alternative method.

"Postmark" means an official mark on a piece of mail or date mark on electronic communications that records the date

and place of mailing or origination of an electronic communication.

"Potential to emit" means an emission rate based on the maximum capacity of a biomass pilot test facility to emit a toxic pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the facility to emit a toxic pollutant, including air pollution control equipment, and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or its effect on emissions is state or federally enforceable. Fugitive emissions shall be included in determining a biomass pilot test facility's potential to emit.

"Qualified energy generator" means a commercial facility located in the Commonwealth (i) with the capacity annually to generate no more than five megawatts (MW) of electricity, or that produces the equivalent amount of energy in the form of fuel, steam, or other energy product; (ii) that is generated or produced solely from biomass; and (iii) that is sold to an unrelated person or stationary source or used in a manufacturing process. For the purposes of this chapter the phrase "capacity annually to generate no more than 5 MW of electricity" shall mean a nameplate capacity equal to or less than 5 MW that is operated in conjunction with a biomass pilot test facility.

"Reasonable time" means business operating hours unless in response to a complaint.

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

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

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

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

"Refuse" means all solid waste products having the characteristics of solids rather than liquids and that are composed wholly or partially of materials such as garbage, trash, rubbish, litter, residues from clean up of spills or contamination, or other discarded materials.

"Sulfur dioxide" or "SO₂" means a colorless gas at standard conditions having a molecular composition of one sulfur atom

and two oxygen atoms as measured by the applicable reference method or an equivalent or alternative method.

"Solid woody waste" means waste consisting of uncontaminated wood and wood product, including tree stumps, trees, or tree limbs (any of which may be whole or cut). Solid woody waste does not include wood or wood products mixed with soil or other nonwood materials such as plastic, metal, cement, or mineral fibers.

"Uncontrolled emissions or uncontrolled emissions rate" means the emission rate from an emissions unit when operating at maximum capacity without air pollution control equipment. Air pollution control equipment includes control equipment that is not vital to its operation, except that its use enables the owner to conform to applicable air pollution control laws and regulations. Annual uncontrolled emissions shall be based on the maximum annual rated capacity (based on 8,760 hours of operation per year) of the emissions unit, unless the emissions unit or stationary source is subject to state and federally enforceable permit conditions that limit the annual hours of operation. Enforceable permit conditions on the type or amount of material combusted, stored, or processed may be used in determining the uncontrolled emission rate of an emissions unit or stationary source. The uncontrolled emission rate of a stationary source is the sum of the uncontrolled emission rates of the individual emissions units. Secondary emissions do not count in determining the uncontrolled emission rate of a stationary source.

"Volatile organic compound" or "VOC" means volatile organic compound as defined in 9VAC5-10.

"Wood product" means manufactured wood such as plywood, particleboard, fiberboard, hardboard, oriented strand board, and engineered structural products made from clean wood with or without glue, binder, or resin. Wood product does not include products made with other nonwood materials such as plastic, metal, cement, or mineral fibers.

"Wood residue" means, in reference to logging, manufacturing or milling processes, woody waste that is generated by the cutting, chipping, grinding, shaping, or smoothing of wood or wood products. Wood residue includes bark, chips, edging sawdust, shavings, or slabs and may include small amounts of glue, binder, or resin from wood products. Wood residue does not include woody waste mixed with soil or other nonwood materials such as plastic, metal, cement, or mineral fibers.

"Yard waste" means collected leaves, grass, grass clippings, bushes, or shrubs, and clippings from bushes and shrubs that come from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands. Yard waste does not include (i) construction, renovation, and demolition wastes or (ii) clean wood.

Regulations

Part II General Provisions

9VAC5-520-30. Basis.

This general permit is being issued under the authority of § 10.1-1308.1 of the Code of Virginia and 9VAC5-80-1250.

9VAC5-520-40. Applicability and designation of affected emissions unit.

A. The affected emissions unit to which the provisions of this chapter apply is each qualified energy generator that is a biomass pilot test facility for which testing is commenced on or after (insert effective date of this chapter).

B. This chapter applies throughout the Commonwealth of Virginia.

C. Any qualified energy generator, the construction or operation of which is subject to the major new source review program, shall not be eligible for the general permit.

D. Any qualified energy generator subject to § 129 of the federal Clean Air Act shall not be eligible for the general permit.

E. Any qualified energy generator that has initially applied for and received the authority to construct and operate under the general permit may apply for the authority to construct and operate under the general permit again for a different biomass fuel if the initial biomass fuel was found to be exempt. Once a qualified energy generator is issued a new source review permit for a specified biomass fuel as required under 9VAC5-520-180 J 3, the qualified energy generator will be subject to the provisions of 9VAC5-80 (Permits for Stationary Sources).

9VAC5-520-50. General authorization; conditions requiring a new source review permit.

A. A biomass pilot test facility desiring authority to construct and test under the general permit shall comply with the requirements of the general permit, may be subject to applicable requirements of 9VAC5-80 (Permits for Stationary Sources), and shall register with the department as required under 9VAC5-20-160.

B. A biomass pilot test facility may continue to operate under the terms and conditions set forth in 9VAC5-520-180 J 2 provided the test results demonstrate the emissions are below the permit emission threshold limits of 9VAC5-520-170 and the facility is exempt from the minor source permitting requirements.

C. No general permit for a biomass pilot test facility will be issued until the department has received a submission that the facility is not a major source subject to the provisions of Article 1, 3, 7, 8, or 9 of Part II of 9VAC5-80 (Permits for Stationary Sources). Each submission shall include the following statement by the permittee or authorized

representative: "I am authorized to make this submission on behalf of the owners and operators of the biomass pilot test facility for which the submission is made. I certify under penalty of law that the statements and information submitted in this document and all its attachments were prepared 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 and evaluating the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I certify, based on my knowledge of the biomass pilot test facility and the attached mathematical or engineering demonstration or both, that the facility is not a major source or is located at a major source defined in this chapter, nor is it subject to § 129 of the federal Clean Air Act. If information demonstrates that the facility is subject to the provisions of Article 1, 3, 7, 8, or 9 of Part II of 9VAC5-80 (Permits for Stationary Sources) or § 129 of the federal Clean Air Act, the facility will stop operation immediately. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

D. The department may require a permittee that is authorized to construct and test under this general permit to apply for and obtain a minor NSR permit. Any interested person may request the board to take action under this subsection. Cases where an individual minor NSR permit may be required include the following:

1. The emissions are above the permit emission threshold limits of 9VAC5-520-170 for either criteria pollutants or hazardous air pollutants;
2. Circumstances have changed since the time of the request to be authorized to be exempt from permitting so that the emissions are no longer appropriately controlled under the terms and conditions of the exemption letter;
3. Either a temporary or permanent reduction or elimination of the emissions is necessary; or
4. Other relevant factors.

E. Permits may be required on a case-by-case basis. A biomass pilot test facility subject to an individual minor NSR permit according to 9VAC5-520-180 shall be notified of that decision and the reasons for it. The permittee must apply for a permit within 30 days of notice and is subject to the provisions of 9VAC5-520-180 J 3 a and b and 9VAC5-80 (Permits for Stationary Sources).

F. Any permittee authorized by a general permit may request to be excluded from the coverage of the general permit by applying for an individual minor new source review permit. The permittee shall submit an application as required by 9VAC5-80 (Permits for Stationary Sources).

G. When an individual minor NSR permit is issued to a permittee, coverage under the general permit is automatically terminated on the effective date of the minor NSR permit.

9VAC5-520-60. Existence of permit no defense.

The existence of a permit under this chapter shall not constitute a defense of a violation of the Virginia Air Pollution Control Law or the regulations of the board and shall not relieve any owner of the responsibility to comply with any applicable regulations, laws, ordinances, and orders of the governmental entities having jurisdiction.

9VAC5-520-70. Circumvention.

A. No owner shall cause or permit the installation or use of any device or any means that, without resulting in reduction in the total amount of air pollutants emitted, conceals or dilutes an emission of air pollutants that would otherwise violate this chapter.

B. This section does not prohibit the construction of a stack.

9VAC5-520-80. Enforcement of a general permit.

The following general requirements apply:

1. Pursuant to § 10.1-1322 of the Code of Virginia, failure to comply with any term or condition of the general permit shall be considered a violation of the Virginia Air Pollution Control Law.

2. An owner who (i) violates or fails, neglects, or refuses to obey any provision of this chapter or the Virginia Air Pollution Control Law, any applicable requirement, or any permit term or condition; (ii) knowingly makes any false statement, representation, or certification in any form, notice, or report required by a permit; or (iii) knowingly renders inaccurate any required monitoring device or method shall be subject to the provisions of §§ 10.1-1307, 10.1-1309, 10.1-1316, 10.1-1318, and 10.1-1320 of the Virginia Air Pollution Control Law.

Part III

General Permit Administrative Procedures

9VAC5-520-90. Requirements for granting an authorization to construct and test under the general permit.

A. The department may grant an authorization to construct and test under the general permit for a biomass pilot test facility that meets the applicability criteria in 9VAC5-520-40 and the testing schedule in 9VAC5-520-180.

B. The general permit will be issued in accordance with § 2.2-4006 A 8 of the Administrative Process Act.

9VAC5-520-100. Applications for coverage under the general permit.

A. Owners of a biomass pilot test facility that qualifies for the general permit may apply to the department for coverage under the terms and conditions of the general permit.

B. The application shall meet the requirements of this chapter and include all information necessary to determine qualification for and to assure compliance with the general permit.

C. Any application form, report, compliance certification, or other document required to be submitted to the department under this chapter shall meet the requirements of 9VAC5-20-230.

D. Any applicant who fails to submit any relevant facts or who has submitted incorrect information in an application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information.

9VAC5-520-110. Required information for initial applications.

A. The department will make application forms available to applicants. The information required by this section shall be determined and submitted according to procedures and methods acceptable to the department.

B. Each initial application for coverage under the general permit shall include, but not be limited to, the following:

1. Information specified in the appropriate permit application form for Biomass Pilot Test Facility General Permits as determined by the regional office.

2. A document certification with all applicable requirements completed by a responsible official.

9VAC5-520-120. Granting an authorization to construct and test under the general permit.

A. The department may grant authorization to construct and test under the conditions and terms of the general permit to sources that meet the applicability criteria set forth in 9VAC5-520-40.

B. Granting an authorization to construct and test under the general permit to a facility covered by the general permit is not subject to the public participation procedures under 9VAC5-80-1170.

9VAC5-520-130. Transfer of authorizations to construct and test under the general permit.

A. No person shall transfer an authorization to construct and test under the general permit from one biomass pilot test facility to another or from one piece of equipment to another.

B. In the case of a transfer of ownership of a biomass pilot test facility, the new owner shall comply with any permit

Regulations

issued or authorization to construct and test under the general permit granted to the previous owner. The new owner shall notify the department of the change in ownership within 30 days of the transfer.

C. In the case of a name change of a biomass pilot test facility source, the owner shall comply with any permit issued or authorization to construct and test under the general permit granted under the previous source name. The owner shall notify the department of the change in source name within 30 days of the name change.

Part IV

General Permit Terms and Conditions

9VAC5-520-140. General permit.

A. Any owner whose application is approved by the Director of Department of Environmental Quality shall receive this permit and shall comply with the requirements in it and be subject to all requirements of this chapter and the regulations of the board.

B. In compliance with the provisions of the Virginia Air Pollution Control Law and regulations adopted pursuant to it, owners of qualified energy generators are authorized to construct and test under the authority of this permit, except those where board regulations or policies prohibit such operation.

C. The authorization to construct and test under this permit shall be in accordance with the cover letter to this permit, 9VAC5-520-150 (General terms and conditions), 9VAC5-520-160 (Process requirements), 9VAC5-520-170 (Permit emission thresholds), 9VAC5-520-180 (Testing schedule), 9VAC5-520-190 (Compliance determination and verification by emission testing), 9VAC5-520-200 (Recordkeeping requirements), 9VAC5-520-210 (Reporting requirements), 9VAC5-520-220 (Compliance), and 9VAC5-520-230 (Enforcement).

9VAC5-520-150. General terms and conditions.

A. The permittee is authorized to construct and test a biomass pilot test facility located within the boundaries of the Commonwealth of Virginia, in accordance with the approved permit application and conditions of this permit except where board regulations or policies prohibit such activities.

B. The permittee shall comply with the terms and conditions of this permit prior to commencing any physical or operational change or activity that will result in making the facility subject to the new source review program.

9VAC5-520-160. Process requirements.

A. Each biomass pilot test facility shall comply with visible emissions and fugitive dust/emissions standards of Article 1 (9VAC5-50-60 et seq.) of Part II of 9VAC5-50 (New and Modified Stationary Sources). No owner or other person shall cause or permit any materials or property to be handled,

transported, stored, used, constructed, altered, repaired, or demolished without taking reasonable precautions to prevent particulate matter from becoming airborne.

B. Each biomass pilot test facility shall comply with the odor standards in Article 2 (9VAC5-50-130 et seq.) of Part II of 9VAC5-50 (New and Modified Stationary Sources). Under no circumstances shall the biomass qualified energy generator or associated raw material storage or handling cause an odor objectionable to individuals of ordinary sensibility.

C. Once per week, the permittee shall observe the biomass pilot test facility's fuel preparation and storage operations to determine if there are any visible emissions excluding stack emissions. The presence of visible emissions shall indicate the need for prompt corrective action. The applicant shall keep a log of the observations. The log shall include the name of the observer, the date and time of the observations, the presence of visible emissions or lack thereof, and the date, time, and description of corrective actions taken whenever visible emissions were observed.

9VAC5-520-170. Permit emission threshold.

A. In determining whether a biomass pilot test facility is exempt from all new minor source review permit programs, the facility must be determined to be exempt under the provisions of 9VAC5-80 (Permits for Stationary Sources) and both subdivisions 1 and 2 of this subsection.

1. A biomass pilot test facility that measures uncontrolled emissions below the threshold values specified in Table 520-1 qualifies as an exempt facility. All biomass pilot test facilities and ancillary equipment shall be considered in the aggregate. A biomass pilot test facility that measures uncontrolled emissions at or above the permit emission threshold values specified in Table 520-1 provided it does not demonstrate it is a major source, shall obtain a permit according to the applicable provisions of 9VAC5-520-180 J 3.

TABLE 520-1

PERMIT EMISSION THRESHOLD VALUES

Pollutant	Combined Units (tons/year)
PM	25
PM ₁₀	15
PM _{2.5}	10
NO _x	40
SO ₂	40
CO	100
VOC	25

a. The PM, PM₁₀, and PM_{2.5} values listed in Table 520-1 contain filterable and condensable particulates.

b. Permit emission threshold values for combined units listed in Table 520-1 include the qualified energy generator and any fuel preparation/storage emission units.

2. Any biomass pilot test facility with measurements that result in a potential to emit any toxic pollutant below threshold values specified in Article 5 (9VAC5-60-300 et seq.) of 9VAC5-60 (Hazardous Air Pollutant Sources) qualifies as an exempt facility. All biomass pilot test facilities and ancillary equipment shall be considered in the aggregate. Any biomass pilot test facility with measurements that result in a potential to emit any toxic pollutant at or above the threshold values specified in Article 5 (9VAC5-60-300 et seq.) of 9VAC5-60 (Hazardous Air Pollutant Sources) shall obtain a permit according to the applicable provisions of 9VAC5-520-180 J 3 of this chapter.

B. No applicant shall cause or allow to be discharged into the atmosphere from any biomass pilot test facility any visible emissions in excess of 10% opacity as determined by Reference Method 9 (9VAC5-50-410) from any stack, vent or duct. This opacity standard shall apply at all times except during periods of startup, shutdown, and malfunction.

9VAC5-520-180. Testing schedule.

A. All testing must be completed within 12 months from the actual startup date as determined under subsection E of this section.

B. Within 30 days after receipt of a biomass pilot test facility general permit application the regional office will notify the applicant of the status of the application with a review letter.

1. If a complete application is received, the review letter will state if the applicant is approved for the biomass pilot test facility general permit. If approved, the applicant has 18 months from the date of the review letter to commence construction of the biomass pilot test facility and its equipment.

2. If a complete application is not received, the applicant has 30 days to submit the additional information needed for a complete application. If the additional information is not received within 30 days, the application will be returned to the applicant and the application will be withdrawn. Within 30 days after receipt of the additional information, the department will respond with another review letter that will state if the applicant is approved for the biomass pilot test facility general permit. If approved, the provisions of subdivision A 1 of this subsection shall apply.

C. Within the approved 18 months, the applicant shall notify the regional office of the actual date on which construction of

the biomass pilot test facility commenced within 30 days after such date.

1. The applicant may apply for another 18-month extension to commence construction on the biomass pilot test facility based upon a satisfactory demonstration that an extension is justified.

2. Only one extension is allowed and shall be limited to commencing construction on the biomass pilot test facility.

D. The applicant shall notify the regional office in writing or electronically of the anticipated startup date of the biomass pilot test facility postmarked not more than 60 days nor less than 30 days prior to such date.

E. The applicant shall notify the regional office in writing or electronically of the actual startup date of the biomass pilot test facility within 15 days after such date. The applicant shall operate and perform all testing needed to comply with this permit no later than 12 months from the actual startup date.

F. For each biomass fuel to be utilized, the applicant shall perform (or acquire) a certified fuel test as required by 9VAC5-520-190 A.

G. At least 30 days prior to testing, the applicant shall:

1. Notify the department in writing or electronically of the anticipated date of the performance tests of the biomass pilot test facility;

2. Submit a stack test protocol and visible emissions evaluation test protocol to the regional office; and

3. Submit the results of the certified fuel test or tests to the regional office.

H. The stack testing and visible emissions evaluation tests shall be performed within 60 days after achieving the maximum production rate at which the facility will be operated but in no event later than 180 days after startup of the permitted facility according to 9VAC5-520-190 B and C as appropriate.

I. All results shall be submitted to the regional office in writing or electronically no later than 45 days after test completion of the stack tests and visible emissions evaluation.

J. Within 60 days, the regional office will review the results and notify the applicant of the status of the biomass pilot test facility.

1. If test results demonstrate that the biomass pilot test facility is a major source, the facility shall cease operation immediately.

2. If test results demonstrate that the biomass pilot test facility is exempt from the minor source permitting requirements of all new source review programs, the regional office shall issue the applicant an exemption letter. The biomass pilot test facility will be authorized to

Regulations

operate under the terms and conditions set forth in the exemption letter and the biomass pilot test facility general permit will terminate. Any changes in the proposed operation of the facility may require a permit.

3. If testing demonstrates that the biomass pilot test facility is not exempt from the minor source permitting requirements of all new source review programs, the applicant shall obtain a permit as required by 9VAC5-80 (Permits for Stationary Sources).

a. An application for a new source review permit shall be submitted within 30 days of notification that the permit emission thresholds have been exceeded; if no application is received within the timeframe, the facility shall shut down.

b. The facility shall be authorized to continue to operate according to the terms and conditions of the biomass pilot test facility general permit application until such time as a new source review permit is issued. Once a new source review permit is issued, the facility shall operate according to the terms and conditions of the new source review permit and the authority to construct and operate under the biomass pilot test facility general permit will terminate.

c. All new source review permits will be issued within 90 days from receipt of a complete application.

9VAC5-520-190. Compliance determination and verification by emission testing.

A. A certified fuel test is required.

1. The permittee shall have a sample analyzed for each type of biomass used during the pilot test period.

2. The results of the fuel analysis shall be used to identify specific constituents of the fuel requiring further emissions testing.

3. The results shall be submitted to the regional office in writing or electronically prior to testing. The submittal shall include:

a. Fuel analysis;

b. Name of company and individual collecting the sample;

c. Identification of sampling method used;

d. Sample (volume or mass);

e. Number of samples taken;

f. Date sample collected;

g. Location of fuel when sample was taken;

h. Date of analysis; and

i. Name of company and individual conducting the analysis.

B. A test protocol for a certified stack test shall be submitted at least 30 days prior to testing.

1. The test protocol shall include information necessary to evaluate the emissions from the biomass pilot test facility and include, but not be limited to, operating rates or production rates as appropriate.

2. The details of conducting the tests shall be arranged with the regional office.

C. A certified stack test or other alternative method of evaluation acceptable to the department shall be conducted for each qualified energy generator stack to determine the quantity of pollutants from each biomass fuel.

1. Performance tests shall be conducted for all criteria pollutants.

2. Performance tests shall be conducted for any toxic pollutants that were found to be contained in the biomass fuel as stated in the certified fuel test.

3. A biomass pilot test facility utilizing a combustion process shall test for any toxic pollutants that are created from combustion (including, but not limited to, acetaldehyde, acrolein, benzene, formaldehyde, hydrochloric acid, hydrogen fluoride, naphthalene, trichloroethylene, and xylene).

4. The tests shall be performed within 60 days after achieving the maximum production rate at which the facility will be operated but in no event later than 180 days after start-up of the permitted facility.

5. Test shall be conducted in accordance with reference methods or an alternative method approved by the department.

6. One copy of the test results shall be submitted to the regional office within 45 days after test completion and shall conform to the test report format in subsection E of this section.

D. A certified visible emissions evaluation shall be conducted.

1. Concurrently with the certified stack test, visible emission evaluations in accordance with Reference Method 9, shall also be conducted on each qualified energy generator.

2. Each test shall consist of 30 sets of 24 consecutive observations (at 15 second intervals) to yield a six minute average.

3. The details of the tests shall be arranged with the regional office.

4. The permittee shall submit a test protocol at least 30 days prior to testing.

5. The evaluation shall be performed, reported, and demonstrate compliance within 60 days after achieving the maximum production rate at which the facility will be operated but in no event later than 180 days after start-up of the permitted facility.

6. Should conditions prevent concurrent opacity observations:

a. The regional office shall be notified in writing or electronically within seven days.

b. Visible emissions testing shall be rescheduled within 30 days.

c. Rescheduled testing shall be conducted under the same conditions (as possible) as the initial performance tests.

7. One copy of the test result shall be submitted to the regional office within 45 days after test completion and shall conform to the test report format in subsection F of this section.

E. The test report format for nonvisible emissions evaluations shall include the following:

1. A report cover containing:

a. The plant name;

b. The plant location;

c. Units tested at the source identified by the agency that have been issued reference numbers;

d. Test dates;

e. The name of the individual conducting the test;

f. The address of the individual conducting the test; and

g. The report date.

2. A certification, including the date certified, that has been signed by:

a. A test team leader or a certified observer;

b. The test reviewer; and

c. A responsible company official.

3. A copy of approved test protocol.

4. A summary including:

a. The reason for testing;

b. Test dates;

c. Identification of the unit tested including the maximum rated capacity for each unit;

d. For each emission unit, a table showing:

(1) The operating rate;

(2) Test methods;

(3) The pollutants tested; and

(4) Test results for each run, including the run average;

e. Process and control equipment data for each run and the average, as required by the test protocol;

f. A statement that the test was conducted in accordance with the test protocol, or identification and discussion of deviations, including the likely impact on results; and

g. Any other important information as determined by the regional office.

5. A description of source operation including:

a. A description of the process;

b. A description of control devices, if necessary;

c. A process and control equipment flow diagram; and

d. A description of sampling port location and a dimensioned cross section. A protocol shall be attached that includes a sketch of the stack (elevation view) showing sampling port locations, upstream and downstream flow disturbances and their distances from ports; and a sketch of stack (plan view) showing sampling ports, ducts entering the stack and stack diameter or dimensions.

6. Test results, including:

a. Detailed test results for each run;

b. Sample calculations; and

c. A description of collected samples, including audits, when applicable.

7. An appendix, including:

a. Raw production data;

b. Raw field data;

c. Laboratory reports;

d. Chain of custody records for laboratory samples;

e. Calibration procedures and results;

f. Project participants and contact information;

g. Observers' names (including their industry and agency affiliation);

h. Related correspondence; and

i. Standard procedures.

F. The test report format for visible emissions evaluations shall include the following.

Regulations

1. A report cover containing:
 - a. The plant name;
 - b. The plant location;
 - c. Units tested at the source identified by the department that have been issued reference numbers;
 - d. Test dates;
 - e. The name of the individual conducting the test;
 - f. The address of individual conducting test; and
 - g. The report date.
2. A certification, including the date certified, that has been signed by:
 - a. A test team leader or a certified observer; and
 - b. A responsible company official.
3. Copy of approved test protocol.
4. A summary including:
 - a. The reason for testing;
 - b. Test dates;
 - c. Identification of the unit tested including the maximum rated capacity for each unit;
 - d. Summarized process and control equipment data for each run and the average, as required by the test protocol;
 - e. A statement certifying that the test was conducted in accordance with the test protocol or, if not conducted according to protocol, identification and discussion of deviations, including the likely impact on results; and
 - f. Any other important information.
5. A description of source operation including:
 - a. A description of the process;
 - b. A description of control devices, if necessary;
 - c. A process and control equipment flow diagram; and
 - d. A description of sampling port location and a dimensioned cross section. A protocol shall be attached that includes a sketch of the stack (elevation view) showing sampling port locations, upstream and downstream flow disturbances and their distances from ports; and a sketch of stack (plan view) showing sampling ports, ducts entering the stack and stack diameter or dimensions.
6. The detailed test results for each run.
7. An appendix including:
 - a. The names of project participants and their titles;

- b. The observers' names including their industry and agency affiliation;
- c. Related correspondence; and
- d. Standard procedures.

9VAC5-520-200. Recordkeeping requirements.

A. The permittee shall maintain records on site for each emission unit or groups of emission units sufficient to determine the actual emissions of the biomass pilot test facility.

1. Records shall include, but not be limited to, emission data and operating parameters during emissions testing.
2. The content and format of such records shall be determined in consultation with the regional office.
3. These records shall be available for inspection by the department and shall be current for the most recent five years.

B. The permittee shall prepare and maintain the following information:

1. Records of monitoring information including:

- a. The date of sampling or measurements;
- b. The place as defined in the authorization to operate under this general permit;
- c. The time of sampling or measurements;
- d. The date or dates analyses were performed;
- e. Each biomass utilized and the rate of consumption;
- f. The company or entity that performed the analyses;
- g. The analytical techniques or methods used;
- h. The results of such analyses;
- i. The operating conditions existing at the time of sampling or measurement;
- j. Results of all stack tests, visible emission evaluations, and certified fuel tests;
- k. The copies of all notifications submitted to the regional office;
- l. The operating schedule as stated in 9VAC5-520-180;
- m. All visible emission records as required in 9VAC5-520-190 D; and
- n. Documentation that the unit does not exceed the 5 MW nameplate capacity threshold.

2. Records of all monitoring data and support information shall be retained for five years and available onsite for inspection by the department during the pilot test trial period.

C. In order to ensure the proper operation of the biomass pilot test facility, the permittee shall perform the following:

1. Develop a maintenance schedule and maintain records of all scheduled and nonscheduled maintenance to the biomass pilot test facility. These records shall be maintained on site for five years and shall be made available to department upon request.
2. Maintain verification that personnel operating the biomass pilot test facility are properly trained to do so.

9VAC5-520-210. Reporting requirements.

A. The permittee shall comply with the reporting requirements in this section. Any document (including reports) required by a permit term or condition to be submitted to the department shall contain a document certification signed by a responsible official that meets the requirements of 9VAC5-520-230.

B. The permittee shall furnish written notification to the department of the following dates relative to the requirements of 9VAC5-520-180:

1. The actual date on which construction or installation of any biomass pilot test facility commenced, postmarked within 30 days after that date;
2. The anticipated startup date of the biomass pilot test facility, postmarked not more than 60 days nor less than 30 days prior to such date;
3. The actual startup date of the biomass pilot test facility postmarked within 15 days after that date;
4. The test protocol, postmarked at least 30 days prior to the date that testing commences; and
5. The test results, no later than 45 days after test completion of the stack tests and visible emissions evaluation.

9VAC5-520-220. Compliance.

A. Whenever it is necessary for the purpose of the regulations of the board, the board or an agent authorized by the board may at reasonable times enter an establishment or upon property, public or private, for the purpose of obtaining information or conducting surveys or investigations as authorized by § 10.1-1315 or § 46.2-1187.1 of the Code of Virginia.

B. Upon presentation of credentials and other documents as may be required by law, the permittee shall allow the department to perform the following:

1. Enter upon the premises where the source is located or emissions related activity is conducted, or where records must be kept under the terms and conditions of this permit.

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

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

4. Sample or monitor at reasonable times, substances or parameters for the purpose of assuring compliance with this permit or applicable requirements.

9VAC5-520-230. Enforcement.

A. Violation of this permit is subject to the enforcement provisions including, but not limited to, those contained in 9VAC5-170 (Regulation for General Administration) and §§ 10.1-1309, 10.1-1309.1, 10.1-1311, and 10.1-1316 of the Virginia Air Pollution Control Law.

B. If any condition, requirement, or portion of this permit is held invalid or inapplicable under any circumstance, such invalidity or inapplicability shall not affect or impair the remaining conditions, requirements, or portions of this permit.

C. The permittee shall comply with all conditions of this permit. Any noncompliance with this permit constitutes a violation of the Virginia Air Pollution Control Law and is grounds for (i) enforcement action, or (ii) suspension or revocation of the authorization to operate under this permit.

D. 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.

E. The authorization to construct and test under this permit may be suspended or revoked for cause as specified in 9VAC5-520-80. The filing by a permittee of (i) a request for reauthorization to operate under this permit, or (ii) notification of termination, planned changes, or anticipated noncompliance does not stay any condition of this permit.

F. The owner of the qualified energy generator may be subject to enforcement action under 9VAC5-520-80 for operation without a permit if the facility is later determined by the department not to qualify for the conditions and terms of this permit.

G. This permit does not convey any property rights of any sort, or any exclusive privilege.

H. The permittee shall furnish to the department, within 30 days of notification, any information that the department may request in writing to determine whether cause exists for suspending or revoking the authorization to operate under this permit or to determine compliance with this permit. Upon request, the permittee shall also furnish to the department copies of records required to be kept by this permit and, for information claimed to be confidential, the permittee shall

Regulations

furnish such records to the department along with a claim of confidentiality meeting the requirements of 9VAC5-170-60.

V.A.R. Doc. No. R09-1830; Filed October 5, 2010, 1:25 p.m.

STATE WATER CONTROL BOARD

REGISTRAR'S NOTICE: The following regulations filed by the State Water Control Board are 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.

Final Regulation

Title of Regulation: 9VAC25-630. Virginia Pollution Abatement General Permit Regulation for Poultry Waste Management (amending 9VAC25-630-10 through 9VAC25-630-50, 9VAC25-630-80; adding 9VAC25-630-25).

Statutory Authority: §§ 62.1-44.15 and 62.1-44.17:1.1 of the Code of Virginia.

Effective Date: December 1, 2010.

Agency Contact: Betsy Bowles, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4059, FAX (804) 698-4116, or email betsy.bowles@deq.virginia.gov.

Summary:

This action amends the existing Virginia Pollution Abatement General Permit Regulation for Poultry Waste Management in order to reissue the regulation. The general permit first became effective on December 1, 2000, with a permit term of 10 years; therefore, the permit is due to expire on November 30, 2010. This action extends the expiration date to November 30, 2020; adds a section regarding duty to comply; and makes other changes for clarification. This regulation governs the management of poultry feeding operations that confine 200 or more animal units (20,000 chickens or 11,000 turkeys) and establishes utilization, storage, tracking, and accounting requirements related to poultry waste, including that transferred from poultry feeding operations. Changes made since the proposed stage (i) correct citations

throughout, (ii) add provisions for administrative continuance of authorizations, (iii) modify the deadline for submittal of reapplication requests, and (iv) clarify certain monitoring requirements.

CHAPTER 630

VIRGINIA POLLUTION ABATEMENT ~~GENERAL PERMIT~~ REGULATION AND GENERAL PERMIT FOR POULTRY WASTE MANAGEMENT

9VAC25-630-10. Definitions.

The words and terms used in this chapter shall have the meanings defined in the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia) and the Permit Regulation (9VAC25-32) unless the context clearly indicates otherwise, except that for the purposes of this chapter:

"Agricultural storm water [discharge]" means [~~storm water that is not the sole result of land application of manure, litter or process wastewater. Where manure, litter or process wastewater has been applied~~ a precipitation-related discharge of manure, litter, or process wastewater that has been applied on land areas under the control of an animal feeding operation or under the control of a poultry waste end-user or poultry waste broker] in accordance with a nutrient management plan approved by the Virginia Department of Conservation and Recreation and in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater [~~, a precipitation-related discharge of manure, litter, or process wastewater from land areas under the control of an animal feeding operation or under the control of a poultry waste end-user or poultry waste broker is an agricultural storm water discharge~~].

"Animal feeding operation" means a lot or facility (other than an aquatic animal production facility) where both of the following conditions are met:

1. Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and
2. Crops, vegetation, forage growth or post-harvest residues are not sustained in the normal growing season over any portion of the operation of the lot or facility.

Two or more animal feeding operations under common ownership are a single animal feeding operation for the purpose of determining the number of animals at an operation if they adjoin each other or if they use a common area or system for the disposal of wastes.

"Confined animal feeding operation," for the purposes of this regulation, has the same meaning as an "animal feeding operation."

"Confined poultry feeding operation" means any confined animal feeding operation with 200 or more animal units of

poultry. This equates to 20,000 chickens or 11,000 turkeys [~~These numbers are established,~~] regardless of animal age or sex.

"Department" means the Virginia Department of Environmental Quality.

"Director" means the Director of the Virginia Department of Environmental Quality or his designee.

"Fact sheet" means the document [prepared by the department] that [~~details summarizes~~] the requirements [set forth in this chapter] regarding utilization, storage, and management of poultry waste by poultry waste end-users and poultry waste brokers. [~~The fact sheet is approved by the department, in consultation with the Department of Conservation and Recreation.~~]

["General permit" means 9VAC25-630-50.]

"Nutrient management plan" or "NMP" means a plan developed or approved by the Department of Conservation and Recreation that requires proper storage, treatment, and management of poultry waste, including dry litter, and limits accumulation of excess nutrients in soils and leaching or discharge of nutrients into state waters; except that for a poultry waste end-user or poultry waste broker who is not subject to the general permit [2] the requirements of 9VAC25-630-80 constitute the NMP.

"Organic source" means any nutrient source including, but not limited to, manures, biosolids, compost, and waste or sludges from animals, humans, or industrial processes, but for the purposes of this regulation it excludes waste from wildlife.

"Permittee" means the poultry grower, poultry waste end-user, or poultry waste broker whose poultry waste management activities are covered under the general permit.

"Poultry grower" or "grower" means any person who owns or operates a confined poultry feeding operation.

"Poultry waste" means dry poultry litter and composted dead poultry.

"Poultry waste broker" or "broker" means a person who possesses or controls poultry waste that is not generated on an animal feeding operation under ~~their~~ his operational control and who transfers or hauls poultry waste to other persons. If the entity is defined as a broker they cannot be defined as a hauler for the purposes of this regulation.

"Poultry waste end-user" or "end-user" means any recipient of transferred poultry waste who stores or who utilizes the waste as fertilizer, fuel, feedstock, livestock feed, or other beneficial end use for an operation under his control.

"Poultry waste hauler" or "hauler" means a person who provides transportation of transferred poultry waste from one entity to another, and is not otherwise involved in the transfer

or transaction of the waste, nor responsible for determining the recipient of the waste. The responsibility of the recordkeeping and reporting remains with the entities to which the service was provided: grower, broker, and end-user.

"Standard rate" means a land application rate for poultry waste approved by the board as specified in this regulation.

"Vegetated buffer" means a permanent strip of dense perennial vegetation established parallel to the contours of and perpendicular to the dominant slope of the field for the purposes of slowing water runoff, enhancing water infiltration, and minimizing the risk of any potential nutrients or pollutants from leaving the field and reaching surface waters.

9VAC25-630-20. Purpose; delegation of authority; effective date of permit.

A. This ~~general permit~~ regulation governs the management of poultry waste at confined poultry feeding operations not covered by a Virginia ~~Pollution~~ Pollutant Discharge Elimination System (VPDES) permit and poultry waste utilized or stored by poultry waste end-users or poultry waste brokers. It establishes requirements for proper nutrient management, waste storage, and waste tracking and accounting of poultry waste.

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 permit will become effective on December 1, ~~2000~~ 2010. This general permit will expire 10 years from the effective date.

9VAC25-630-25. Duty to comply.

A. Any person who manages or proposes to manage pollutants regulated by 9VAC25-630 shall comply with the applicable requirements of this chapter.

B. In order to manage pollutants from a confined poultry feeding operation, the poultry grower shall be required to obtain coverage under the Virginia Pollution Abatement (VPA) general permit or an individual VPA permit provided that the poultry grower has not been required to obtain a Virginia Pollutant Discharge Elimination System (VPDES) permit. The poultry grower shall comply with the requirements of this chapter and the permit.

C. Any poultry waste end-user or poultry waste broker shall comply with the technical requirements outlined in 9VAC25-630-60, 9VAC25-630-70, and 9VAC25-630-80. Any poultry waste end-user or poultry waste broker who does not comply with the technical requirements outlined in 9VAC25-630-60, 9VAC25-630-70, and 9VAC25-630-80 may be required to obtain coverage under the general permit.

Regulations

D. Any poultry waste end-user or poultry waste broker who is required by the board to obtain coverage under the Virginia Pollution Abatement general permit shall obtain coverage and comply with the requirements of this chapter.

9VAC25-630-30. Authorization to manage pollutants.

A. Poultry grower. Any poultry grower governed by this general permit is hereby authorized to manage pollutants at confined poultry feeding operations provided that the poultry grower files the registration statement of 9VAC25-630-40, complies with the requirements of 9VAC25-630-50, and ~~provided that:~~

1. The poultry grower has not been required to obtain a Virginia ~~Pollution~~ Pollutant Discharge Elimination System (VPDES) permit or an individual permit according to 9VAC25-32-260 B;

2. The activities of the confined poultry feeding operation shall not contravene the Water Quality Standards, as amended and adopted by the board, or any provision of the State Water Control Law. There shall be no point source discharge of wastewater to surface waters of the state except in the case of a storm event greater than the 25-year, 24-hour storm. Agricultural storm water discharges are permitted. Domestic sewage or industrial waste shall not be managed under this general permit;

3. Confined poultry feeding operations that use disposal pits for routine disposal of daily mortalities shall not be covered under this general permit. The use of a disposal pit by a permittee for routine disposal of daily poultry mortalities shall be ~~considered~~ a violation of this permit. This prohibition shall not apply to the emergency disposal of dead poultry done according to regulations adopted pursuant to § 3.2-6002 or Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia;

4. The poultry grower shall obtain Department of Conservation and Recreation ~~must approve~~ approval of a nutrient management plan for the confined poultry feeding operation prior to the submittal of the registration statement. The poultry grower shall attach to the registration statement a copy of the approved nutrient management plan and a copy of the letter from the Department of Conservation and Recreation certifying approval of the nutrient management plan, ~~and if the plan was written after December 31, 2005, that the plan was developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia. The poultry grower shall implement the approved nutrient management plan;~~

5. Adjoining property notification.

a. Prior to filing ~~When a poultry grower files~~ a general permit registration statement for a confined poultry feeding operation that proposes construction of poultry

growing houses after December 1, 2000, the poultry grower shall ~~also~~ give notice to all owners or residents of property that adjoins the property on which the proposed confined poultry feeding operation will be located. Such notice shall include (i) the types and maximum number of poultry which will be maintained at the facility and (ii) the address and phone number of the appropriate department regional office to which comments relevant to the permit may be submitted.

b. Any person may submit written comments on the proposed operation to the department within 30 days of the date of the filing of the registration statement. If, on the basis of such written comments or his review, the director determines that the proposed operation will not be capable of complying with the provisions of the general permit, the director shall require the owner to obtain an individual permit for the operation. Any such determination by the director shall be made in writing and received by the poultry grower not more than 45 days after the filing of the registration statement or, if in the director's sole discretion additional time is necessary to evaluate comments received from the public, not more than 60 days after the filing of the registration statement; and

6. Each poultry grower covered by this general permit shall complete a training program offered or approved by the department within one year of filing the registration statement for general permit coverage. All permitted poultry growers shall complete a training program at least once every five years.

B. Poultry waste end-user, poultry waste broker. Any poultry waste end-user or poultry waste broker ~~who receives transferred poultry waste~~ shall comply with the requirements outlined in 9VAC25-630-60, 9VAC25-630-70, and 9VAC25-630-80 ~~regarding utilization, storage, tracking, and accounting of poultry waste in his possession or under his control or the general permit as applicable.~~

1. Any poultry waste end-user or poultry waste broker who does not comply with the requirements of 9VAC25-630-60, 9VAC25-630-70, and 9VAC25-630-80 may be required to obtain coverage under the general permit.

2. Any poultry waste end-user or poultry waste broker governed by this general permit is hereby authorized to manage pollutants relating to the utilization and storage of poultry waste provided that the poultry waste end-user or poultry waste broker files the registration statement of 9VAC25-630-40, complies with the requirements of 9VAC25-630-50, and ~~provided that:~~

a. The poultry waste end-user or poultry waste broker has not been required to obtain a Virginia Pollution Abatement individual permit according to subdivision 2 b of 9VAC25-32-260;

b. The activities of the poultry waste end-user or poultry waste broker shall not contravene the Water Quality Standards, as amended and adopted by the board, or any provision of the State Water Control Law (§ 62.1-44 et seq. of the Code of Virginia). There shall be no point source discharge of wastewater to surface waters of the state except in the case of a storm event greater than the 25-year, 24-hour storm. Agricultural storm water discharges are permitted. Domestic sewage or industrial waste shall not be managed under this general permit;

c. The poultry waste end-user or poultry waste broker shall obtain Department of Conservation and Recreation ~~must approve approval of a nutrient management plan for land application sites where poultry waste will be utilized or stored and managed by the poultry waste end-user or the poultry waste broker~~ prior to the submittal of the registration statement. The poultry waste end-user or the poultry waste broker shall attach to the registration statement a copy of the approved nutrient management plan and a copy of the letter from the Department of Conservation and Recreation certifying approval of the nutrient management plan, ~~and if the plan was written after December 31, 2005, that the plan was developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia. The poultry waste end-user or the poultry waste broker shall implement the approved nutrient management plan; and~~

d. Each poultry waste end-user or poultry waste broker covered by this general permit shall complete a training program offered or approved by the department within one year of filing the registration statement for general permit coverage. All permitted [poultry waste] end-users or permitted [poultry waste] brokers shall complete a training program at least once every five years.

C. Receipt of this general permit does not relieve any poultry grower, poultry waste end-user, or poultry waste broker of the responsibility to comply with any other applicable federal, state or local statute, ordinance or regulation.

[D. Continuation of permit coverage.

1. Any owner that was authorized to manage pollutants under the general permit issued in 2000, and that submits a complete registration statement on or before November 30, 2010, is authorized to continue to manage pollutants under the terms of the 2000 general permit until such time as the board 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 permittee that was covered under the expiring or expired general permit has violated or is violating the conditions of that permit, the board may choose to do any or all of the following:

- a. Initiate enforcement action based upon the existing or expired general permit;
- 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 set forth in the VPA Permit Regulation (9VAC25-32).]

9VAC25-630-40. Registration statement.

A. Poultry growers. In order to be covered under the general permit, the poultry grower shall file a complete VPA General Permit Registration Statement. The registration statement shall contain the following information:

- 1. The poultry grower's name, mailing address [, email address (if available),] and telephone number;
- 2. The [farm name (if applicable) and] location of the confined poultry feeding operation;
- 3. The name [, email address (if available),] and telephone number of a contact person or operator other than the poultry grower, if necessary;
- 4. The best time of day and day of the week to contact the poultry grower or contact person;
- 5. If the facility has an existing VPA permit, the permit number;
- [6. Indicate whether the poultry are grown under contract with a poultry integrator and give the name of the integrator (if applicable);]

[~~6. 7.~~] The types of poultry and the maximum numbers of each type to be grown at the facility at any one time;

[~~7. 8.~~] Identification of the method of dead bird disposal;

[~~8. 9.~~] An indication of whether new poultry growing houses are under construction or planned for construction;

[~~9. 10.~~] A copy of the nutrient management plan approved by the Department of Conservation and Recreation;

[~~10. 11.~~] A copy of the Department of Conservation and Recreation nutrient management plan approval letter that also certifies that the plan was developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia; and

Regulations

[~~11~~. 12.] The following certification: "I certify that [~~notice of the registration statement~~] for any confined poultry feeding operation that proposes construction of [new] poultry growing houses [~~after December 1, 2000~~, notice of the registration statement] has been given to all owners or residents of property that adjoins the property on which the confined poultry feeding operation will be located. This notice included the types and numbers of poultry which will be grown at the facility and the address and phone number of the appropriate Department of Environmental Quality regional office to which comments relevant to the permit may be submitted. I certify under penalty of law that all the requirements of the board for the general permit are being met and 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."

B. Poultry waste end-users or poultry waste brokers. In order to be covered under the general permit, the poultry waste end-user or poultry waste broker shall file a complete VPA General Permit Registration Statement. The registration statement shall contain the following information:

1. The poultry waste end-user's or poultry waste broker's name, mailing address, [email address (if available)], and telephone number;
2. The location of the operation where the poultry waste will be utilized, stored, or managed;
3. The best time of day and day of the week to contact the poultry waste end-user or poultry waste broker;
4. If the facility has an existing VPA permit, the permit number;
5. If confined poultry are located at the facility, indicate the number of confined poultry;
6. A copy of the nutrient management plan approved by the Department of Conservation and Recreation;
7. A copy of the Department of Conservation and Recreation nutrient management plan approval letter that also certifies that the plan was developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia; and
8. The following certification: "I certify under penalty of law that all the requirements of the board for the general permit are being met and that this document and all

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

C. The registration statement shall be signed in accordance with 9VAC25-32-50.

9VAC25-630-50. Contents of the general permit.

Any poultry grower, poultry waste end-user, or poultry waste broker whose registration statement is accepted by the board will receive the following general permit and shall comply with the requirements therein and be subject to the VPA Permit Regulation, 9VAC25-32.

General Permit No. VPG2

Effective Date: December 1, ~~2000~~ 2010

~~Modification Date: January 1, 2006~~

~~Modification Date: January 1, 2010~~

Expiration Date: November 30, ~~2010~~ 2020

GENERAL PERMIT FOR POULTRY WASTE MANAGEMENT

AUTHORIZATION TO MANAGE POLLUTANTS UNDER THE VIRGINIA POLLUTION ABATEMENT PROGRAM AND THE VIRGINIA STATE WATER CONTROL LAW

In compliance with the provisions of the State Water Control Law and State Water Control Board regulations adopted pursuant thereto, owners of confined poultry feeding operations having 200 or more animal units, poultry waste end-users, and poultry waste brokers are authorized to manage pollutants within the boundaries of the Commonwealth of Virginia, except where board regulations [~~or policies~~] prohibit such activities.

The authorized pollutant management activities shall be in accordance with the registration statement and supporting documents submitted to the Department of Environmental Quality, this cover page, and Part I—Pollutant Management and Monitoring Requirements for Confined Poultry Feeding Operations and Part II—Conditions Applicable to All VPA Permits and Part III—Pollutant Management and Monitoring Requirements for Poultry Waste End-Users and Poultry Waste Brokers, as set forth herein.

Part I

Pollutant Management and Monitoring Requirements for Confined Poultry Feeding Operations

A. Pollutant management authorization and monitoring requirements.

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 manage pollutants at the location or locations identified in the registration statement and the facility's approved nutrient management plan.

2. If poultry waste is land applied, it shall be applied at the rates specified in the facility's approved nutrient management plan.

3. Soil at the land application sites shall be monitored as specified below. Additional soils monitoring may be required in the facility's approved nutrient management plan.

SOILS MONITORING

PARAMETERS	LIMITATIONS	UNITS	MONITORING REQUIREMENTS	
			Frequency	Sample Type
pH	NL	SU	1/3 years	Composite [*]
Phosphorus	NL	ppm or lbs/ac	1/3 years	Composite [*]
Potash	NL	ppm or lbs/ac	1/3 years	Composite [*]
Calcium	NL	ppm or lbs/ac	1/3 years	Composite [*]
Magnesium	NL	ppm or lbs/ac	1/3 years	Composite [*]

NL = No limit, this is a monitoring requirement only.

SU = Standard Units

[*Specific sampling requirements are found in the facility's approved nutrient management plan.]

4. Poultry waste shall be monitored as specified below. Additional waste monitoring may be required in the facility's approved nutrient management plan.

WASTE MONITORING

PARAMETERS	LIMITATIONS	UNITS	MONITORING REQUIREMENTS	
			Frequency	Sample Type
Total Kjeldahl Nitrogen	NL	*	1/3 years	Composite
Ammonia Nitrogen	NL	*	1/3 years	Composite
Total Phosphorus	NL	*	1/3 years	Composite
Total Potassium	NL	*	1/3 years	Composite
Moisture Content	NL	%	1/3 years	Composite

NL = No limit, this is a monitoring requirement only.

*Parameters for waste may be reported as a percent, as lbs/ton or lbs/1000 gallons, or as ppm where appropriate.

5. Analysis of soil and waste shall be according to methods specified in the facility's approved nutrient management plan.

6. All monitoring data required by Part I A shall be maintained on site in accordance with Part II B. Reporting of results to the department is not required; however, the monitoring results shall be made available to department personnel upon request.

B. Other requirements or special conditions.

1. The confined poultry feeding operation shall be designed and operated to (i) prevent point source discharges of pollutants to state waters except in the case

of a storm event greater than the 25-year, 24-hour storm and (ii) provide adequate waste storage capacity to accommodate periods when the ground is ice covered, snow covered or saturated, periods when land application of nutrients should not occur due to limited or nonexistent crop nutrient uptake, and periods when physical limitations prohibit the land application of waste.

2. Poultry waste shall be stored according to the nutrient management plan and in a manner that prevents contact with surface water and ground water. Poultry waste that is stockpiled outside of the growing house for more than 14 days shall be kept in a facility or at a site that provides adequate storage. Adequate storage shall, at a minimum, include the following:

Regulations

- a. Poultry waste shall be covered to protect it from precipitation and wind;
- b. Storm water shall not run onto or under the stored poultry waste; and
- c. A minimum of two feet separation distance to the seasonal high water table or an impermeable barrier shall be used under the stored poultry waste. All poultry waste storage facilities that use an impermeable barrier shall maintain a minimum of one foot separation between the seasonal high water table and the impermeable barrier. "Seasonal high water table" means that portion of the soil profile where a color change has occurred in the soil as a result of saturated soil conditions or where soil concretions have formed. Typical colors are gray mottlings, solid gray or black. The depth in the soil at which these conditions first occur is termed the seasonal high water table. Impermeable barriers must be constructed of at least 12 inches of compacted clay, at least four inches of reinforced concrete, or another material of similar structural integrity that has a minimum permeability rating of 0.0014 inches per hour (1×10^{-6} centimeters per second).

d. For poultry waste that is not stored under roof, the storage site must be at least 100 feet from any surface water, intermittent drainage, wells, sinkholes, rock outcrops, and springs.

3. Poultry waste storage facilities constructed after December 1, 2000, shall not be located within a 100-year floodplain unless the poultry grower has no land outside the floodplain on which to construct the facility and the facility is constructed so that the poultry waste is stored above the 100-year flood elevation or otherwise protected from floodwaters through the construction of berms or similar best management flood control structures. New, expanded or replacement poultry growing houses that are constructed after December 1, 2000, shall not be located within a 100-year floodplain unless they are part of an existing, ongoing confined poultry feeding operation and are constructed so that the poultry and poultry litter are housed above the 100-year flood elevation or otherwise protected from floodwaters through construction of berms or similar best management flood control structures.

4. Poultry waste may be transferred from a permitted poultry grower to another person without identifying the fields where such waste will be utilized in the permitted poultry grower's approved nutrient management plan if the following conditions are met:

- a. When a poultry grower transfers to another person more than 10 tons of poultry waste in any 365-day period, the poultry grower shall provide that person with:
 - (1) Grower name, address, and permit number;

- (2) A copy of the most recent nutrient analysis of the poultry waste; and

- (3) A fact sheet.

- b. When a poultry grower transfers to another person more than 10 tons of poultry waste in any 365-day period, the poultry grower shall keep a record of the following:

- (1) The recipient name and address;

- (2) The amount of poultry waste received by the person;

- (3) The date of the transaction;

- (4) The nutrient analysis of the waste; and

- (5) The signed waste transfer records form acknowledging the receipt of the following:

- (a) The waste;

- (b) The nutrient analysis of the waste; and

- (c) A fact sheet.

- c. When a poultry grower transfers to another person more than 10 tons of poultry waste in any 365-day period, and the recipient of the waste is someone other than a broker, the poultry grower shall keep a record of the following:

- (1) The locality in which the recipient intends to utilize the waste (i.e., nearest town or city and zip code); and

- (2) The name of the stream or waterbody if known to the recipient that is nearest to the waste utilization or storage site.

- d. Poultry growers shall maintain the records required by Part I B 4 a, b, and c for at least three years after the transaction and shall make them available to department personnel upon request.

- e. Poultry waste generated by this facility shall not be applied to fields owned by or under the operational control of either the poultry grower or a legal entity in which the poultry grower has an ownership interest unless the fields are included in the facility's approved nutrient management plan.

5. Confined poultry feeding operations that use disposal pits for routine disposal of daily mortalities shall not be covered under this general permit. The use of a disposal pit for routine disposal of daily poultry mortalities by a permittee shall be ~~considered~~ a violation of this permit. This prohibition does not apply to the emergency disposal of dead poultry done according to regulations adopted pursuant to § 3.2-6002 of the Code of Virginia or Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia.

6. The poultry grower shall implement a nutrient management plan (NMP) ~~developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia and approved by the Department of Conservation and Recreation and maintain the plan on site. All NMP's written after December 31, 2005, shall be developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia. The [terms of the] NMP shall be enforceable through this permit. The NMP shall contain at a minimum the following information:~~

- a. Site map indicating the location of the waste storage facilities and the fields where waste generated by this facility will be applied by the poultry grower. The location of fields as identified in Part I B 4 e shall also be included;
- b. Site evaluation and assessment of soil types and potential productivities;
- c. Nutrient management sampling including soil and waste monitoring;
- d. Storage and land area requirements for the grower's poultry waste management activities;
- e. Calculation of waste application rates; and
- f. Waste application schedules.

7. When the poultry waste storage facility is no longer needed, the permittee shall close it in a manner that: (i) minimizes the need for further maintenance and (ii) controls, minimizes or eliminates, to the extent necessary to protect human health and the environment, the postclosure escape of uncontrolled leachate, surface runoff, or waste decomposition products to the ground water, surface water or the atmosphere. At closure, the permittee shall remove all poultry waste residue from the waste storage facility. At waste storage facilities without permanent covers and impermeable ground barriers, all residual poultry waste shall be removed from the surface below the stockpile when the poultry waste is taken out of storage. Removed waste materials shall be utilized according to the NMP.

8. Nitrogen application rates contained in the NMP shall ~~not exceed crop nutrient needs as determined by the Department of Conservation and Recreation be established [as stipulated in regulations promulgated pursuant to § 10.1-104.2 of the Code of Virginia in accordance with 4VAC5-15-150 A 2]~~. The application of poultry waste shall be managed to minimize runoff, leachate, and volatilization losses, and reduce adverse water quality impacts from nitrogen.

9. ~~For all NMPs developed after October 1, 2001, and on or before December 31, 2005, phosphorus application rates shall not exceed the greater of crop nutrient needs or crop~~

~~nutrient removal as determined by the Department of Conservation and Recreation. For all NMPs developed after December 31, 2005, phosphorus Phosphorus application rates shall conform solely to the Department of Conservation and Recreation's regulatory criteria and standards in effect at the time the NMP is written contained in the NMP shall be established [as stipulated in regulations promulgated pursuant to § 10.1-104.2 of the Code of Virginia in accordance with 4VAC5-15-150 A 2]~~. The application of poultry waste shall be managed to minimize runoff and leaching and reduce adverse water quality impacts from phosphorous.

10. The timing of land application of poultry waste shall be according to the schedule contained in the NMP, except that no waste may be applied to ice [covered] or snow covered ground or to soils that are saturated. Poultry waste may be applied to frozen ground within the NMP scheduled times only under the following conditions:

- a. Slopes are not greater than 6.0%;
- b. A minimum of a 200-foot vegetative or adequate crop residue buffer is maintained between the application area and all surface water courses;
- c. Only those soils characterized by USDA as "well drained" with good infiltration are used; and
- d. At least 60% uniform cover by vegetation or crop residue is present in order to reduce surface runoff and the potential for leaching of nutrients to ground water.

11. Poultry waste shall not be land applied within buffer zones. Buffer zones at waste application sites shall, at a minimum, be maintained as follows:

- a. Distance from occupied dwellings not on the permittee's property: 200 feet (unless the occupant of the dwelling signs a waiver of the buffer zone);
- b. Distance from water supply wells or springs: 100 feet;
- c. Distance from surface water courses: 100 feet (without a permanent vegetated buffer) or 35 feet (if a permanent vegetated buffer exists). Other site-specific conservation practices may be approved by the department that will provide pollutant reductions equivalent or better than the reductions that would be achieved by the 100-foot buffer [:]
- d. Distance from rock outcropping (except limestone): 25 feet;
- e. Distance from limestone outcroppings: 50 feet; and
- f. Waste shall not be applied in such a manner that it would discharge to sinkholes that may exist in the area.

12. The following records shall be maintained:

Regulations

- a. The identification of the land application field sites where the waste is utilized or stored;
- b. The application rate;
- c. The application dates; and
- d. What crops have been planted.

These records shall be maintained on site for a period of three years after recorded application is made and shall be made available to department personnel upon request.

13. Each poultry grower covered by this general permit shall complete a training program offered or approved by the department within one year of filing the registration statement for general permit coverage. All [permitted] poultry growers shall complete a training program at least once every five years.

Part II

Conditions Applicable to all VPA 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 listed under 40 CFR Part 136 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 name of the individual(s) who performed the sampling or measurements;
 - c. The date(s) analyses were performed;
 - d. The name of the individual(s) who performed the analyses;
 - e. The analytical techniques or methods used, with supporting information such as observations, readings, calculations and bench data; and
 - f. The results of such analyses.
2. 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 application for this permit for a period of at least three years from the date of the sample, measurement,

report or application. This period of retention may be extended by request of the board at any time.

C. Reporting monitoring results. [If reporting is required by Part I or Part III of this general permit, the permittee shall follow the requirements of this subsection.]

1. The permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after the 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 forms provided or specified by the department.

3. If the permittee monitors the pollutant management activity, at a sampling location specified in this permit, for any pollutant more frequently than required by the permit using approved analytical methods, the permittee shall report the results of this monitoring on the monitoring report.

4. If the permittee monitors the pollutant management activity, at a sampling location specified in this permit, for any pollutant that is not required to be monitored by the permit, and uses approved analytical methods, the permittee shall report the results with the monitoring report.

5. 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 which the [board director] may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the department, upon request, copies of records required to be kept by the permittee. Plans, specifications, maps, conceptual reports and other relevant information shall be submitted as requested by the [board director] prior to commencing construction.

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 (i) 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 (ii) a discharge that may reasonably be expected to enter state waters in violation of Part II F shall notify the department of the discharge immediately upon discovery of the discharge, but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the department within five days of discovery of the discharge. The written report shall contain:

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

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

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

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

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

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

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

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

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

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

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

NOTE: The immediate (within 24 hours) reports required in Parts II F, G and H may be made to the department's regional office. 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 design or operation of the pollutant management activity.
2. The permittee shall give at least 10 days 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. Applications. All permit applications shall be signed as follows:

Regulations

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 employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

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

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

2. Reports, 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, or a position of equivalent responsibility. 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 [general] permit [and 9VAC25-630]. Any [permit] noncompliance [with the general permit or 9VAC25-630] constitutes a violation of the State Water Control Law. Permit noncompliance is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. Compliance with a permit during its term constitutes compliance, for purposes of enforcement, with the State Water Control Law.

M. Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall apply for and obtain a new permit. All permittees with a currently effective permit shall submit a new application at least [~~480~~ 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 applications to be submitted later than the expiration date of the existing permit.

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

O. State law. Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any other state law or regulation or under authority preserved by § 510 of the federal 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 be responsible for the proper operation and maintenance of all treatment works, systems and controls which are installed or used to achieve compliance with the conditions of this permit.

Proper operation and maintenance includes effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures.

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 pollutant management activity 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. Prohibition. "Bypass" means intentional diversion of waste streams from any portion of a treatment works. A bypass of the treatment works is prohibited except as provided herein.

2. Anticipated bypass. If the permittee knows in advance of the need for a bypass, he shall notify the department promptly at least 10 days prior to the bypass. After considering its adverse effects, the board may approve an anticipated bypass if:

a. The bypass will be unavoidable to prevent loss of human life, personal injury, or severe property damage. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. "Severe property damage" does not mean economic loss caused by delays in production; and

b. There are no feasible alternatives to bypass such as the use of auxiliary treatment facilities, retention of untreated waste, or maintenance during normal periods of equipment downtime. However, if bypass occurs during normal periods of equipment downtime or preventive maintenance and in the exercise of reasonable engineering judgment the permittee could have installed adequate backup equipment to prevent such bypass, this exclusion shall not apply as a defense.

3. Unplanned bypass. If an unplanned bypass occurs, the permittee shall notify the department as soon as possible, but in no case later than 24 hours, and shall take steps to halt the bypass as early as possible. This notification will be a condition for defense to an enforcement action that an

unplanned bypass met the conditions in paragraphs U 2 a and b and in light of the information reasonably available to the permittee at the time of the bypass.

V. Upset. A permittee may claim an upset as an affirmative defense to an action brought for noncompliance. In any enforcement proceedings a permittee shall have the burden of proof to establish the occurrence of any upset. In order to establish an affirmative defense of upset, the permittee shall present properly signed, contemporaneous operating logs or other relevant evidence that shows:

1. That an upset occurred and that the cause can be identified;
2. That the permitted facility was at the time being operated efficiently and in compliance with proper operation and maintenance procedures;
3. That the 24-hour reporting requirements to the department were met; and
4. That the permittee took all reasonable steps to minimize or correct any adverse impact on state waters resulting from noncompliance with the permit.

W. Inspection and entry. Upon presentation of credentials, any duly authorized agent of the board may, at reasonable times and under reasonable circumstances:

1. Enter upon any permittee's property, public or private and have access to records required by this permit;
2. Have access to, inspect and copy any records that must be kept as part of permit conditions;
3. Inspect any facility's equipment (including monitoring and control equipment) practices or operations regulated or required under the permit; and
4. Sample or monitor any substances or parameters at any locations for the purpose of assuring permit compliance or as otherwise authorized by the State Water Control Law.

For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours, and whenever the facility is involved in managing pollutants. 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 upon the request of the permittee or interested persons, or upon the board's initiative. If a permittee files a request for a permit modification, revocation, or termination, or files a notification of planned changes, or anticipated noncompliance, the permit terms and conditions shall remain effective until the request is acted upon by the board. This provision shall not be used to extend the expiration date of the effective VPA permit.

Y. Transfer of permits.

Regulations

1. Permits are not transferable to any person except after notice to the department. The board may require modification or revocation and reissuance of the permit to change the name of the permittee and to incorporate such other requirements as may be necessary. 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 to reflect the transfer or has been revoked and reissued to the new owner or operator.

2. As an alternative to transfers under Part II Y 1, this permit shall 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, within the 30-day time period, notify the existing permittee and the proposed new permittee of its intent to modify or revoke and reissue the permit. [If the board 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.

Part III

Pollutant Management and Monitoring Requirements for Poultry Waste End-Users and Poultry Brokers

A. Pollutant management authorization and monitoring requirements.

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 manage pollutants at the location or locations identified in the registration statement and the permittee's approved nutrient management plan.

2. If poultry waste is land applied on land under the permittee's operational control, it shall be applied at the rates specified in the permittee's approved nutrient management plan.

3. Soil at the land application sites shall be monitored as specified below. Additional soils monitoring may be required in the permittee's approved nutrient management plan.

SOILS MONITORING

PARAMETERS	LIMITATIONS	UNITS	MONITORING REQUIREMENTS	
			Frequency	Sample Type
pH	NL	SU	1/3 years	Composite [*]
Phosphorus	NL	ppm or lbs/ac	1/3 years	Composite [*]
Potash	NL	ppm or lbs/ac	1/3 years	Composite [*]
Calcium	NL	ppm or lbs/ac	1/3 years	Composite [*]
Magnesium	NL	ppm or lbs/ac	1/3 years	Composite [*]

NL = No limit, this is a monitoring requirement only.

SU = Standard Units

[*Specific sampling requirements are outlined in the permittee's approved nutrient management plan.]

4. Poultry waste shall be monitored as specified below. Additional waste monitoring may be required in the permittee's approved nutrient management plan.

WASTE MONITORING

PARAMETERS	LIMITATIONS	UNITS	MONITORING REQUIREMENTS	
			Frequency	Sample Type
Total Kjeldahl Nitrogen	NL	*	1/3 years	Composite
Ammonia Nitrogen	NL	*	1/3 years	Composite
Total Phosphorus	NL	*	1/3 years	Composite

Total Potassium	NL	*	1/3 years	Composite
Moisture Content	NL	%	1/3 years	Composite

NL = No limit, this is a monitoring requirement only.

*Parameters for waste may be reported as a percent, as lbs/ton or lbs/1000 gallons, or as ppm where appropriate.

5. If waste from two or more poultry waste sources is commingled or stored then a sample that best represents the waste shall be used to calculate the nutrients available in the poultry waste for land application and shall be provided to the end-user of the waste.

6. Analysis of soil and waste shall be according to methods specified in the permittee's approved nutrient management plan.

7. All monitoring data required by Part III A shall be maintained on site in accordance with Part II B. Reporting of results to the department is not required; however, the monitoring results shall be made available to department personnel upon request.

B. Other requirements or special conditions.

1. Poultry waste storage facilities shall be designed and operated to (i) prevent point source discharges of pollutants to state waters except in the case of a storm event greater than the 25-year, 24-hour storm and (ii) provide adequate waste storage capacity to accommodate periods when the ground is ice covered, snow covered or saturated, periods when land application of nutrients should not occur due to limited or nonexistent crop nutrient uptake, and periods when physical limitations prohibit the land application of waste.

2. Poultry waste shall be stored according to the approved nutrient management plan and in a manner that prevents contact with surface water and ground water. Poultry waste that is stockpiled outside for more than 14 days shall be kept in a facility or at a site that provides adequate storage. Adequate storage shall, at a minimum, include the following:

- a. Poultry waste shall be covered to protect it from precipitation and wind;
- b. Storm water shall not run onto or under the stored poultry waste; [~~and~~]
- c. A minimum of two feet separation distance to the seasonal high water table or an impermeable barrier shall be used under the stored poultry waste. All poultry waste storage facilities that use an impermeable barrier shall maintain a minimum of one foot separation between the seasonal high water table and the impermeable barrier. "Seasonal high water table" means that portion of the soil profile where a color change has occurred in the soil as a result of saturated soil conditions or where soil concretions have formed. Typical colors are gray

mottlings, solid gray, or black. The depth in the soil at which these conditions first occur is termed the seasonal high water table. Impermeable barriers must be constructed of at least 12 inches of compacted clay, at least four inches of reinforced concrete, or another material of similar structural integrity that has a minimum permeability rating of 0.0014 inches per hour (1X10⁻⁶ centimeters per second) [- ; and]

d. For poultry waste that is not stored under roof, the storage site must be at least 100 feet from any surface water, intermittent drainage, wells, sinkholes, rock outcrops, and springs.

3. Poultry waste storage facilities constructed after December 1, 2000, shall not be located within a 100-year floodplain unless there is no land available outside the floodplain on which to construct the facility and the facility is constructed so that the poultry waste is stored above the 100-year flood elevation or otherwise protected from floodwaters through the construction of berms or similar best management flood control structures.

4. When a poultry waste end-user or poultry waste broker receives, possesses, or has control over more than 10 tons of transferred poultry waste in any 365-day period, he shall provide the person from whom he received the poultry waste with:

- a. The end-user or broker name, address, and permit number;
- b. If the recipient of the poultry waste is an end-user, then he shall also provide the person from whom he received the poultry waste the following information:
 - (1) The locality in which the recipient intends to utilize the waste (i.e., nearest town or city and zip code);
 - (2) The name of the stream or waterbody if known to the recipient that is nearest to the waste utilization or storage site; [and]
- c. Written acknowledgement of receipt of:
 - (1) The waste;
 - (2) The nutrient analysis of the waste; and
 - (3) The fact sheet.

If the person receiving the waste is a poultry waste broker, then he shall also certify in writing that he will provide a copy of the nutrient analysis and fact sheet to each end user to whom he transfers poultry waste.

Regulations

5. When a poultry waste broker transfers or hauls poultry waste to other persons, he shall provide the person who received the poultry waste with:

- a. Broker name, address, and permit number;
- b. The nutrient analysis of the waste; and
- c. A fact sheet.

6. When a poultry waste end-user or poultry waste broker is a recipient of more than 10 tons of transferred poultry waste in any 365-day period, the poultry waste end-user or poultry waste broker shall keep a record regarding the transferred poultry waste:

a. The following items shall be recorded regarding the source of the transferred poultry waste:

- (1) The source name and address;
- (2) The amount of poultry waste received from the source; and
- (3) The date the poultry waste was acquired.

b. The following items shall be recorded regarding the recipient of the transferred poultry waste:

- (1) The recipient name and address;
- (2) The amount of poultry waste received by the person;
- (3) The date of the transaction;
- (4) The nutrient content of the waste;
- (5) The locality in which the recipient intends to utilize the waste (i.e., nearest town or city and zip code);
- (6) The name of the stream or waterbody if known to the recipient that is nearest to the waste utilization or storage site; and
- (7) The signed waste transfer records form acknowledging the receipt of the following:

- (a) The waste;
- (b) The nutrient analysis of the waste; and
- (c) A fact sheet.

7. End-users or brokers shall maintain the records required by Part III B 6 for at least three years after the transaction and make them available to department personnel upon request.

8. If poultry waste is also generated by this facility it shall not be applied to fields owned by or under the operational control of either the permittee or a legal entity in which the permittee has an ownership interest unless the fields are included in the permittee's approved nutrient management plan.

9. Poultry feeding operations that use disposal pits for routine disposal of daily mortalities shall not be covered under this general permit. The use of a disposal pit for routine disposal of daily poultry mortalities by a permittee shall be ~~considered~~ a violation of this permit. This prohibition does not apply to the emergency disposal of dead poultry done according to regulations adopted pursuant to § 3.2-6002 of the Code of Virginia or Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia.

10. The permittee shall implement a nutrient management plan (NMP) developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia and approved by the Department of Conservation and Recreation and maintain the plan on site. ~~All NMP's written after December 31, 2005, shall be developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia.~~ The [terms of the] NMP shall be enforceable through this permit. The NMP shall contain at a minimum the following information:

- a. Site map indicating the location of the waste storage facilities and the fields where waste will be applied by the permittee. The location of fields as identified in Part III B 8 shall also be included;
- b. Site evaluation and assessment of soil types and potential productivities;
- c. Nutrient management sampling including soil and waste monitoring;
- d. Storage and land area requirements for the permittee's poultry waste management activities;
- e. Calculation of waste application rates; and
- f. Waste application schedules.

11. When the poultry waste storage facility is no longer needed, the permittee shall close it in a manner that: (i) minimizes the need for further maintenance and (ii) controls, minimizes, or eliminates, to the extent necessary to protect human health and the environment, the postclosure escape of uncontrolled leachate, surface runoff, or waste decomposition products to the ground water, surface water, or the atmosphere. At closure, the permittee shall remove all poultry waste residue from the waste storage facility. At waste storage facilities without permanent covers and impermeable ground barriers, all residual poultry waste shall be removed from the surface below the stockpile when the poultry waste is taken out of storage. Removed waste materials shall be utilized according to the NMP.

12. Nitrogen application rates contained in the NMP shall ~~not exceed crop nutrient needs as determined by the Department of Conservation and Recreation be established [as stipulated in regulations promulgated pursuant to~~

~~§ 10.1-104.2 of the Code of Virginia~~ in accordance with 4VAC5-15-150 A 2]. The application of poultry waste shall be managed to minimize runoff, leachate, and volatilization losses, and reduce adverse water quality impacts from nitrogen.

13. Phosphorus application rates ~~shall conform solely to the Department of Conservation and Recreation's regulatory criteria and standards in effect at the time the NMP is written~~ contained in the NMP shall be established [~~as stipulated in regulations promulgated pursuant to § 10.1-104.2 of the Code of Virginia in accordance with 4VAC5-15-150 A 2~~]. The application of poultry waste shall be managed to minimize runoff and leaching and reduce adverse water quality impacts from phosphorous.

14. The timing of land application of poultry waste shall be according to the schedule contained in the NMP, except that no waste may be applied to ice [covered] or snow covered ground or to soils that are saturated. Poultry waste may be applied to frozen ground within the NMP scheduled times only under the following conditions:

- a. Slopes are not greater than 6.0%;
- b. A minimum of a 200-foot vegetative or adequate crop residue buffer is maintained between the application area and all surface water courses;
- c. Only those soils characterized by USDA as "well drained" with good infiltration are used; and
- d. At least 60% uniform cover by vegetation or crop residue is present in order to reduce surface runoff and the potential for leaching of nutrients to ground water.

15. Poultry waste shall not be land applied within buffer zones. Buffer zones at waste application sites shall, at a minimum, be maintained as follows:

- a. Distance from occupied dwellings not on the permittee's property: 200 feet (unless the occupant of the dwelling signs a waiver of the buffer zone);
- b. Distance from water supply wells or springs: 100 feet;
- c. Distance from surface water courses: 100 feet (without a permanent vegetated buffer) or 35 feet (if a permanent vegetated buffer exists). Other site-specific conservation practices may be approved by the department that will provide pollutant reductions equivalent or better than the reductions that would be achieved by the 100-foot buffer;
- d. Distance from rock outcropping (except limestone): 25 feet;
- e. Distance from limestone outcroppings: 50 feet; and
- f. Waste shall not be applied in such a manner that it would discharge to sinkholes that may exist in the area.

16. The following records shall be maintained:

- a. The identification of the land application field sites where the waste is utilized or stored;
- b. The application rate;
- c. The application dates; and
- d. What crops have been planted.

These records shall be maintained on site for a period of three years after recorded application is made and shall be made available to department personnel upon request.

17. Each poultry waste end-user or poultry waste broker covered by this general permit shall complete a training program offered or approved by the department within one year of filing the registration statement for general permit coverage. All [permitted] poultry waste end-users or [permitted] poultry waste brokers shall complete a training program at least once every five years.

9VAC25-630-80. Utilization and storage requirements for transferred poultry waste.

A. Any poultry waste end-user or poultry waste broker who receives poultry waste shall comply with the requirements outlined in the following sections.

B. Storage requirements. Any poultry waste end-user or poultry waste broker who receives poultry waste shall comply with the requirements outlined in this section regarding storage of poultry waste in their possession or under their control.

1. Poultry waste shall be stored in a manner that prevents contact with surface water and ground water. Poultry waste that is stockpiled outside for more than 14 days shall be kept in a facility or at a site that provides adequate storage. Adequate storage shall, at a minimum, include the following:

- a. Poultry waste shall be covered to protect it from precipitation and wind;
- b. Storm water shall not run onto or under the stored poultry waste;
- c. A minimum of two feet separation distance to the seasonal high water table or an impermeable barrier shall be used under the stored poultry waste. All poultry waste storage facilities that use an impermeable barrier shall maintain a minimum of one foot separation between the seasonal high water table and the impermeable barrier. "Seasonal high water table" means that portion of the soil profile where a color change has occurred in the soil as a result of saturated soil conditions or where soil concretions have formed. Typical colors are gray mottlings, solid gray, or black. The depth in the soil at which these conditions first occur is termed the seasonal high water table. Impermeable barriers shall be constructed of at least 12 inches of compacted clay, at

Regulations

least four inches of reinforced concrete, or another material of similar structural integrity that has a minimum permeability rating of 0.0014 inches per hour (1X10⁻⁶ centimeters per second); and

d. For poultry waste that is not stored under roof, the storage site must be at least 100 feet from any surface water, intermittent drainage, wells, sinkholes, rock outcrops, and springs.

2. Poultry waste storage facilities constructed after December 1, 2000, shall not be located within a 100-year floodplain unless there is no land available outside the floodplain on which to construct the facility and the facility is constructed so that the poultry waste is stored above the 100-year flood elevation or otherwise protected from floodwaters through the construction of berms or similar best management flood control structures.

C. Land application requirements. Any poultry waste end-user or poultry waste broker who (i) receives five or more tons of poultry waste in any 365-day period and (ii) land applies poultry waste shall follow appropriate land application requirements as outlined in this section. The application of poultry waste shall be managed to minimize adverse water quality impacts.

1. The maximum application rates can be established by the following methods:

a. Phosphorus crop removal application rates can be used when:

(1) Soil test phosphorus levels do not exceed the values listed in the table below:

Region	Soil test P (ppm) VPI & SU Soil test (Mehlich I) *
Eastern Shore and Lower Coastal Plain	135
Middle and Upper Coastal Plain and Piedmont	136
Ridge and Valley	162
* If results are from another laboratory the Department of Conservation and Recreation approved conversion factors must be used.	

(2) The phosphorus crop removal application rates are set forth by regulations promulgated by the Department of Conservation and Recreation in accordance with § 10.1-104.2 of the Code of Virginia.

b. Poultry waste may be applied to any crop at the standard rate of 1.5 tons per acre once every three years when:

(1) In the absence of current soil sample analyses and recommendations; and

(2) Nutrients have not been supplied by an organic source, other than pastured animals, to the proposed land application sites within the previous three years of the proposed land application date of poultry waste.

c. Soil test recommendations can be used when:

(1) Accompanied by analysis results for soil tests that have been obtained from the proposed field or fields in the last three years;

(2) ~~Provided by a laboratory whose procedures and recommendations are approved by the Department of Conservation and Recreation~~ The analytical results are from procedures in accordance with 4VAC5-15-150 A 2 f; and

(3) Nutrients from the waste application do not exceed the nitrogen or phosphorus recommendations for the proposed crop or double crops ~~listed on the soil test recommendation~~ [. The recommendations shall be] in accordance with [4VAC5-15-150 A 2 4VAC5-15-150 A 2 a].

d. A nutrient management plan developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia.

2. The timing of land application of poultry waste shall be appropriate for the crop, and in accordance with ~~regulations promulgated by the Department of Conservation and Recreation in accordance with § 10.1-104.2 of the Code of Virginia~~ 4VAC5-15-150 A 4, except that no waste may be applied to ~~[ice covered or snow covered~~ ice covered or snow covered] ground or to soils that are saturated. Poultry waste may be applied to frozen ground under the following conditions:

a. Slopes are not greater than 6.0%;

b. A minimum of a 200-foot vegetative or adequate crop residue buffer is maintained between the application area and all surface water courses;

c. Only those soils characterized by USDA as "well drained" with good infiltration are used; and

d. At least 60% uniform cover by vegetation or crop residue is present in order to reduce surface runoff and the potential for leaching of nutrients to ground water.

3. Poultry waste shall not be land applied within buffer zones. Buffer zones at waste application sites shall, at a minimum, be maintained as follows:

a. Distance from occupied dwellings: 200 feet (unless the occupant of the dwelling signs a waiver of the buffer zone);

b. Distance from water supply wells or springs: 100 feet;

c. Distance from surface water courses: 100 feet (without a permanent vegetated buffer) or 35 feet (if a permanent vegetated buffer exists). Other site-specific conservation practices may be approved by the department that will provide pollutant reductions equivalent or better than the reductions that would be achieved by the 100-foot buffer;

d. Distance from rock outcropping (except limestone): 25 feet;

e. Distance from limestone outcroppings: 50 feet; and

f. Waste shall not be applied in such a manner that it would discharge to sinkholes that may exist in the area.

D. Poultry waste end-users ~~or~~ and poultry waste brokers shall maintain the records demonstrating compliance with the requirements of subsections B and C for at least three years and make them available to department personnel upon request.

E. The activities of the poultry waste end-user or poultry waste broker shall not contravene the Water Quality Standards, as amended and adopted by the board, or any provision of the State Water Control Law (§ 62.1-44 et seq. of the Code of Virginia).

F. Any duly authorized agent of the board may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this regulation.

[FORMS (9VAC25-630)

~~Registration Statement, VPA General Permit for Poultry Waste Management for Poultry Waste End Users and Brokers, RS VPG2 (rev. 12/09).~~

~~Virginia DEQ Registration Statement for VPA General Permit for Poultry Waste Management for Poultry Growers, RS VPG2.~~

[Virginia DEQ Registration Statement for VPA General Permit for Poultry Waste Management for Poultry Growers, RS VPG2 \(rev. 07/10\)](#)

[Virginia DEQ Registration Statement for VPA General Permit for Poultry Waste Management for Poultry Waste End-Users and Poultry Waste Brokers, RS End Users/Brokers VPG2 \(rev. 07/10\)](#)

[Fact Sheet, Requirements for Poultry Litter Use and Storage \(rev. 12/10\) \]](#)

VA.R. Doc. No. R09-2006; Filed October 5, 2010, 1:25 p.m.

Proposed Regulation

Title of Regulation: **9VAC25-800. Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Discharges Resulting from the Application of Pesticides to Surface Waters ((adding 9VAC25-800-10 through 9VAC25-800-60).**

Statutory Authority: § 62.1-44.15 of the Code of Virginia; § 402 of the Clean Water Act (33 USC § 1251 et seq.).

Public Hearing Information:

November 16, 2010 - 7 p.m. - Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA

November 18, 2010 - 7 p.m. - Department of Environmental Quality, Blue Ridge Regional Office, 3019 Peters Creek Road, Roanoke, VA

December 7, 2010 - 3 p.m. - Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA

Public Comment Deadline: December 27, 2010.

Agency Contact: William K. Norris, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4022, FAX (804) 698-4347, or email william.norris@deq.virginia.gov.

Summary:

The proposed regulation develops and issues a Virginia Pollutant Discharge Elimination System (VPDES) general permit for discharges from pesticides applied directly to surface waters to control pests, or applied to control pests that are present in or over, including near, surface waters. The general permit regulation is needed to comply with court-ordered requirements for the federal Environmental Protection Agency (EPA) and states to issue national pollutant discharge elimination system (NPDES) permits for both chemical pesticide applications that leave a residue or excess in water and all biological pesticide applications that are made in or over, including near, waters of the United States.

Since the court ruling, EPA collected and analyzed data on pesticide applications, including labeling requirements, pesticide uses, best management practices employed to minimize the impact of pesticides on water quality, and existing state water quality standards for pesticides. EPA proposed a NPDES pesticides general permit, issued by EPA, for areas where EPA remains the NPDES permitting authority and for Virginia and other delegated NPDES states to use in drafting their permit.

The following pesticide uses will be covered under the general permit per the court order for operators that apply pesticides in or near water: (i) mosquito and other flying insect pest control, (ii) aquatic weed and algae control,

Regulations

(iii) aquatic animal pest control, and (iv) forest canopy pest control.

The proposed regulation generally follows EPA's proposed pesticide general permit with (i) definitions, (ii) eligibility requirements (authorizations to discharge), (iii) technology effluent limitations (integrated pest management considerations), (iv) water quality based limitations, (v) monitoring requirements, (vi) pesticide discharge monitoring plan, (vii) corrective actions, (viii) adverse incident and spills and leaks reporting, (ix) recordkeeping and annual reporting requirements, and (x) conditions applicable to all permits. However, the EPA proposed general permit was adjusted for Virginia users for clarification, flexibility, and ease of implementation. No regulation currently exists for this permit.

CHAPTER 800

VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM (VPDES) GENERAL PERMIT FOR DISCHARGES RESULTING FROM THE APPLICATION OF PESTICIDES TO SURFACE WATERS

9VAC25-800-10. Definitions.

The words and terms used in this chapter shall have the same meanings as given in the State Water Control Law (§ 62.1-44.2 et seq. 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:

"Action threshold" means the point at which pest populations or environmental conditions can no longer be tolerated necessitating that pest control action be taken based on economic, human health, aesthetic, or other effects. Sighting a single pest does not always mean control is needed. Action thresholds help determine both the need for control actions and the proper timing of such actions. Action thresholds are site specific and part of integrated pest management decisions.

"Active ingredient" means any substance (or group of structurally similar substances if specified by the federal Environmental Protection Agency (EPA) that will prevent, destroy, repel, or mitigate any pest, or that functions as a plant regulator, desiccant, or defoliant within the meaning of § 2 (a) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) (7 USC § 136 et seq.). Active ingredient also means a pesticidal substance that is intended to be produced and used in a living plant, or in the produce thereof, and the genetic material necessary for the production of such a pesticidal substance.

"Adverse incident" means an incident that the operator observes upon inspection or of which otherwise becomes aware, in which there is evidence that:

1. A person or nontarget organism has likely been exposed to a pesticide residue; and

2. The person or nontarget organism suffered a toxic or adverse effect.

The phrase "toxic or adverse effects" includes effects that occur within surface waters on nontarget plants, fish, or wildlife that are unusual or unexpected as a result of exposure to a pesticide residue and may include any of the following:

1. Distressed or dead juvenile and small fishes;

2. Washed up or floating fish;

3. Fish swimming abnormally or erratically;

4. Fish lying lethargically at water surface or in shallow water;

5. Fish that are listless or nonresponsive to disturbance;

6. Stunting, wilting, or desiccation of nontarget submerged or emergent aquatic plants; and

7. Other dead or visibly distressed nontarget aquatic or semi-aquatic organisms (amphibians, turtles, invertebrates, etc.).

The phrase "toxic or adverse effects" also includes any adverse effects to humans (e.g., skin rashes), domesticated animals or wildlife (e.g., vomiting, lethargy) that occur either directly or indirectly from a discharge to surface waters that are temporally and spatially related to exposure to a pesticide residue.

"Best management practices" or "BMPs" means, for purposes of this chapter, schedules of activities, prohibitions of practices, maintenance procedures, preventative practices (pre-emergent applications) and other management practices to prevent or reduce the pollution of surface waters. BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spillage, or leaks.

"Biological control" means organisms that can be introduced to sites, such as herbivores, predators, parasites, and hyperparasites.

"Biological pesticides" or "biopesticides" include microbial pesticides, biochemical pesticides, and plant-incorporated protectants (PIP).

1. "Microbial pesticide" means a microbial agent intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, that:

a. Is a eucaryotic microorganism, including but not limited to protozoa, algae, and fungi;

b. Is a procaryotic microorganism, including but not limited to Eubacteria and Archaeobacteria; or

c. Is a parasitically replicating microscopic element, including but not limited to viruses.

2. "Biochemical pesticide" means a pesticide that:

a. Is a naturally occurring substance or structurally similar and functionally identical to a naturally occurring substance;

b. Has a history of exposure to humans and the environment demonstrating minimal toxicity, or in the case of a synthetically derived biochemical pesticide, is equivalent to a naturally occurring substance that has such a history; and

c. Has a nontoxic mode of action to the target pest(s).

3. "Plant-incorporated protectant" means a pesticidal substance that is intended to be produced and used in a living plant, or in the produce thereof, and the genetic material necessary for production of such a pesticidal substance. It also includes any inert ingredient contained in the plant or produce thereof.

"Chemical pesticides" means all pesticides not otherwise classified as biological pesticides.

"Control measure" means any best management practice (BMP) or other method used to meet the effluent limitations in this permit. Control measures must comply with label directions and relevant legal requirements. Additionally, control measures could include other actions, including nonchemical tactics (e.g., cultural methods), that a prudent operator would implement to reduce or eliminate discharges resulting from pesticide application to surface waters to comply with the effluent limitations in this permit.

"Cultural methods" means manipulation of the habitat to increase pest mortality by making the habitat less suitable to the pest.

"Declared pest emergency situation" means an event defined by a public declaration by a federal agency, state, or local government of a pest problem determined to require control through application of a pesticide beginning less than 10 days after identification of the need for pest control. This public declaration may be based on:

1. Significant risk to human health;

2. Significant economic loss; or

3. Significant risk to:

a. Endangered species;

b. Threatened species;

c. Beneficial organisms; or

d. The environment.

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

"Discharge of a pollutant" means, for purposes of this chapter, any addition of any "pollutant" or combination of pollutants to surface waters from any point source, or any addition of any pollutant or combination of pollutants to the water of the contiguous zone or the ocean from any point source.

"FIFRA" means the Federal Insecticide, Fungicide and Rodenticide Act (7 USC § 136 et seq.) as amended.

"Impaired water" or "water quality impaired water" or "water quality limited segment" means any stream segment where the water quality does not or will not meet applicable water quality standards, even after the application of technology-based effluent limitations required by §§ 301(b) and 306 of the Clean Water Act (CWA) (33 USC § 1251 et seq. as of 1987). Impaired waters include both impaired waters with approved or established TMDLs, and impaired waters for which a TMDL has not yet been approved or established.

"Inert ingredient" means any substance (or group of structurally similar substances if designated by EPA), other than an active ingredient, that is intentionally included in a pesticide product. Inert ingredient also means any substance, such as a selectable marker, other than the active ingredient, where the substance is used to confirm or ensure the presence of the active ingredient, and includes the genetic material necessary for the production of the substance, provided that genetic material is intentionally introduced into a living plant in addition to the active ingredient.

"Integrated pest management" or "IPM" means an effective and environmentally sensitive approach to pest management that relies on a combination of common-sense practices. IPM uses current, comprehensive information on the life cycles of pests and their interaction with the environment. This information, in combination with available pest control methods, is used to manage pest damage by the most economical means, and with the least possible hazard to people, property, and the environment.

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

"Labeling" means all labels and other written, printed, or graphic matter:

1. Upon the pesticide or device or any of its containers or wrappers;

2. Accompanying the pesticide or device at any time; or

3. To which reference is made on the label or in literature accompanying the pesticide or device, except when accurate, nonmisleading reference is made to current official publications of the agricultural experiment station, the Virginia Polytechnic Institute and State University, the

Regulations

Virginia Department of Agriculture and Consumer Services, the State Board of Health, or similar federal institutions or other official agencies of the Commonwealth or other states when such states are authorized by law to conduct research in the field of pesticides.

"Mechanical/physical methods" means mechanical tools or physical alterations of the environment, for pest prevention or removal.

"Minimize" means to reduce or eliminate pesticide discharges to surface waters through the use of control measures to the extent technologically available and economically practicable and achievable.

"Nontarget organisms" means any organisms that are not the target of the pesticide.

"Operator" means, for purposes of this chapter, any person involved in the application of a pesticide that results in a discharge to state waters that meets either or both of the following two criteria:

1. The person has control over the financing for or the decision to perform pesticide applications that result in discharges, including the ability to modify those decisions; or

2. The person has day-to-day control of or performs activities that are necessary to ensure compliance with the permit (e.g., they are authorized to direct workers to carry out activities required by the permit or perform such activities themselves).

"Person" means, for purposes of this chapter, an individual; a corporation; a partnership; an association; a local, state, or federal governmental body; a municipal corporation; or any other legal entity.

"Pest" means any deleterious organism that is:

1. Any vertebrate animal other than man;

2. Any invertebrate animal excluding any internal parasite of living man or other living animals;

3. Any plant growing where not wanted, and any plant part such as a root; or

4. Any bacterium, virus, or other microorganisms (except for those on or in living man or other living animals and those on or in processed food or processed animal feed, beverages, drugs as defined by the federal Food, Drug, and Cosmetic Act at 21 USC § 321(g)(1), and cosmetics as defined by the federal Food, Drug, and Cosmetic Act at 21 USC § 321(i)).

Any organism classified as endangered, threatened, or otherwise protected under federal or state laws shall not be deemed a pest for the purposes of this chapter.

"Pest management area" means the area of land, including any water, for which pest management activities covered by this permit are conducted.

"Pesticide" means:

1. Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, fungi, bacteria, weeds, or other forms of plant or animal life or viruses, except viruses on or in living man or other animals, which the Commissioner of Agriculture and Consumer Services shall declare to be a pest;

2. Any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; and

3. Any substance which is intended to become an active ingredient thereof.

Pesticides that are used or applied shall only be those that are approved and registered for use by the Virginia Department of Agriculture and Consumer Services.

"Pesticide product" means a pesticide in the particular form (including active and inert ingredients, packaging, and labeling) in which the pesticide is, or is intended to be, distributed or sold. The term includes any physical apparatus used to deliver or apply the pesticide if distributed or sold with the pesticide.

"Pesticide research and development" means activities undertaken on a systematic basis to gain new knowledge (research) or the application of research findings or other scientific knowledge for the creation of new or significantly improved products or processes (experimental development). These types of activities are generally categorized under 5417 under the 2007 North American Industry Classification System (NAICS).

"Pesticide residue" includes that portion of a pesticide application that has been discharged from a point source to surface waters and no longer provides pesticidal benefits. It also includes any degradates of the pesticide.

"Point source" means, for purposes of this chapter, any discernible, confined, and discrete conveyance including, but not limited to, any pipe, ditch, channel, tunnel, conduit, or container from which pollutants are or may be discharged. This includes biological pesticides or pesticide residuals coming from a container or nozzle of a pesticide application device. This term does not include return flows from irrigated agriculture or agricultural storm water run-off.

"Pollutant" means, for purposes of this chapter, biological pesticides and any pesticide residue resulting from use of a chemical pesticide.

"Surface waters" means:

1. All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign

commerce, including all waters that are subject to the ebb and flow of the tide;

2. All interstate waters, including interstate wetlands;

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

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

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

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

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

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

6. The territorial sea; and

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

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

"Target pest" means the organism toward which pest control measures are being directed.

"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.

"Treatment area" means the area of land including any waters, or the linear distance along water's edge, to which pesticides are being applied. Multiple treatment areas may be located within a single pest management area.

Treatment area includes the entire area, whether over land or water, where the pesticide application is intended to provide pesticidal benefits. In some instances, the treatment area will

be larger than the area where pesticides are actually applied. For example, the treatment area for a stationary drip treatment into a canal should be calculated by multiplying the width of the canal by the length over which the pesticide is intended to control weeds. The treatment area for a lake or marine area is the water surface area where the application is intended to provide pesticidal benefits.

Treatment area calculations for pesticide applications that occur at water's edge, where the discharge of pesticides directly to waters is unavoidable, are determined by the linear distance over which pesticides are applied. For example, treating both sides of a five-mile-long river, stream, or ditch is equal to 10 miles of treatment area. Treating five miles of shoreline or coast would equal a five-mile treatment area.

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

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

9VAC25-800-20. Purpose; delegation of authority; effective date of permit.

A. This general permit regulation governs discharges resulting from the application of pesticides to surface waters.

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 April 10, 2011, and expire on June 30, 2013.

9VAC25-800-30. Authorization to discharge.

A. Any operator that meets the eligibility requirements in subsection B of this section is hereby authorized for his discharges resulting from the application of pesticides to surface waters of the Commonwealth of Virginia.

The definition of operator in 9VAC25-800-10 provides that more than one person may be responsible for the same discharge resulting from pesticide application. Any operator authorized to discharge under this general permit is responsible for compliance with the terms of this permit for discharges resulting from the application of pesticides.

B. Eligibility. This permit is available to operators who discharge to surface waters from the application of (i) biological pesticides, or (ii) chemical pesticides that leave a residue (hereinafter collectively "pesticides"), when the pesticide application is for one of the following pesticide use patterns:

Regulations

1. Mosquito and other flying insect pest control - to control public health/nuisance and other flying insect pests that develop or are present during a portion of their life cycle in or above standing or flowing water. Public health/nuisance and other flying insect pests in this use category include, but are not limited to, mosquitoes and black flies.

2. Aquatic weed and algae control - to control invasive or other aquatic (emergent, floating or submerged) nuisance weeds and algae in surface waters. Aquatic nuisance weeds include, but are not limited to, cattails, hydrilla, and watermeal.

3. Aquatic animal pest control - to control aquatic invasive or other aquatic animal pests in surface waters. Aquatic animal pests in this use category include, but are not limited to, fish (e.g., snakehead) and zebra mussels.

4. Forest canopy pest control - aerial application of a pesticide over a forest canopy to control the population of a pest species (e.g., insect or pathogen) where to target the pests effectively a portion of the pesticide unavoidably will be applied over and deposited to surface water.

C. Operators applying pesticides are required to maintain a pesticide discharge management plan (PDMP) if they exceed the annual treatment area thresholds in Table 1 of this subsection:

Table 1. Annual Treatment Area Thresholds

<u>Pesticide Use</u>	<u>Annual Threshold</u>
<u>Mosquitoes and Other Flying Insect Pests</u>	<u>640 acres of treatment area</u>
<u>Aquatic Weed and Algae Control:</u>	
<u>- In Water</u>	<u>20 acres of treatment area¹</u>
<u>- At Water's Edge</u>	<u>20 linear miles of treatment area at water's edge²</u>
<u>Aquatic Animal Pest Control:</u>	
<u>- In Water</u>	<u>20 acres of treatment area¹</u>
<u>- At Water's Edge</u>	<u>20 linear miles of treatment area at water's edge²</u>
<u>Forest Canopy Pest Control</u>	<u>640 acres of treatment area</u>

¹ Calculations include the area of the applications made to: (i) surface waters and (ii) conveyances with a hydrologic surface connection to surface waters at the time of pesticide application. For calculating annual treatment area totals, count each pesticide application activity as a separate activity. For example, applying pesticides twice a year to a 10 acre site is counted as 20 acres of treatment area.

² Calculation include the linear extent of the application made along the water's edge adjacent to: (i) surface waters and (ii) conveyances with a hydrologic surface connection to surface waters at the time of pesticide application. For calculating

annual treatment totals, count each pesticide application activity and each side of a linear water body as a separate activity or area. For example, treating both sides of a 10 mile ditch is equal to 20 miles of water treatment area.

D. An operator's discharge resulting from the application of pesticides is not authorized under this permit in the event of any of the following:

1. The operator is required to obtain an individual VPDES permit in accordance with 9VAC25-31-170 B 3 of the VPDES Permit Regulation.

2. The discharge would violate the antidegradation policy stated in 9VAC25-260-30 of the Virginia Water Quality Standards. Discharges resulting from the application of pesticides are temporary and allowable in exceptional waters (see 9VAC25-260-30 A 3 (b) (3)).

3. The operator is proposing a discharge from a pesticide application to surface waters that have been identified as impaired by that pesticide or its degradates. Impaired waters include both impaired waters with board-adopted, EPA-approved or EPA-imposed TMDLs, and impaired waters for which a TMDL has not yet been approved, established, or imposed.

If the proposed discharge would not be eligible for coverage under this permit because the surface water is listed as impaired for that specific pesticide, but the applicant has evidence that shows the water is no longer impaired, the applicant may submit this information to the board and request that coverage be allowed under this permit.

E. Discharge authorization date. Operators are not required to submit a registration statement and are authorized to discharge under this permit immediately upon the permit's effective date of April 10, 2011.

F. 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 operator of the responsibility to comply with any other applicable federal, state, or local statute, ordinance, or regulation. For example, this permit does not negate the requirements under FIFRA and its implementing regulations to use registered pesticides consistent with the product's labeling.

G. Continuation of permit coverage.

1. This general permit shall expire on June 30, 2013, except that the conditions of the expired pesticides general permit will continue in force for an operator until coverage is granted under a reissued pesticides general permit if the board, through no fault of the operator, does not reissue a pesticides general permit on or before the expiration date of the expiring general permit.

2. General permit coverages continued under this section remain fully effective and enforceable.

3. When the operator that was covered under the expiring or expired pesticides 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 pesticides general permit that has been continued;

b. Issue a notice of intent to deny coverage under a reissued pesticides general permit. If the general permit coverage is denied, the operator 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).

9VAC25-800-40. Registration statement.

Operators are not required to submit a registration statement to apply for coverage under this general VPDES permit for discharges resulting from the application of pesticides to surface waters.

9VAC25-800-50. Termination of permit coverage.

Operators are not required to submit a notice of termination to terminate permit coverage under this general VPDES permit for discharges resulting from the application of pesticides to surface waters.

9VAC25-800-60. General permit.

Any operator who is authorized to discharge shall comply with the requirements contained herein and be subject to all requirements of 9VAC25-31-170.

General Permit No.: VAGxx
Effective Date: April 10, 2011
Expiration Date: June 30, 2013

GENERAL PERMIT FOR DISCHARGES RESULTING FROM THE APPLICATION OF PESTICIDES TO SURFACE WATERS OF VIRGINIA

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, operators that apply pesticides that result in a discharge to surface waters are authorized to discharge to

surface waters within the boundaries of the Commonwealth of Virginia.

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. Coverage under this general VPDES permit does not relieve any operator of the responsibility to comply with any other applicable federal, state, or local statute, ordinance, or regulation, including the pesticide product label.

Part I

Effluent Limitations, Monitoring Requirements, and Special Conditions

A. Effluent limitations.

1. Technology-based effluent limitations. To meet the effluent limitations in this permit, the operator shall implement site-specific control measures that minimize discharges of pesticides to surface waters.

a. Minimize pesticide discharges to surface waters. All operators shall minimize the discharge of pollutants resulting from the application of pesticides, and:

(1) Use the lowest effective amount of pesticide product per application and optimum frequency of pesticide applications necessary to control the target pest, consistent with reducing the potential for development of pest resistance without exceeding the maximum allowable rate of the product label;

(2) No person shall apply, dispense, or use any pesticide in or through any equipment or application apparatus unless the equipment or apparatus is in sound mechanical condition and capable of satisfactory operation. All pesticide application equipment shall be properly equipped to dispense the proper amount of material. All pesticide mixing, storage, or holding tanks, whether on application equipment or not, shall be leak proof. All spray distribution systems shall be leak proof, and any pumps that these systems may have shall be capable of operating at sufficient pressure to assure a uniform and adequate rate of pesticide application; and

(3) All pesticide application equipment shall be equipped with cut-off valves and discharge orifices to enable the operator to pass over non-target areas without contaminating them. All hoses, pumps, or other equipment used to fill pesticide handling, storage, or application equipment shall be fitted with an effective valve or device to prevent backflow into water supply systems, streams, lakes, other sources of water, or other materials. However, these backflow devices or valves are not required for separate water storage tanks used to fill pesticide application equipment by gravity systems when the fill spout, tube, or pipe is not allowed to contact or

Regulations

fall below the water level of the application equipment being filled, and no other possible means of establishing a back siphon or backflow exists.

b. Integrated pest management (IPM) practices. The operator shall implement integrated pest management practices to ensure that discharges resulting from the application of pesticides to surface waters are minimized. Operators that exceed the annual treatment area thresholds established in 9VAC25-800-30 C are also required to maintain a pesticide discharge management plan (PDMP) in accordance with Part 1 C of this permit. The PDMP documents the operator's IPM practices.

The operator's IPM practices shall consider the following for each pesticide use pattern:

(Note: If the operator's discharge of pollutants results from the application of a pesticide that is being used solely for the purpose of "pesticide research and development," as defined in 9VAC25-800-10, the operator is only required to fully implement IPM practices to the extent that the requirements do not compromise the research design.)

(1) Mosquito and other flying insect pest control. This subpart applies to discharges resulting from the application of pesticides to control public health/nuisance and other flying insect pests that develop or are present during a portion of their life cycle in or above standing or flowing water. Public health/nuisance and other flying insect pests in this use category include, but are not limited to, mosquitoes and black flies.

(a) Identify the problem. Prior to the first pesticide application covered under this permit that will result in a discharge to surface waters, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, the operator shall consider the following for each pest management area:

(i) Identify target mosquito or flying insect pests;

(ii) Establish densities for larval and adult mosquito or flying insect pest populations to serve as action thresholds for implementing pest management strategies;

(iii) Identify known breeding sites for source reduction, larval control program, and habitat management; and

(iv) Analyze existing surveillance data to identify new or unidentified sources of mosquito or flying insect pest problems as well as sites that have recurring pest problems.

(b) Pest management. Prior to the first pesticide application covered under this permit that will result in a discharge to surface waters, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, the operator shall

select and implement for each pest management area efficient and effective means of pest management that minimize discharges resulting from application of pesticides to control mosquitoes or other flying insect pests. In developing these pest management strategies, the operator shall evaluate the following management options, considering impact to water quality, impact to nontarget organisms, pest resistance, feasibility, and cost effectiveness:

(i) No action;

(ii) Prevention;

(iii) Mechanical or physical methods;

(iv) Cultural methods;

(v) Biological control; and

(vi) Pesticides.

(c) Pesticide use. If a pesticide is selected to manage mosquitoes or flying insect pests and application of the pesticide will result in a discharge to surface waters, the operator shall:

(i) Conduct larval or adult surveillance prior to each pesticide application to assess the pest management area and to determine when action thresholds are met that necessitate the need for pest management;

(ii) Assess environmental conditions (e.g., temperature, precipitation, and wind speed) in the treatment area prior to each pesticide application to identify whether existing environmental conditions support development of pest populations and are suitable for control activities;

(iii) Reduce the impact on the environment and on nontarget organisms by applying the pesticide only when the action threshold has been met;

(iv) In situations or locations where practicable and feasible for efficacious control, use larvicides as a preferred pesticide for mosquito or flying insect pest control when larval action thresholds have been met; and

(v) In situations or locations where larvicide use is not practicable or feasible for efficacious control, use adulticides for mosquito or flying insect pest control when adult action thresholds have been met.

(2) Aquatic weed and algae control. This subpart applies to discharges resulting from the application of pesticides to control invasive or other aquatic (emergent, floating, or submerged) nuisance weeds and algae in surface waters. Aquatic nuisance weeds include, but are not limited to, cattails, hydrilla, and watermeal.

(a) Identify the problem. Prior to the first pesticide application covered under this permit that will result in a discharge to surface waters, and at least once each

calendar year thereafter prior to the first pesticide application for that calendar year, the operator shall consider the following for each pest management area:

(i) Identify target weed and algae;

(ii) Identify areas with aquatic weed or algae problems and characterize the extent of the problems, including, for example, water use goals not attained (e.g., wildlife habitat, fisheries, vegetation, and recreation);

(iii) Identify possible factors causing or contributing to the weed or algae problem (e.g., nutrients, invasive species, etc); and

(iv) Establish past or present aquatic weed or algae densities to serve as action thresholds for implementing pest management strategies.

(b) Pest management. Prior to the first pesticide application covered under this permit that will result in a discharge to surface waters, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, the operator shall select and implement, for each pest management area, efficient and effective means of pest management that minimize discharges resulting from application of pesticides to control aquatic weeds or algae. In developing these pest management strategies, the operator shall evaluate the following management options, considering impact to water quality, impact to nontarget organisms, pest resistance, feasibility, and cost effectiveness:

(i) No action;

(ii) Prevention;

(iii) Mechanical or physical methods;

(iv) Cultural methods;

(v) Biological control; and

(vi) Pesticides.

(c) Pesticide use. If a pesticide is selected to manage aquatic weeds or algae and application of the pesticide will result in a discharge to surface waters, the operator shall:

(i) Conduct surveillance prior to each pesticide application to assess the pest management area and to determine when the action threshold is met that necessitates the need for pest management; and

(ii) Reduce the impact on the environment and nontarget organisms by applying the pesticide only when the action threshold has been met.

(3) Aquatic animal pest control. This subpart applies to discharges resulting from the application of pesticides to control aquatic invasive or other aquatic animal pests in

surface waters. Aquatic animal pests in this use category include, but are not limited to, fish (e.g., snakehead) and zebra mussels.

(a) Identify the problem. Prior to the first pesticide application covered under this permit that will result in a discharge to surface waters, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, the operator shall consider the following for each pest management area:

(i) Identify target aquatic animal pests;

(ii) Identify areas with aquatic animal pest problems and characterize the extent of the problems, including, for example, water use goals not attained (e.g., wildlife habitat, fisheries, vegetation, and recreation);

(iii) Identify possible factors causing or contributing to the problem; and

(iv) Establish past or present aquatic animal pest densities to serve as action thresholds for implementing pest management strategies.

(b) Pest management. Prior to the first pesticide application covered under this permit that will result in a discharge to surface waters, and at least once each year thereafter prior to the first pesticide application during that calendar year, the operator shall select and implement, for each pest management area, efficient and effective means of pest management that minimize discharges resulting from application of pesticides to control aquatic animal pests. In developing these pest management strategies, the operator shall evaluate the following management options, considering impact to water quality, impact to nontarget organisms, pest resistance, feasibility, and cost effectiveness:

(i) No action;

(ii) Prevention;

(iii) Mechanical or physical methods;

(iv) Biological control; and

(v) Pesticides.

(c) Pesticide use. If a pesticide is selected to manage aquatic animal pests and application of the pesticide will result in a discharge to surface waters, the operator shall:

(i) Conduct surveillance prior to each application to assess the pest management area and to determine when the action threshold is met that necessitates the need for pest management; and

(ii) Reduce the impact on the environment and nontarget organisms by evaluating site restrictions, application timing, and application method in addition to applying

Regulations

the pesticide only when the action threshold has been met.

(4) Forest canopy pest control. This subpart applies to discharges resulting from the aerial application of pesticides to the forest canopy to control the population of a pest species (e.g., insect or pathogen) where to target the pests effectively a portion of the pesticide unavoidably will be applied over and deposited to surface water.

(a) Identify the problem. Prior to the first pesticide application covered under this permit that will result in a discharge to surface waters, and at least once each calendar year thereafter prior to the first pesticide application in that calendar year, the operator shall consider the following for each pest management area:

(i) Identify target pests;

(ii) Establish target pest densities to serve as action thresholds for implementing pest management strategies; and

(iii) Identify current distribution of the target pest and assess potential distribution in the absence of control measures.

(b) Pest management. Prior to the first pesticide application covered under this permit that will result in a discharge to surface waters, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, the operator shall select and implement for each pest management area efficient and effective means of pest management that minimize discharges resulting from application of pesticides to control forestry pests. In developing these pest management strategies, the operator shall evaluate the following management options, considering impact to water quality, impact to nontarget organisms, pest resistance, feasibility, and cost effectiveness:

(i) No action;

(ii) Prevention;

(iii) Mechanical or physical methods;

(iv) Cultural methods;

(v) Biological control; and

(vi) Pesticides.

(c) Pesticide use. If a pesticide is selected to manage forestry pests and application of the pesticide will result in a discharge to surface waters, the operator shall:

(i) Conduct surveillance prior to each application to assess the pest management area and to determine when the pest action threshold is met that necessitates the need for pest management;

(ii) Assess environmental conditions (e.g., temperature, precipitation, and wind speed) in the treatment area to identify conditions that support target pest development and are conducive for treatment activities;

(iii) Reduce the impact on the environment and nontarget organisms by evaluating the restrictions, application timing, and application methods in addition to applying the pesticide only when the action thresholds have been met; and

(iv) Evaluate using pesticides against the most susceptible developmental stage.

2. Water quality-based effluent limitations. The operator's discharge of pollutants must be controlled as necessary to meet applicable numeric and narrative water quality standards.

If at any time the operator become aware, or the board determines, that the operator's discharge of pollutants causes or contributes to an excursion of applicable water quality standards, corrective action must be taken as required in Part I D 1 of this permit.

B. Monitoring requirements.

1. Monitoring requirements for pesticide applicators.

a. The amount of pesticide applied shall be monitored to ensure that the lowest effective amount is used to control the pest, consistent with reducing the potential for development of pest resistance without exceeding the maximum allowable rate of the product label.

b. Pesticide application activities shall be monitored to ensure that regular maintenance activities are being performed and that application equipment is in proper operating condition to reduce the potential for leaks, spills, or other unintended discharge of pesticides to surface waters.

c. Pesticide application activities shall also be monitored to ensure that the application equipment is in proper operating condition by adhering to any manufacturer's conditions and industry practices and by calibrating, cleaning, and repairing equipment on a regular basis.

2. Visual monitoring assessment requirements for all operators. All operators covered under this permit must conduct a visual monitoring assessment (i.e., spot checks in the area to and around where pesticides are applied) for possible and observable adverse incidents caused by application of pesticides, including but not limited to the unanticipated death or distress of nontarget organisms and disruption of wildlife habitat, recreational, or municipal water use.

A visual monitoring assessment is only required during the pesticide application when feasibility and safety allow. For example, visual monitoring assessment is not required

during the course of treatment when that treatment is performed in darkness as it would be infeasible to note adverse effects under these circumstances. Visual monitoring assessments of the application site must be performed:

- a. During any post-application surveillance or efficacy check that the operator conducts, if surveillance or an efficacy check is conducted.
- b. During any pesticide application, when considerations for safety and feasibility allow.

C. Pesticide discharge management plan (PDMP). Any operator applying pesticides and exceeding the annual application thresholds established in 9VAC25-800-30 C must prepare a PDMP for the pest management area. The plan must be kept up-to-date thereafter for the duration of coverage under this general permit, even if discharges subsequently fall below the annual application threshold levels. The operator applying pesticides shall develop a PDMP consistent with the deadline outlined in Table I-1 below.

<u>Table I-1. Pesticide Discharge Management Plan Deadline</u>	
<u>Category</u>	<u>PDMP Deadline</u>
<u>Operators who know prior to commencement of discharge that they will exceed an annual treatment area threshold identified in 9VAC25-800-30 C for that year.</u>	<u>Prior to first pesticide application covered under this permit.</u>
<u>Operators who do not know until after commencement of discharge that they will exceed an annual treatment area threshold identified in 9VAC25-800-30 C for that year.</u>	<u>Prior to exceeding an annual treatment area threshold.</u>
<u>Operators commencing discharge in response to a declared pest emergency situation as defined in 9VAC25-800-10 that will cause the operator to exceed an annual treatment area threshold.</u>	<u>No later than 90 days after responding to declared pest emergency situation.</u>

The PDMP does not contain effluent limitations; the limitations are contained in Parts I A 1 and I A 2 of the permit. The PDMP documents how the operator will implement the effluent limitations in Parts I A 1 and I A 2 of the permit, including the evaluation and selection of control measures to meet those effluent limitations and minimize discharges. In the PDMP, the operator may incorporate by reference any procedures or plans in other documents that meet the requirements of this permit. If other documents are being relied upon by the operator to describe how compliance with the effluent limitations in this permit will be achieved, such as a pre-existing integrated pest management (IPM) plan, a copy of any portions of any documents that are being

used to document the implementation of the effluent limitations shall be attached to the PDMP. The control measures implemented must be documented and the documentation must be kept up to date.

1. Contents of the pesticide discharge management plan. The PDMP must include the following elements:

- a. Pesticide discharge management team.
- b. Pest management area description.
- c. Control measure description.
- d. Schedules and procedures.

(1) Pertaining to control measures used to comply with the effluent limitations in Part I A 1:

- (a) Application rate and frequency procedures.
- (b) Spill prevention procedures.
- (c) Pesticide application equipment procedures.
- (d) Pest surveillance procedures.

(e) Assessing environmental conditions procedures.

(2) Pertaining to other actions necessary to minimize discharges:

- (a) Spill response procedures.
- (b) Adverse incident response procedures.
- (c) Pesticide monitoring schedules and procedures.

e. Documentation to support eligibility considerations under other federal laws.

f. Signature requirements.

2. PDMP team. The operator shall identify all the persons (by name and contact information) who compose the team as well as each person's individual responsibilities, including:

- a. Persons responsible for managing pests in relation to the pest management area;
- b. Persons responsible for developing and revising the PDMP;
- c. Persons responsible for developing, revising, and implementing corrective actions and other effluent limitation requirements; and
- d. Persons responsible for pesticide applications.

3. Pest management area description. The operator shall document the following:

- a. Pest problem description. A description of the pest problem at the pest management area shall be documented to include identification of the target pests, source of the pest problem, and source of data used to

Regulations

identify the problem in Parts I A 1 b (1), I A 1 b (2), I A 1 b (3), and I A 1 b (4).

b. Action thresholds. The action thresholds for the pest management area shall be described, including a description of how they were determined.

c. General service area map. The plan shall include a general service area map that identifies the geographic boundaries of the service area to which the plan applies and location of major surface waters.

4. Control measure description. The operator shall document an evaluation of control measures for the pest management area. The documentation shall include the control measures that will be implemented to comply with the effluent limitations required in Parts I A 1 and I A 2. The operator shall include in the description the active ingredients evaluated.

5. Schedules and procedures. The operator shall document the following schedules and procedures in the PDMP:

a. Pertaining to control measures used to comply with the effluent limitations in Part I A 1. The following must be documented in the PDMP:

(1) Application rate and frequency (see Part I A 1 a (1)). Procedures for determining the lowest effective amount of pesticide product per application (without exceeding the maximum allowable rate of the product label) and the optimum frequency of pesticide applications necessary to control the target pest, consistent with reducing the potential for development of pest resistance.

(2) Spill prevention (see Part I A 1 a (2)). Procedures and schedule of maintenance activities for preventing spills and leaks of pesticides associated with the application of pesticides covered under this permit.

(3) Pesticide application equipment (see Part I A 1 a (3)). Schedules and procedures for maintaining the pesticide application equipment in proper operating condition, including calibrating, cleaning, and repairing the equipment in accordance with 2VAC20-20-170.

(4) Pest surveillance (see Parts I A 1 b (1) (c), I A 1 b (2) (c), I A 1 b (3) (c), and I A 1 b (4) (c)). Procedures and methods for conducting preapplication pest surveillance.

(5) Assessing environmental condition (Parts I A 1 b (1) (c) (ii) and I A 1 b (4) (c) (ii)). Procedures and methods for assessing environmental conditions in the treatment area.

b. Pertaining to other actions necessary to minimize discharges resulting from pesticide application. The following must be documented in the PDMP:

(1) Spill response procedures. At a minimum the PDMP must have:

(a) Procedures for expeditiously stopping, containing, and cleaning up leaks, spills, and other releases. Employees who may cause, detect, or respond to a spill or leak must be trained in these procedures and have necessary spill response equipment available. If possible, one of these individuals should be a member of the PDMP team.

(b) Procedures for notification of appropriate facility personnel, emergency response agencies, and regulatory agencies.

(2) Adverse incident response procedures. At a minimum the PDMP must have:

(a) Procedures for responding to any incident resulting from pesticide applications; and

(b) Procedures for notification of the incident, both internal to the operator's agency or organization and external. Contact information for DEQ, nearest emergency medical facility, and nearest hazardous chemical responder must be in locations that are readily accessible and available.

(3) Pesticide monitoring schedules and procedures. The operator shall document procedures for monitoring consistent with the requirements in Part I B including:

(a) The process for determining the location of any monitoring;

(b) A schedule for monitoring;

(c) The person or position responsible for conducting monitoring; and

(d) Procedures for documenting any observed impacts to nontarget organisms resulting from your pesticide discharge.

6. Signature requirements.

a. The PDMP, including changes to the PDMP to document any corrective actions taken as required by Part I D 1, and all reports submitted to the department must be signed by a person described in this subsection or by a duly authorized representative of that person described in Part I C 6 b.

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

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

(2) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

(3) For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this subsection, a principal executive officer of a federal 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 or the agency.

b. A person is a duly authorized representative only if:

(1) The authorization is made in writing by a person described in Part I C 6 a;

(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated activity such as the position of 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

(3) The signed and dated written authorization is included in the PDMP. A copy of this authorization must be submitted to the department if requested.

c. All other changes to the PDMP, and other compliance documentation required under this permit, must be signed and dated by the person preparing the change or documentation.

d. Any person signing documents in accordance with Part I C 6 a or Part I C 6 b must include 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 gathered and evaluated the information contained therein. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information contained 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."

7. PDMP modifications and availability.

a. PDMP modifications. The operator shall modify the PDMP whenever necessary to address any of the triggering conditions for corrective action in Part I D 1 a, or when a change in pest control activities significantly changes the type or quantity of pollutants discharged. Changes to the PDMP must be made before the next pesticide application that results in a discharge, if practicable, or if not, as soon as possible thereafter. The revised PDMP must be signed and dated in accordance with Part I C 6.

The operator shall review the PDMP at a minimum once per calendar year and whenever necessary to update the pest problem identified and pest management strategies evaluated for the pest management area.

b. PDMP availability. The operator shall retain a copy of the current PDMP, along with all supporting maps and documents. The operator shall make the PDMP and supporting information available to the department upon request. The PDMP is subject to the provisions and exclusions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia).

D. Special conditions.

1. Corrective action.

a. Situations requiring revision of control measures. If any of the following situations occur, the operator shall review and, as necessary, revise the evaluation and selection of control measures to ensure that the situation is eliminated and will not be repeated in the future:

(1) An unauthorized release or discharge associated with the application of pesticides occurs (e.g., spill, leak, or discharge not authorized by this or another VPDES permit);

(2) The operator becomes aware, or the board concludes, that the control measures are not adequate or sufficient for the discharge of pollutants to meet applicable water quality standards;

(3) Any monitoring activities indicate that the operator failed to meet the requirements of Part 1 A 1 a of this permit;

(4) An inspection or evaluation of the operator's activities by DEQ, VDACS, EPA, or a locality reveals that modifications to the control measures are necessary to meet the non-numeric effluent limits in this permit, or

Regulations

(5) The operator observes (e.g., during visual monitoring that is required in Part I B 2) or is otherwise made aware of an adverse incident.

b. Corrective action deadlines. If the operator determines that changes to the control measures are necessary to eliminate any situation identified in Part I D 1 a, such changes must be made before the next pesticide application that results in a discharge if practicable, or if not, as soon as possible thereafter.

c. Corrective action documentation. For situations identified in Part I D 1 a, other than for adverse incidents (see Part I D 2), or reportable spills or leaks (see Part I D 3), the operator shall document the situation triggering corrective action and the planned corrective action within five days of becoming aware of that situation, and retain a copy of this documentation. This documentation must include the following information:

(1) Identification of the condition triggering the need for corrective action review, including any ambient water quality monitoring that assisted in determining that discharges did not meet water quality standards;

(2) Brief description of the situation;

(3) Date the problem was identified;

(4) Brief description of how the problem was identified, how the operator learned of the situation, and the date the operator learned of the situation;

(5) Summary of corrective action taken or to be taken including date initiated and date completed or expected to be completed; and

(6) Any measures to prevent reoccurrence of such an incident, including notice of whether PDMP modifications are required as a result of the incident.

2. Adverse incident documentation and reporting.

a. Twenty-four hour adverse incident notification. If the operator observes or is otherwise made aware of an adverse incident that may have resulted from a discharge from the operator's pesticide application, the operator shall immediately notify the department (see Part I D 5). This notification must be made by telephone within 24 hours of when the operator becomes aware of the adverse incident and must include at least the following information:

(1) The caller's name and telephone number;

(2) Operator's name and mailing address;

(3) The name and telephone number of a contact person if different than the person providing the 24-hour notice;

(4) How and when the operator became aware of the adverse incident;

(5) Description of the location of the adverse incident;

(6) Description of the adverse incident identified and the EPA pesticide registration number for each product that was applied in the area of the adverse incident; and

(7) Description of any steps the operator has taken or will take to correct, repair, remedy, cleanup, or otherwise address any adverse effects.

If the operator is unable to notify the department within 24 hours, notification shall be made as soon as possible and the rationale for why the notification was not possible within 24 hours shall be provided.

The adverse incident notification and reporting requirements are in addition to what the registrant is required to submit under FIFRA § 6(a)(2) and its implementing regulations at 40 CFR Part 159.

b. Reporting of adverse incidents is not required under this permit in the following situations:

(1) The operator is aware of facts that clearly establish that the adverse incident was not related to toxic effects or exposure from the pesticide application.

(2) The operator has been notified in writing by the board that the reporting requirement has been waived for this incident or category of incidents.

(3) The operator receives notification of an adverse incident but that notification and supporting information are clearly erroneous.

(4) An adverse incident occurs to pests that are similar in kind to pests identified as potential targets.

c. Five-day adverse incident written report. Within five days of a reportable adverse incident pursuant to Part I D 2 a, the operator shall provide a written report of the adverse incident to the appropriate DEQ regional office at the address listed in Part I D 5. The adverse incident report must include at least the following information:

(1) Information required to be provided in Part I D 2 a;

(2) Date and time the operator contacted DEQ notifying the department of the adverse incident, and whom the operator spoke with at DEQ, and any instructions the operator received from DEQ;

(3) Location of incident, including the names of any waters affected and appearance of those waters (sheen, color, clarity, etc);

(4) A description of the circumstances of the adverse incident including species affected, estimated number of individuals, and approximate size of dead or distressed organisms;

(5) Magnitude and scope of the effected area (e.g., aquatic square area or total stream distance affected);

(6) Pesticide application rate, intended use site, method of application, and name of pesticide product, description of pesticide ingredients, and EPA registration number;

(7) Description of the habitat and the circumstances under which the adverse incident occurred (including any available ambient water data for pesticides applied);

(8) If laboratory tests were performed, indicate what tests were performed, and when, and provide a summary of the test results within five days after they become available;

(9) If applicable, explain why it is believed the adverse incident could not have been caused by exposure to the pesticide;

(10) Actions to be taken to prevent recurrence of adverse incidents; and

(11) Signed and dated in accordance with Part I C 6.

The operator shall report adverse incidents even for those instances when the pesticide labeling states that adverse effects may occur.

d. Adverse incident to threatened or endangered species or critical habitat.

(1) Notwithstanding any of the other adverse incident notification requirements of this section, if the operator becomes aware of an adverse incident to threatened or endangered species or critical habitat that may have resulted from a discharge from the operator's pesticide application, the operator shall immediately notify the:

(a) National Marine Fisheries Service (NMFS) and the Virginia Department of Game and Inland Fisheries (DGIF) in the case of an anadromous or marine species;

(b) U.S. Fish and Wildlife Service (FWS) and the DGIF in the case of an animal or invertebrate species; or

(c) FWS and the Virginia Department of Agriculture and Consumer Services in the case of plants or insects.

(2) Threatened or endangered species or critical habitats include the following:

(a) Federally listed threatened or endangered species;

(b) Federally designated critical habitat;

(c) State-listed threatened or endangered species;

(d) Tier I (critical conservation need), or Tier II (very high conservation need) species of greatest conservation need (SGCN) as defined in Virginia's Wildlife Action Plan (www.bewildvirginia.org).

(3) This notification must be made by telephone immediately upon the operator becoming aware of the adverse incident and must include at least the following information:

(a) The caller's name and telephone number;

(b) Operator's name and mailing address;

(c) The name of the affected species, size of area impacted, and if applicable, the approximate number of animals affected;

(d) How and when the operator became aware of the adverse incident;

(e) Description of the location of the adverse incident;

(f) Description of the adverse incident, including the EPA pesticide registration number for each product the operator applied in the area of the adverse incident;

(g) Description of any steps the operator has taken or will take to alleviate the adverse impact to the species; and

(h) Date and time of application.

Additional information on federally listed threatened or endangered species and federally designated critical habitat is available from NMFS (www.nmfs.noaa.gov) for anadromous or marine species or FWS (www.fws.gov) for terrestrial or freshwater species. Additional information on state-listed threatened or endangered wildlife species is available through the Virginia Fish and Wildlife Information Service (www.dgif.virginia.gov). Listing of state threatened or endangered plants and insects can be found in §§ 3.2-1000 through 3.2-1011 of the Code of Virginia and 2VAC5-320-10 of the Virginia Administrative Code (both the Code of Virginia and the Virginia Administrative Code must be referenced in order to obtain the complete plant and insect list). (Contact information for these agencies can be found on the contact information form or through the DEQ website.)

3. Reportable spills and leaks.

a. Spill, leak, or other unauthorized discharge notification. Where a leak, spill, or other release containing a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under either 40 CFR Part 110, 117, or 302 occurs in any 24-hour period, the operator shall notify the department (see Part I D 2) as soon as the operator has knowledge of the release. Department contact information must be kept in locations that are readily accessible and available in the area where a spill, leak, or other unpermitted discharge may occur.

b. Five-day spill, leak, or other unauthorized discharge report. Within five days of the operator becoming aware of a spill, leak, or other unauthorized discharge triggering the notification in subdivision 3 of this subsection, the operator shall submit a written report to the appropriate DEQ regional office at the address listed in Part I D 5. The report shall contain the following information:

Regulations

- (1) A description of the nature and location of the spill, leak, or discharge;
- (2) The cause of the spill, leak, or discharge;
- (3) The date on which the spill, leak, or discharge occurred;
- (4) The length of time that the spill, leak, or discharge continued;
- (5) The volume of the spill, leak, or discharge;
- (6) If the discharge is continuing, how long it is expected to continue and what the expected total volume of the discharge will be;
- (7) A summary of corrective action taken or to be taken including date initiated and date completed or expected to be completed; and
- (8) Any steps planned or taken to prevent recurrence of such a spill, leak, or other discharge, including notice of whether PDMP modifications are required as a result of the spill or leak.

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

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

4. Recordkeeping and annual reporting. The operator shall keep records as required in this permit. These records must be accurate, complete, and sufficient to demonstrate compliance with the conditions of this permit. The operator can rely on records and documents developed for other obligations, such as requirements under FIFRA and state or local pesticide programs, provided all requirements of this permit are satisfied. The board recommends that all operators covered under this permit keep records of acres or linear miles treated for all applicable use patterns covered under this general permit.

a. All operators must keep the following records:

- (1) A copy of any adverse incident reports (see Part I D 2 c).
- (2) The operator's rationale for any determination that reporting of an identified adverse incident is not required consistent with allowances identified in Part I D 2 a.
- (3) Any corrective action documentation (see Part I D 1 c).

b. Any operator applying pesticides and exceeding the annual application thresholds established in 9VAC25-800-30 C must also maintain a record of each pesticide

applied. This shall apply to both general use and restricted use pesticides. Each record shall contain the:

- (1) Name, address, and telephone number of customer and address or location, if different, of site of application;
- (2) Name and VDACS certification number of the person making the application or certification number of the supervising certified applicator;
- (3) Day, month, and year of application;
- (4) Type of plants, crop, animals, or sites treated and principal pests to be controlled;
- (5) Acreage, area, or number of plants or animals treated;
- (6) Brand name or common product name;
- (7) EPA registration number;
- (8) Amount of pesticide concentrate and amount of diluting used, by weight or volume, in mixture applied; and
- (9) Type of application equipment used.

c. All required records must be assembled as soon as possible but no later than 30 days following completion of such activity. The operator shall retain any records required under this permit for at least three years from the date that coverage under this permit expires. The operator shall make available to the board, including an authorized representative of the board, all records kept under this permit upon request and provide copies of such records, upon request.

d. Annual reporting.

(1) Any operator applying pesticides that reports an adverse incident as described in Part I D 2 must submit an annual report to the department no later than February 10 of the following year (and retain a copy for the operator's records).

(2) The annual report must contain the following information:

- (a) Operator's name;
- (b) Contact person name, title, email address (where available), and phone number;
- (c) A summary report of all adverse incidents that occurred during the previous calendar year; and
- (d) A summary of any corrective actions, including spill responses, in response to adverse incidents, and the rationale for such actions.

5. DEQ contact information and mailing addresses.

a. All incident reports under Part I D 2 must be sent to the appropriate DEQ regional office within five days of the operator becoming aware of the adverse incident.

b. All other written correspondence concerning discharges must be sent to the address of the appropriate DEQ regional office listed in Part I D 5 c.

NOTE: The immediate (within 24-hours) reports required in Part I D 2 may be made to the department's regional office. Reports may be made by telephone, fax, or online (<http://www.deq.virginia.gov/prep/h2rpt.html>). 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.

c. DEQ regional office addresses.

(1) Blue Ridge Regional Office - Lynchburg (BRRO-L)
7705 Timberlake Road
Lynchburg, VA 24502
(434) 582-5120

(2) Blue Ridge Regional Office - Roanoke (BRRO-R)
3019 Peters Creek Road
Roanoke, VA 24019
(540) 562-6700

(3) Northern Virginia Regional Office (NVRO)
13901 Crown Court
Woodbridge, VA 22193
(703) 583-3800

(4) Piedmont Regional Office (PRO)
4949-A Cox Road
Glen Allen, VA 23060
(804) 527-5020

(5) Southwest Regional Office (SWRO)
355 Deadmore St.
P.O. Box 1688
Abingdon, VA 24212
(276) 676-4800

(6) Tidewater Regional Office (TRO)
5636 Southern Blvd.
Virginia Beach, VA 23462
(757) 518-2000

(7) Valley Regional Office (VRO)
4411 Early Road
Mailing address: P.O. Box 3000
Harrisonburg, VA 22801
(540) 574-7800

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 operator 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. The operator shall retain records of all monitoring information, including all calibration and maintenance records and copies of all reports required by this permit for a period of at least three years from the date that coverage under this permit expires. 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 operator, 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 operator submit monitoring results, the following subdivisions would apply.

1. The operator 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 operator 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

Regulations

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 operator 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 operator 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 operator 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, or to the use of such waters for domestic or industrial consumption, recreation, or other uses.

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

H. Duty to reapply.

1. If the operator wishes to continue an activity regulated by this permit after the expiration date of this permit, and the operator does not qualify for automatic permit coverage renewal, the operator shall submit a registration statement at least 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.

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

a. The operator information has not changed since this general permit went into effect on April 10, 2011; and

b. The board has no objection to the automatic permit coverage renewal for this operator based on performance issues or enforcement issues. If the board objects to the automatic renewal, the operator will be notified in writing.

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

I. 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.

J. State law. Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the operator from any responsibilities, liabilities, or penalties established pursuant to any other state law or regulation or under authority preserved by § 510 of the Clean Water Act. Nothing in this permit shall be construed to relieve the operator from civil and criminal penalties for noncompliance.

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

L. Proper operation and maintenance. The operator 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 operator 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 backup or auxiliary facilities or

similar systems that are installed by the operator only when the operation is necessary to achieve compliance with the conditions of this permit.

M. 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.

N. Duty to mitigate. The operator 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.

O. Need to halt or reduce activity not a defense. It shall not be a defense for a operator 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.

P. Inspection and entry. The operator 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 operator 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.

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

R. Transfer of permits.

1. Permits are not transferable to any person except after notice to the department. Except as provided in Part II R 2, a permit may be transferred by the operator 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 operator 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 R 1, this permit may be automatically transferred to a new operator if:

- a. The current operator notifies the department within 30 days of the transfer of the title to the facility or property;
- b. The notice includes a written agreement between the existing and new operator's containing a specific date for transfer of permit responsibility, coverage, and liability between them; and
- c. The board does not notify the existing operator and the proposed new operator 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 R 2 b.

S. 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.

VA.R. Doc. No. R10-2390; Filed October 5, 2010, 1:23 p.m.

Final Regulation

Title of Regulation: **9VAC25-810. General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Coin-Operated Laundry (amending 9VAC25-810-10, 9VAC25-810-20, 9VAC25-810-40, 9VAC25-810-50, 9VAC25-810-60, 9VAC25-810-70).**

Statutory Authority: § 62.1-44.15 of the Code of Virginia; § 402 of the Clean Water Act (33 USC § 1251 et seq.).

Effective Date: February 9, 2011.

Agency Contact: George E. Cosby, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4067, FAX (804) 698-4032, or email gecosby@deq.virginia.gov.

Summary:

The changes amend and reissue the existing general permit that expires on February 8, 2011. The general permit establishes limitations and monitoring requirements for point source discharge of treated wastewaters from coin-operated laundries to surface waters. Coin-operated laundry means any self-service facility where the washing of clothes is conducted as designated by Standard Industrial Classification Code 7215. It does not mean facilities that engage in dry cleaning.

Regulations

The final regulation has been modified from the proposed regulation to clarify (i) requirements for authorization to discharge under the general permit, (ii) compliance, and (iii) administrative continuances of authorization to discharge.

CHAPTER 810 GENERAL VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM (VPDES) PERMIT FOR COIN- OPERATED LAUNDRY LAUNDRIES

9VAC25-810-10. Definitions.

The words and terms used in this regulation shall have the meanings defined in the State Water Control Law and 9VAC25-31 (Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation) unless the context clearly indicates otherwise, except that for the purposes of this regulation:

"Coin-operated laundry" means any self-service facility where the washing of clothes is conducted as designated by SIC 7215. It does not mean facilities that engage in dry cleaning.

"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.

9VAC25-810-20. Purpose.

This general permit regulation governs the discharge of wastewater from coin-operated ~~laundry laundries~~ to surface waters. ~~[No discharge of pollutants from coin-operated laundries is allowed except when in compliance with the conditions of this permit.]~~

9VAC25-810-40. Effective date of the permit.

This general permit will become effective on February [8 9], 2006 ~~2011~~. This general permit will expire [~~five years after February 8, 2006~~ on February 8, 2016]. This general permit is effective for any covered owner upon compliance with all the provisions of 9VAC25-810-50 ~~and the receipt of this general permit.~~

9VAC25-810-50. 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 submits~~] and receives acceptance by the board of the registration statement of 9VAC25-810-60, [~~files submits~~] the required permit fee, complies with the effluent limitations and other requirements of 9VAC25-810-70, and provided that: the [department board] has not notified the [applicant

owner] that authorization is denied in accordance with subsection B of this section.

1. Individual permit. B. The [department board] will notify an [applicant owner] of denial of authorization in the event of any of the following:

1. The owner ~~has not been~~ is required to obtain an individual permit according to 9VAC25-31-170 B 3;

2. ~~Prohibited discharge locations. The owner shall not be authorized by this general permit to discharge to state waters specifically named in other~~ Other board regulations [~~or policies~~] that prohibit such discharges;

3. Central sewage facilities are reasonably available;

4. The discharge violates the antidegradation policy in the Water Quality Standards at 9VAC25-260-30; or

The board has established a "total maximum daily load" (TMDL) that has been approved by EPA prior to the term of this permit, and the TMDL 5. An applicable 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 meets the TMDL WLA.

B- C. Compliance with this general permit constitutes compliance with the federal 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. 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.

[D. Continuation of permit coverage.

1. Any owner that was authorized to discharge under the general permit issued in 2006, and that submits a complete registration statement on or before February 8, 2011, is authorized to continue to discharge under the terms of the 2006 general permit until such time as the board 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 owner that was covered under the expiring or expired general permit has violated or is violating 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).]

9VAC25-810-60. Registration statement.

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

A. Deadlines for submitting registration statements. The owner seeking coverage under this general permit shall submit a complete VPDES general permit registration statement in accordance with this chapter, which shall serve as a notice of intent for coverage under the general permit for coin-operated laundries.

1. New facilities. Any owner proposing a new discharge shall submit a complete registration statement at least 30 days prior to the date planned for commencing operation of the new discharge.

2. Existing facilities.

a. Any owner of an existing coin-operated laundry covered by an individual VPDES permit who is proposing to be covered by this general permit shall submit a complete registration statement at least 210 days prior to the expiration date of the individual VPDES permit.

b. Any owner that was authorized to discharge under the general VPDES permit for coin-operated laundries that became effective on February 9, 2006, and who intends to continue coverage under this general permit shall submit a complete registration statement to the board prior to January 8, 2011.

B. Late registration statements will be accepted, but authorization to discharge will not be retroactive.

C. The required registration statement shall contain the following information:]

1. Facility name and mailing address, owner name and mailing address ~~and~~, telephone number, and email (if available);

2. Facility ~~location~~ street address (if different from mailing address);

3. Facility operator name, address ~~and~~, telephone number, and email (if available) if different than owner;

4. Does the facility discharge to surface waters? Name of receiving stream if "yes" and if "no," describe the discharge;

5. Does the facility have a current VPDES Permit? Permit number if "yes";

6. Are there central sewage facilities available to serve this facility?;

~~6.~~ 7. A USGS topographic map or computer-generated map showing the facility, discharge location, and receiving stream;

7. Provide a brief description of the type of coin-operated laundry;

8. Number of laundry machines and an estimate of the average flow rate (million gallons per day);

9. Facility line (water balance) drawing;

~~10. Treatment information~~ Description of wastewater treatment;

11. Information on use of chemicals at the facility; and

12. 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.

9VAC25-810-70. General permit.

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

Regulations

General Permit No.: VAG72
 Effective Date: [February 9, 2011]
 Expiration Date: [February 8, 2016]

GENERAL PERMIT FOR COIN-OPERATED LAUNDRY LAUNDRIES

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

In compliance with the provisions of the Clean Water Act, as amended and pursuant to the State Water Control Law and regulations adopted pursuant thereto, owners of coin-operated laundries 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, and Part II - Conditions Applicable to All VPDES Permits, as set forth herein.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

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 originating from a coin-operated laundry ~~taken at~~ from outfall(s):

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

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Minimum	Maximum	Frequency***	Sample Type
Flow (mgd)	NA	NL	1/Quarter	Estimate
pH (S.U.)	6.0*	9.0*	1/Quarter	Grab
TSS (mg/l)	NA	60	1/Quarter	Grab
BOD ₅ (mg/l)	NA	60*	1/Quarter	Grab
Dissolved Oxygen (mg/l)	6.0*	NA	1/Quarter	Grab
Temperature °C	NA	32**	1/6 Months	Immersion Stabilization
Total Residual Chlorine (ug/l) (mg/l)	NA	1* .011*	1/Quarter	Grab
[E. Coli]	[NA]	[235 n/100 ml]	[1/6 Months]	[Grab]

NL - No Limitation, monitoring requirement only

NA - Not applicable

*Where the Water Quality Standards (~~9VAC25-260 et seq.~~) (9VAC25-260) establish alternate standards for pH, BOD₅, DO, TRC and temperature in waters receiving the discharge, those standards shall be, as appropriate, the maximum and minimum effluent limitations.

**The effluent temperature shall not exceed a maximum 32°C for discharges to nontidal coastal and piedmont waters, 31°C for mountain and upper piedmont waters, 21°C for put and take trout waters, or 20°C for natural trout waters. For estuarine waters, nontidal coastal and piedmont waters, mountain and upper piedmont waters, and put and take trout waters, the effluent shall not cause an increase in temperature of the receiving stream of more than 3°C above the natural water temperature. For natural trout waters, the temperature of the effluent shall not cause an increase of 1°C above natural water temperature. The effluent shall not cause the temperature in the receiving stream to change more than 2°C per hour, except in the case of natural trout waters where the hourly temperature change shall not exceed 0.5°C

***Reports of quarterly monitoring shall be submitted to the DEQ regional office no later than the tenth day of April, July, October, and January. Reports of once per six months shall be submitted no later than the tenth day of January and the tenth day of July for samples collected by December 31 and June 30 of each year.

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

B. Special conditions.

1. 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 this permit, if

that discharge will exceed the highest of the following notification levels:

- (1) One hundred micrograms per liter;
- (2) Two hundred micrograms per liter for acrolein and acrylonitrile; 500 micrograms per liter for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter 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 this permit, if that discharge will exceed the highest of the following notification levels:

- (1) Five hundred micrograms per liter;
- (2) One milligram per liter 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.

2. Operation and maintenance manual requirement. The permittee shall develop an Operations and Maintenance (O & M) Manual for the treatment works. This manual shall detail the practices and procedures that will be followed to ensure compliance with the requirements of this permit. The manual shall be submitted for staff approval within 90 days of February 8, 2006 2011, or completion of construction. If an approved O & M Manual is already on file with DEQ, the permittee shall review the existing O & M Manual and notify the DEQ regional office in writing within 90 days of the date of coverage under the general permit whether it is still accurate and complete. If the O & M Manual is no longer accurate and complete, a revised O & M Manual shall be submitted for approval to the DEQ regional office within 90 days of the date of coverage under the general permit or with the above required notification. The permittee will maintain an accurate, approved operation and maintenance manual for the treatment works. This manual shall detail the practices and procedures that will be followed to ensure compliance with the requirements of the permit. The permittee shall operate the treatment works in accordance with the approved O & M Manual. This manual shall include, but not necessarily be limited to, the following items, as appropriate:

- a. Techniques to be employed in the collection, preservation, and analysis of effluent samples;
- b. Discussion of best management practices, if applicable;
- c. ~~Treatment system design, treatment~~ system operation, routine preventive maintenance of units within the treatment system, critical spare parts inventory, and recordkeeping; and
- d. A sludge/solids disposal plan.

3. ~~The permit prohibits adding~~ permittee shall not add chemicals to the water or waste that may be discharged other than those listed on the owner's accepted registration statement, unless prior approval of the chemical(s) is granted by the ~~Department of Environmental Quality~~ [department board].

~~4. There shall be no discharge of floating solids or visible foam in other than trace amounts.~~

~~5. 4. Compliance Reporting under Part I A (use for permit with water quality based limits for toxics or conventional pollutants in Part I A. Modify this example as needed for effluent parameters in the permit).~~

a. The quantification levels (QL) shall be as follows:

Effluent Characteristic	Quantification Level
BOD ₅	5 mg/l
TSS	1.0 mg/l
Chlorine	0.10 mg/l

~~b. Reporting. Daily Maximum Compliance with the daily maximum limitations and/or reporting requirements for the parameters listed in Part I A and B shall be determined as follows: All concentration data below the QL listed in subdivision a shall be treated as zero. All concentration data equal to or above the QL shall be treated as reported. An arithmetic average shall be calculated using all reported data, including the defined zeros, collected within each day during the reporting month. The maximum value of these daily averages thus determined shall be reported on the DMR as the Daily Maximum. If all data are below the QL, then the average shall be reported as "<QL." If reporting for quantity is required on the DMR and the calculated concentration is <QL, then report "<QL" for the quantity. Otherwise use the calculated concentration.~~ e. Any single datum required shall be reported as "<QL" if it is less than the QL in subdivision a. Otherwise the numerical value shall be reported.

~~c.~~ c. Monitoring results shall be reported 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.

~~6. 5. If the discharge is into a municipal separate storm sewer the permittee is required to notify the owner of the municipal separate storm sewer system of the existence of the discharge within 30 days of coverage under the general permit and provide the following information: the name of the facility; a contact person and phone number; and the location of the discharge; the nature of the discharge; and the facility's VPDES general permit number.~~

~~7. 6. No sewage shall be discharged from a point source to surface waters from this facility except under the provisions of another VPDES permit specifically issued for that purpose.~~

Regulations

7. The discharges authorized by this permit shall be controlled as necessary to meet applicable 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 US 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 tenth 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 US 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 II F; or who discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of

Part II F, shall notify the department of the discharge immediately upon discovery of the discharge, but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the department, within five days of discovery of the discharge. The written report shall contain:

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

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

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

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

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

1. An oral report shall be provided within 24 hours from the time the permittee becomes aware of the circumstances. The following shall be included as

information which shall be reported within 24 hours under this paragraph:

- a. Any unanticipated bypass; and
 - b. Any upset which causes a discharge to surface waters.
2. A written report shall be submitted within five days and shall contain:
- a. A description of the noncompliance and its cause;
 - b. The period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and
 - c. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

The board may waive the written report on a case-by-case basis for reports of noncompliance under this subsection 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 subdivisions 1 or 2 of this subsection, in writing, at the time the next monitoring reports are submitted. The reports shall contain the information listed in subdivision 2 of this subsection.

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

J. Notice of planned changes.

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

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

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

(2) After proposal of standards of performance in accordance with § 306 of 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

Regulations

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

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

c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking 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 subdivision 1 of this subsection;

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

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

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

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

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

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

M. Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall 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 law or regulations.

O. State law. Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any other state law or regulation or under authority preserved by § 510 of the Clean Water Act. Except as provided in permit conditions on "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 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 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 assure efficient operation. These bypasses are not subject to the provisions of Part II U 2 and 3.

2. Notice.

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

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

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

Regulations

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, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

Y. Transfer of permits.

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

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

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

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

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

VA.R. Doc. No. R09-1877; Filed October 5, 2010, 1:24 p.m.



TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Notice of Extension of Emergency Regulation

Title of Regulation: **12VAC30-20. Administration of Medical Assistance Services (amending 12VAC30-20-210).**

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

Effective Dates: October 5, 2009, through April 4, 2011.

Pursuant to § 2.2-4011 of the Code of Virginia, the Department of Medical Assistance Services (DMAS) requested an extension of the above-referenced emergency regulation to complete the requirements of the Administrative Process Act. The emergency regulations were published in 26:4 VA.R. 396-399 October 26, 2009 (<http://register.dls.virginia.gov/vol26/iss04/v26i04.pdf>).

This emergency regulation was implemented on October 5, 2009. Because of the controversial nature of the changes being made to make the Health Insurance Premium Payment

Program (HIPP) more cost effective, DMAS has been engaged in both appeals on this issue and in discussions with members of the public. As a result of this process, there was a delay in submitting the proposed regulation for executive review, due in part to the General Assembly and the change in administration. This proposed regulation was approved by the Office of the Attorney General on March 9, 2010, by the Department of Planning and Budget on April 2, 2010, and by the Secretary of Health and Human Resources on June 23, 2010. It has been pending in the Governor's office since that time.

Once the proposed regulation is approved by the Governor, it must be published for a 60-day public comment period, and then made permanent by a follow up final regulation, which includes a 30 post-publication waiting period before the regulation goes into effect. Given this timeline, the regulatory process cannot be completed by October 4, 2010, the expiration date of the previous emergency regulation.

For this reason DMAS requested an extension of six months to complete the necessary changes while maintaining the integrity of the changes made in the emergency action. The Governor approved the department's request to extend the expiration date of the emergency regulation for six months as provided for in § 2.2-4011 D of the Code of Virginia. Therefore, the regulations will continue in effect through April 4, 2011.

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

VA.R. Doc. No. R10-2021; Filed October 4, 2010, 11:50 a.m.

BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Notice of Extension of Emergency Regulation

Title of Regulation: **12VAC35-220. Certification Requirements for Early Intervention Professionals and Early Intervention Specialists (adding 12VAC35-220-10 through 12VAC35-220-100).**

Statutory Authority: § 2.2-5304 of the Code of Virginia.

Effective Dates: November 3, 2009, through May 2, 2011.

Pursuant to § 2.2-4011 of the Code of Virginia, the Department of Behavioral Health and Developmental Services requested an extension of the above-referenced emergency regulation to complete the requirements of the Administrative Process Act fast-track rulemaking process. The existing emergency regulations are set to expire on November 2, 2010. The emergency regulations were published in 26:6 VA.R. 664-668 November 23, 2009 (<http://register.dls.virginia.gov/vol26/iss06/v26i06.pdf>).

In February 2010, the Department of Behavioral Health and Developmental Services submitted a request to establish permanent regulations related to the certification process for early intervention personnel through the Administrative Process Act fast-track rulemaking process. In April 2010, the Department of Planning and Budget approved this request. In July, the Secretary of Health and Human Resources forwarded the request to the Governor's office. To date, the request has not been released by the Governor's office for publication in the *Virginia Register of Regulations*.

Federal officials have advised the Department of Behavioral Health and Developmental Services that federal guidelines require that adoption of permanent regulations include a 60-day comment period. It is the department's intent to extend the comment period allowed for fast-track adoption to 60 days in order to meet these guidelines. With the extended comment period required by federal regulations, it will not be possible to have permanent regulations in place before the emergency regulations expire.

In order for providers to receive Medicaid payments for early intervention services, regulations governing personnel qualifications must be in place. Therefore, the department is requesting a six-month extension of the expiration date of the emergency early intervention personnel certification regulations in order to allow sufficient time for the publication and adoption of permanent replacement regulations.

The Governor approved the department's request to extend the expiration date of the emergency regulation for six months as provided for in § 2.2-4011 D of the Code of Virginia. Therefore, the regulations will continue in effect through May 2, 2011.

Agency Contact: Karen Durst, Department of Behavioral Health and Developmental Services, 1220 Bank Street, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-9844, FAX (804) 371-7959, or email karen.durst@dbhds.virginia.gov.

VA.R. Doc. No. R10-1928; Filed October 8, 2010, 8:26 p.m.



TITLE 14. INSURANCE

STATE CORPORATION COMMISSION

Final Regulation

REGISTRAR'S NOTICE: The following amendments are exempt from the Virginia Administrative Process Act pursuant to § 2.2-4002 C of the Code of Virginia, which provides that minor changes to regulations published in the Virginia Administrative Code under the Virginia Register Act, Chapter 41 (§ 2.2-4100 et seq.) of Title 2.2 of the Code of Virginia, made by the Virginia Code Commission pursuant

Regulations

to § 30-150, shall be exempt from the provisions of the Virginia Administrative Process Act.

Title of Regulation: 14VAC5-395. Rules Governing Settlement Agents (amending 14VAC5-395-10, 14VAC5-395-20, 14VAC5-395-25, 14VAC5-395-30, 14VAC5-395-80).

Statutory Authority: §§ 12.1-13, 55-525.28, and 55-525.30 of the Code of Virginia.

Effective Date: October 25, 2010.

Agency Contact: Steve Shipman, Senior Insurance Market Examiner, Bureau of Insurance, State Corporation Commission, P.O. Box 1157, Richmond, VA 3218, telephone (804) 371-9619, FAX (804) 371-9211, or email steve.shipman@scc.virginia.gov.

Summary:

During the 2010 Session of the General Assembly, Title 6.1 of the Code of Virginia was repealed and recodified as Title 6.2 of the Code of Virginia. As a part of the recodification of Title 6.1, Code of Virginia statutes pertaining to settlement agents were renumbered and made a part of Title 55 of the Code of Virginia. The changes in these regulations repeal references to Title 6.1 of the Code of Virginia and conform code citations and chapter references to the current cites in Title 55 of the Code of Virginia.

14VAC5-395-10. Purpose.

A. The purpose of this chapter is to implement ~~the Consumer Real Estate Settlement Protection Act (§ 6.1-2.19 et seq. of the Code of Virginia)~~ Chapter 27.3 (§ 55-525.16 et seq.) of Title 55 of the Code of Virginia.

B. This chapter applies to all title insurance agents, title insurance agencies and title insurance companies providing escrow, closing or settlement services involving the purchase of or lending on the security of real estate containing not more than four residential dwelling units in the Commonwealth of Virginia.

C. The Bureau of Insurance shall issue the necessary forms to carry out the provisions of ~~the Act Chapter 27.3 (§ 55-525.16 et seq.)~~ of Title 55 of the Code of Virginia and this chapter.

14VAC5-395-20. Definitions.

As used in this chapter:

~~"Act" means the Consumer Real Estate Settlement Protection Act (§ 6.1-2.19 et seq. of the Code of Virginia).~~ Unless otherwise defined herein, all terms used in this chapter shall have the meaning as set forth in ~~the Act Chapter 27.3 (§ 55-525.16 et seq.)~~ of Title 55 of the Code of Virginia.

"Agent" or "insurance agent" shall have the same meaning as set forth in § 38.2-1800 of the Code of Virginia.

"Bureau" means the State Corporation Commission Bureau of Insurance.

"Lay real estate settlement agent" means a person who (i) is not licensed as an attorney under Chapter 39 (§ 54.1-3900 et seq.) of Title 54.1 of the Code of Virginia, (ii) is not a party to the real estate transaction, (iii) provides escrow, closing or settlement services in connection with a transaction related to any real estate in this Commonwealth, and (iv) is listed as the settlement agent on the settlement statement for such transaction.

"Settlement agent" shall have the same meaning as set forth in ~~§ 6.1-2.20~~ 55-525.16 of the Code of Virginia.

"Title insurance agency" means a business entity licensed in this Commonwealth as a title insurance agent.

"Title insurance agent" shall have the same meaning as set forth in § 38.2-1800 of the Code of Virginia.

"Title insurance company" means any company licensed to transact, or transacting, title insurance in this Commonwealth.

14VAC5-395-25. Lay real estate settlement agents.

Notwithstanding any provision of this chapter to the contrary, and pursuant to ~~the Real Estate Settlement Agent Registration Act (§ 6.1-2.30 et seq.)~~ of Title 6.1 § 55-525.18 of the Code of Virginia, a lay real estate settlement agent shall be required to comply with the provisions of this chapter, except as specifically set forth in 14VAC5-395-60.

14VAC5-395-30. Registration.

Every title insurance agent, title insurance agency and title insurance company that acts as a settlement agent shall be required to be registered with the bureau in accordance with the provisions of ~~§ 6.1-2.26~~ 55-525.30 of the Code of Virginia.

14VAC5-395-80. Violations.

Any violation of this chapter shall be punished as provided for in ~~the Act Chapter 27.3 (§ 55-525.16 et seq.)~~ of Title 55 of the Code of Virginia.

VA.R. Doc. No. R11-2580; Filed October 5, 2010; 5:02 p.m.



TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF PHARMACY

Final Regulation

REGISTRAR'S NOTICE: The following forms used in administering the regulation have been filed by the Board of Pharmacy. The forms are not being published; however, the name of each form is listed below and hyperlinks to the actual form. Online users of this issue of the Virginia Register of Regulations may access the form by clicking on the name of the form. Users of the Virginia Administrative Code online at <http://regulations.legis.virginia.gov> may access the forms online as of November 10, 2010. The forms are also available for public inspection at the Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 300, Henrico, Virginia 23233-1463, or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

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

Agency Contact: Caroline D. Juran, Acting Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Henrico, VA 23233-1463, telephone (804) 367-4456, FAX (804) 527-4472, or email pharmbd@dhp.virginia.gov

FORMS (18VAC110-20)

[Application for Registration as a Pharmacy Intern \(rev. 8/07\).](#)

[Affidavit of Practical Experience, Pharmacy Intern \(rev. 8/07\).](#)

~~[Application for Licensure as a Pharmacist by Examination \(rev. 8/07\).](#)~~

~~[Instructions for Reinstating or Reactivating a Pharmacist License \(rev. 11/07\).](#)~~

~~[Application to Reinstatement or Reactivate a Pharmacist License \(rev. 11/07\).](#)~~

[Application for Licensure as a Pharmacist by Examination \(rev. 11/09\).](#)

[Application to Reinstatement or Reactivate a Pharmacist License \(rev. 3/10\).](#)

[Application for Approval of a Continuing Education Program \(rev. 8/07\).](#)

~~[Application for Approval of ACPE Pharmacy School Course\(s\) for Continuing Education Credit \(rev. 4/09\).](#)~~

~~[Application for License to Dispense Drugs \(permitted physician\) \(rev. 8/07\).](#)~~

[Application for a Pharmacy Permit \(rev. 3/09\).](#)

[Application for Approval of ACPE Pharmacy School Course\(s\) for Continuing Education Credit \(rev. 6/09\).](#)

[Application for License to Dispense Drugs \(rev. 8/07\).](#)

[Application for a Pharmacy Permit \(rev. 6/10\).](#)

[Application for a Nonresident Pharmacy Registration \(rev. 7/08\).](#)

[Application for a Permit as a Medical Equipment Supplier \(rev. 3/09\).](#)

[Application for a Controlled Substances Registration Certificate \(rev. 4/09\).](#)

[Application for Registration as a Pharmacy Intern for Graduates of a Foreign College of Pharmacy \(rev. 8/07\).](#)

[Closing of a Pharmacy \(rev. 8/07\).](#)

[Application for Approval of a Robotic Pharmacy System \(rev. 8/07\).](#)

~~[Inspection Required for Approval of a Robotic Pharmacy System \(rev. 8/07\).](#)~~

[Application for Approval of an Innovative \(Pilot\) Program \(rev. 8/07\).](#)

[Pharmacy Technician Registration Instructions and Application \(rev. 3/09\).](#)

~~[Instructions for Reinstating a Pharmacy Technician Registration \(rev. 11/07\).](#)~~

~~[Application to Reinstatement a Pharmacy Technician Registration \(rev. 11/07\).](#)~~

[Application to Reinstatement a Pharmacy Technician Registration \(rev. 3/10\).](#)

[Application for Approval of a Pharmacy Technician Training Program \(rev. 8/07\).](#)

[Application for Registration for Volunteer Practice \(rev. 8/07\).](#)

~~[Sponsor Certification for Volunteer Registration \(rev. 8/07\).](#)~~

[Sponsor Certification for Volunteer Registration \(rev. 8/08\).](#)

~~[Preceptor Verification Form \(rev. 8/07\).](#)~~

[Application for Reinstatement of Registration as a Pharmacy Intern \(eff. 9/07\).](#)

[Affidavit for Limited-Use Pharmacy Technician \(rev. 8/07\).](#)

[Limited-Use Pharmacy Technician Registration Instructions and Application \(rev. 7/08\).](#)

~~[Application for Registration as a Pharmacy Technician \(eff. 3/09\).](#)~~

[Registration for a Pharmacy to be a Collection Site for Donated Drugs \(eff. 4/09\).](#)

VA.R. Doc. No. R11-2615; Filed October 6, 2010.

GOVERNOR

EXECUTIVE ORDER NUMBER 25 (2010)

Establishing the Domestic Violence Prevention and Response Advisory Board

Importance of the Issue

The preservation of peace in our communities and the protection of all citizens of the Commonwealth from violence are fundamental priorities of government. Unfortunately, every year thousands of Virginians suffer the indignity of domestic violence and experience emotional, physical, psychological and financial harm as a result of such crimes. Victimization strikes people of all ages and abilities, as well as all economic, racial, and social backgrounds. Furthermore, the physical and emotional trauma suffered by victims of domestic and sexual violence, often compounded by silence and stigma surrounding the crime, calls for special attention in our prevention and response efforts.

According to the Virginia Department of State Police, 4,487 forcible sex offenses, including rape, sodomy, and assault with an object, were reported in 2009 in jurisdictions throughout the Commonwealth. These acts of violence resulted in 4,779 victims. Tragically, over 61 percent of these victims were under the age of 17.

Unfortunately, these numbers do not reflect the complete picture relating to acts of sexual and domestic violence in Virginia because many victims do not report the incident to law enforcement.

Domestic and sexual violence impacts all segments of our society and is on the rise in certain areas.

In April 2010, the U.S. Department of Education, the Federal Bureau of Investigation, and the U.S. Secret Service released a report indicating that the incidents of college campus violence have drastically increased in the past 20 years. One in five women who attend college will be the victim of a sexual assault during her four years on campus. The Commonwealth's institutions of higher education, as demonstrated by recent events, are not immune from these acts of campus violence.

To make Virginia's citizens, families, and communities safe, it is appropriate that the Commonwealth dedicate resources to prevent, combat, and reduce domestic violence in Virginia.

Establishment of the Advisory Board

While many localities have taken necessary steps to address domestic violence in their communities, public policymakers must continuously strive to improve the services and support for Virginia's domestic violence victims and survivors. Statewide collaboration is essential in order to provide services to victims; to create programs aimed at preventing and responding to such tragedies; and to hold offenders accountable.

Accordingly, 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 2.2-134 of the Code of Virginia, and subject always to my continuing and ultimate authority and responsibility to act in such matters, I hereby establish the Governor's Domestic Violence Prevention and Response Advisory Board. This Board will continue the dialogue with state and local agencies, as well as involve stakeholders, to make recommendations for changes to our laws, policies, and procedures to enhance Virginia's response to domestic violence at all levels.

This Advisory Board will promote ongoing collaboration among relevant state and local agencies, as well as private sector and community partners involved in domestic violence prevention, enforcement and response efforts.

Composition of the Advisory Board

The Governor's Domestic Violence Prevention and Response Advisory Board shall operate under the direction of the Secretary of Public Safety. Recognizing that these efforts will require the work of individuals across a broad spectrum of professions and expertise, the Advisory Board shall consist of designees from the following agencies and organizations:

- Office of the Attorney General;
- Supreme Court of Virginia;
- Commonwealth's Attorneys' Services Council;
- Virginia Association of Commonwealth's Attorneys;
- Virginia Association of Chiefs of Police;
- Virginia Sheriffs' Association;
- Virginia Department for the Aging;
- Virginia Department of Behavioral Health and Developmental Services;
- Virginia Department of Corrections;
- Virginia Department of Criminal Justice Services;
- Virginia Department of Education;
- Virginia Department of Health;
- Virginia Department of Housing and Community Development;
- Virginia Department of Juvenile Justice;
- Virginia Department of Social Services;
- Virginia Department of State Police;
- Virginia State Crime Commission;
- Family and Children's Trust Fund of Virginia;
- Virginia Center on Aging;
- Virginia Poverty Law Center;
- Criminal Injuries Compensation Fund;
- Virginia Sexual and Domestic Violence Action Alliance;
- Virginia Association of Campus Law Enforcement Administrators, Inc.;
- Virginia Coalition Against Campus Sexual Assault;
- Virginia Chapter of the International Association of Forensic Nurses;

Virginia Network for Victims and Witnesses of Crime, Inc.; and Representatives from the Virginia Senate and House of Delegates

Other members may be added at the discretion of the Secretary of Public Safety.

Staff support to the Advisory Board shall be provided by the Office of the Governor, the Office of the Secretary of Public Safety, the Virginia Department of Criminal Justice Services, the Virginia Department of Social Services, and such other agencies as the Governor may designate. All Cabinet Secretariats and executive branch agencies shall cooperate fully with the Advisory Board and render such assistance as may be requested.

Duties of the Advisory Board

The Advisory Board's responsibilities shall include the following:

- Assess means of improving services to children who have experienced, witnessed, or been exposed to the effects of domestic violence.
- Work in conjunction with the Virginia State Crime Commission and the Office of the Attorney General, to complete a comprehensive review of Virginia's protective order laws and processes, and make recommendations for clarifying the protective order process and enhancing the enforcement of protective orders.
- Review the recommendations set forth in previous relevant reports and studies, and develop strategies for implementing sound recommendations from these sources. This assessment should include prioritizing initiatives, developing a timeline for achieving goals, and designating duties to accomplish the Advisory Board's stated purpose of preventing and responding to domestic violence.
- Develop recommendations for enhancing services and community response to victims of domestic violence who are traditionally underserved.
- Investigate ways to make Virginia's college campuses safer and reduce incidents of violence of all kinds.
- Make any other recommendations as may be appropriate.

The Advisory Board shall submit to the Governor its findings and recommendations on matters potentially impacting the development of the Executive Budget no later than September 15, 2011. The Board shall submit a final report of its activities, findings and recommendations no later than October 1, 2011. Should the Advisory Board be extended

beyond a year, this pattern of reporting shall continue for the duration of the Board.

An estimated 200 hours of staff time will be required to support the work of the Commission.

Necessary funding to support the Commission and its staff shall be provided from federal funds, private contributions, and state funds appropriated for the same purposes as the Advisory Board, as authorized by Section 2.2-135 of the Code of Virginia, as well as any other private sources of funding that may be identified. Estimated direct costs for this Commission are \$5,000.00 per year.

Effective Date of the Executive Order

This Executive Order supersedes and rescinds Executive Order 93 (2009) issued on September 28, 2009, by Governor Timothy M. Kaine. This Executive Order shall become effective upon its signing and shall remain in full force and effect until one year from its signing, unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 1st day of October, 2010.

/s/ Robert F. McDonnell
Governor

GENERAL NOTICES/ERRATA

DEPARTMENT OF ENVIRONMENTAL QUALITY (DEQ)

Proposed Enforcement Action for Bandy, L.L.C.

An enforcement action has been proposed for Bandy, L.L.C., regarding alleged violations of § 62.1-44.15:20 of the Code of Virginia and 9VAC25-210-50 in Floyd County. The consent order describes a settlement to resolve alleged unpermitted excavation and discharge of fill material into state waters. A copy the proposed settlement is available at the DEQ office named below or online at www.deq.virginia.gov. Lee M. Crowell, Esq. will accept comments by email at lee.crowell@deq.virginia.gov, FAX (804) 698-4277, or postal mail at Department of Environmental Quality, Central Office, 629 East Main Street, Richmond, VA 23219, from October 25, 2010, to November 24, 2010.

Proposed Enforcement Action for Getty Petroleum Marketing, Inc.

An enforcement action has been proposed for Getty Petroleum Marketing, Inc. for Getty Mart 71173, for alleged violations in Richmond, Virginia. The State Water Control Board proposes to issue a consent special order to Getty Petroleum Marketing, Inc. to address noncompliance with underground storage tank regulations. A description of the proposed action is available at the DEQ office named below or online at www.deq.virginia.gov. Lisa Dewey will accept comments by email at lisa.dewey@deq.virginia.gov, FAX (804) 527-5106, or postal mail at Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, from October 25, 2010, to November 27, 2010.

Proposed Enforcement Action for Greensville County Water & Sewer Authority

An enforcement action has been proposed for the Greensville County Water & Sewer Authority for alleged violations at the Town of Jarratt wastewater treatment plant on 721 Horseshoe Road in Jarratt, Virginia. The action requires corrective action and payment of a civil charge. A description of the proposed action is available at the DEQ office named below or online at www.deq.virginia.gov. Frank Lupini will accept comments by email at frank.lupini@deq.virginia.gov, FAX (804) 527-5106, or postal mail at Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, from October 25, 2010, to November 25, 2010.

Proposed Enforcement Action for Henrico County

An enforcement action has been proposed for Henrico County for alleged violations at the County's 911 Training Center in Henrico County, Virginia. The State Water Control Board proposes to issue a consent special order to Henrico County to address noncompliance with State Water Control Board

law. A description of the proposed action is available at the 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 at Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, from October 25, 2010, to November 26, 2010.

Proposed Enforcement Action for Henrico County Water Reclamation Facility

An enforcement action has been proposed for the Henrico County Water Reclamation Facility for alleged violations at the facility on 9101 WRVA Road in Henrico County, Virginia. The action requires corrective action and payment of a civil charge. A description of the proposed action is available at the DEQ office named below or online at www.deq.virginia.gov. Frank Lupini will accept comments by email at frank.lupini@deq.virginia.gov, FAX (804) 527-5106, or postal mail at Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA, 23060, from October 25, 2010, to November 25, 2010.

Proposed Enforcement Action for Lucky's Convenience Stores, Inc.

An enforcement action has been proposed for Lucky's Convenience Stores, Inc. for alleged violations at its facility at 607 East Laburnum Avenue, Richmond, Virginia. The action requires corrective action and payment of a civil charge. A description of the proposed action is available at the DEQ office named below or online at www.deq.virginia.gov. Frank Lupini will accept comments by email at frank.lupini@deq.virginia.gov, FAX (804) 527-5106, or postal mail at Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, from October 25, 2010, to November 25, 2010.

Proposed Enforcement Action for the City of Richmond

An enforcement action has been proposed for the City of Richmond for alleged violations at the wastewater treatment plant on 1400 Brander Street, Richmond, Virginia. The action requires corrective action and payment of a civil charge. A description of the proposed action is available at the DEQ office named below or online at www.deq.virginia.gov. Frank Lupini will accept comments by email at frank.lupini@deq.virginia.gov, FAX (804) 527-5106, or postal mail at Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, from October 25, 2010, to November 25, 2010.

Public Comment Opportunity - Small Renewable Wind Energy Projects Permit By Rule Regulation

Purpose of Notice: The Director of the Department of Environmental Quality has scheduled a public meeting to receive comment on the Small Renewable Wind Energy Projects Permit by Rule Regulation, 9VAC15-40.

Date and Location of Public Meeting: October 18, 2010, at 1 p.m. in the 2nd Floor Conference Room of the Department of Environmental Quality Office, 629 East Main Street, Richmond, Virginia.

Background: The Department of Environmental Quality is in the process of adopting a regulation establishing a permit by rule for small renewable wind energy projects. The public comment period on the proposal closed on August 20, 2010, and an additional, informal comment period on a revised staff draft closes on October 5, 2010. Additional information on the regulatory action, including the original proposal, is available at <http://townhall.virginia.gov/L/viewaction.cfm?actionid=3089>. Information on the revised staff draft was announced through the Virginia Regulatory Town Hall on September 3, 2010, and detailed information on the revised staff draft is available at http://www.deq.virginia.gov/info/wind_notice.html.

Public Comment at the Meeting: Prior to final action on the regulation, the Director of the Department of Environmental Quality will hold a public meeting at which time persons who submitted comments to the Department of Environmental Quality during the established comment periods on the proposal or the revised staff draft may address the director. At the meeting those persons are allowed up to five minutes to respond to the summary of comments provided to the director. New information will not be accepted at the meeting. The director expects comments and information on the regulatory action to be submitted during the established public comment periods. However, the director recognizes that in rare instances new information may become available after the close of the public comment periods. To provide for consideration of and ensure the appropriate review of this new information, persons who participated during the prior public comment periods shall submit the new information to the Department of Environmental Quality staff contact listed below by October 14, 2010. If the director decides that the new information was not reasonably available during the prior public comment periods, is significant to the director's decision, and should be included in the official file, an additional public comment period may be announced by DEQ in order for all interested persons to have an opportunity to consider and provide comment on the new information. In addition, the director reserves the right to alter the time limitations set forth in this policy without notice, limit presentation of repetitive material, and ensure comments presented at the meeting conform to this policy. (The full

policy is available at <http://www.deq.virginia.gov/regulations/deqregulations.html>.

Final Decision: The director's final decision on the adoption of the regulation will occur at some time after the public meeting.

Contact Information: Carol C. Wampler, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4579, FAX (804)98-4346, or email carol.wampler@deq.virginia.gov.

STATE BOARD OF HEALTH

Periodic Review of Regulations

Pursuant to Executive Order Number 14 (2010), the Virginia Department of Health, on behalf of the State Board of Health, will review certain of its existing regulations to determine whether the regulations should be terminated, amended, or retained in their current form. The review of the regulations will be guided by the principles set out in Executive Order Number 14 (2010). The purpose of the regulations is to protect public health and welfare with the least possible costs and intrusiveness to the citizens and businesses of the Commonwealth.

The department and the board are seeking public comment in the review of any issue relating to these regulations, and in particular, whether they comport appropriately with the policies contained in Executive Order Number 14. Executive Order Number 14 encourages consideration of whether: (i) the regulations protect public health, safety and welfare with the least possible intrusion in the lives of citizens; (ii) alternatives in lieu of regulation may achieve the goals of the regulation; (iii) the regulations are based on the best reasonably available scientific, economic and other information; (iv) the regulations are designed to achieve their intended objective in the most efficient, cost-effective manner; (v) the regulations are clearly written and easily understandable by the individuals and entities affected; and (vi) the regulations have been developed in accordance with laws relating to the impact of regulations on small businesses.

Comments on the regulations are welcome and should be addressed to the person identified below as the contact person for the regulation. The deadline for receipt of comments is November 15, 2010.

12VAC5-125, Regulations for Bedding and Upholstered Furniture Inspection Program. Contact: Gary Hagy

12VAC5-165, Regulations for the Repacking of Crabmeat. Contact: Bob Croonenberghs

12VAC5-200, Regulations Governing Eligibility Standards and Charges for Health Care Services to Individuals. Contact: Jeff Lake

General Notices/Errata

12VAC5-371, Regulations for the Licensure of Nursing Facilities. Contact: Carrie Eddy

12VAC5-381, Home Care Organization Regulations. Contact: Carrie Eddy

12VAC5-405, Rules Governing Private Review Agents. Contact: Carrie Eddy

12VAC5-440, Regulations for Summer Camps. Contact: Gary Hagy

12VAC5-460, Regulations Governing Tourist Establishment Swimming Pools and Other Public Pools. Contact: Gary Hagy

12VAC5-462, Swimming Pool Regulations Governing the Posting of Water Quality Results. Contact: Gary Hagy

12VAC5-550, Board of Health Regulations Governing Vital Records. Contact: Janet Rainey

12VAC5-570, Commonwealth of Virginia Sanitary Regulations for Marinas and Boat Moorings. Contact: Allen Knapp

12VAC5-590, Waterworks Regulations. Contact: Robert A.K. Payne

12VAC5-600, Waterworks Operation Fee. Contact: Robert A.K. Payne

12VAC5-620, Regulations Governing Application Fees for Construction Permits for Onsite Sewage Disposal Systems and Private Wells. Contact: Allen Knapp

12VAC5-640, Alternative Discharging Sewage Treatment Regulations for Individual Single Family Dwellings. Contact: Allen Knapp

Agency Contacts:

Gary Hagy, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7455, email gary.hagy@vdh.virginia.gov.

Bob Croonenberghs, Ph.D., Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7477, or email bob.croonenberghs@vdh.virginia.gov.

Jeff Lake, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7003, or email jeff.lake@vdh.virginia.gov.

Carrie Eddy, Virginia Department of Health, 9960 Mayland Drive, Suite 401, Richmond, VA 23233, telephone (804) 367-2102, or email carrie.eddy@vdh.virginia.gov.

Janet Rainey, Virginia Department of Health, 1601 Willow Lawn Drive, Suite 275, Richmond, VA 23230, telephone (804) 662-6207, or email janet.rainey@vdh.virginia.gov.

Allen Knapp, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7458, or email allen.knapp@vdh.virginia.gov.

Robert A.K. Payne, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7498, or email rob.payne@vdh.virginia.gov.

STATE LOTTERY DEPARTMENT

Director's Orders

The following Director's Orders of the State Lottery Department were filed with the Virginia Registrar of Regulations on October 1, 2010, and October 4, 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 Sixty-Nine (10)

Virginia's Instant Game Lottery 1186; "10 X The Money" Final Rules for Game Operation (effective October 1, 2010)

Director's Order Number Seventy-Six (10)

Virginia Lottery's "Virginia's Wildlife Photo Contest" Final Rules for Game Operation (effective October 1, 2010)

Director's Order Number Eighty (10)

Virginia's Instant Game Lottery 1192; "Triple Wild" Final Rules for Game Operation (effective October 1, 2010)

Director's Order Number Eighty-One (10)

Virginia's Instant Game Lottery 1206; "Cash Flurry" Final Rules for Game Operation (effective October 1, 2010)

Director's Order Number Eighty-Two (10)

Virginia's Instant Game Lottery 1207; "Season's Delight" Final Rules for Game Operation (effective October 1, 2010)

Director's Order Number Eighty-Three (10)

Virginia's Instant Game Lottery 1208; "Red Hot Bucks" Final Rules for Game Operation (effective October 1, 2010)

Director's Order Number Eighty-Four (10)

Virginia's Instant Game Lottery 1209; "Holiday Cash" Final Rules for Game Operation (effective October 1, 2010)

Director's Order Number Eighty-Five (10)

Virginia's Instant Game Lottery 1211, "Farm Fresh Fast \$500!" Final Rules for Game Operation

Director's Order Number Eighty-Eight (10)

Virginia's Instant Game Lottery 1232; "Super Blackjack" Final Rules for Game Operation (effective October 1, 2010)

Director's Order Number Eighty-Nine (10)

Virginia's Instant Game Lottery 1180; "Movie Night" Final Rules for Game Operation (effective October 1, 2010)

Director's Order Number Ninety (10)

Virginia's Instant Game Lottery 1201; "Virginia's Wildlife" Final Rules for Game Operation (effective October 1, 2010)

STATE WATER CONTROL BOARD

Proposed Enforcement Action for Branscome, Inc.

An enforcement action has been proposed for Branscome, Inc., for alleged violations of the Virginia Pollutant Discharge Elimination System Permit at the Branscome Facility at 30100 Withams Road, Oak Hall, Accomack County. A description of the proposed action is available at the DEQ office named below or online at www.deq.virginia.gov. Paul R. Smith will accept comments by email at paul.smith@deq.virginia.gov, FAX (757) 518-2009, or postal mail at Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Blvd., Virginia Beach, VA 23462, from October 23, 2010, to November 24, 2010.

Proposed Enforcement Action for Carrollton Used Auto Parts, Inc.

An enforcement action has been proposed for Carrollton Used Auto Parts, Inc., for alleged violations of Virginia Pollutant Discharge Elimination General Permit VAR05 at the Joe's Auto Parts automobile salvage yard at 22251 Brewers Neck Road, Carrollton, Isle of Wight County. A description of the proposed action is available at the DEQ office named below or online at www.deq.virginia.gov. Paul R. Smith will accept comments by email at paul.smith@deq.virginia.gov, FAX (757) 518-2009, or postal mail at Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Blvd., Virginia Beach, VA 23462, from October 25, 2010, to November 24, 2010.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219; *Telephone:* Voice (804) 786-3591; FAX (804) 692-0625; *Email:* varegs@dls.virginia.gov.

Meeting Notices: Section 2.2-3707 C of the Code of Virginia requires state agencies to post meeting notices on their websites and on the Commonwealth Calendar at <http://www.virginia.gov/cmsportal3/cgi-bin/calendar.cgi>.

Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed: A table listing

regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the regulations were originally published or last supplemented in the print version of the Virginia Administrative Code is available at <http://register.dls.virginia.gov/cumultab.htm>.

Filing Material for Publication in the Virginia Register of Regulations: Agencies are required to use the Regulation Information System (RIS) when filing regulations for publication in the *Virginia Register of Regulations*. The Office of the Virginia Register of Regulations implemented a web-based application called RIS for filing regulations and related items for publication in the Virginia Register. The Registrar's office has worked closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.

The Office of the Virginia Register is working toward the eventual elimination of the requirement that agencies file print copies of regulatory packages. Until that time, agencies may file petitions for rulemaking, notices of intended regulatory actions, and general notices in electronic form only; however, until further notice, agencies must continue to file print copies of proposed, final, fast-track, and emergency regulatory packages.

ERRATA

BOARD OF CONTRACTORS

Title of Regulation: 18VAC50-22. Board for Contractors Regulations.

Publication: 26:11 VA.R. 1832-1833 February 1, 2010.

Correction to Final Regulation:

Page 1833, column 2, Forms, the following forms were updated effective May 18, 2009, and should read:

Trade-Related Examinations and Qualifications Information, 27EXINFO (~~8/07~~) (rev. 5/09).

Changes of Responsible Management Form, 27CHRM (~~eff. 8/07~~) (rev. 5/09).

VA.R. Doc. No. R08-1169; Filed October 8, 2010, 3:01 p.m.

