



Virginia Register of Regulations

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THE VIRGINIA REGISTER INFORMATION PAGE

THE VIRGINIA REGISTER OF REGULATIONS is an official state publication issued every other week throughout the year. Indexes are published quarterly, and are cumulative for the year. The *Virginia Register* has several functions. The new and amended sections of regulations, both as proposed and as finally adopted, are required by law to be published in the *Virginia Register*. In addition, the *Virginia Register* is a source of other information about state government, including petitions for rulemaking, emergency regulations, executive orders issued by the Governor, 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 V.A.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.**; **Patricia L. West**; **Charles S. Sharp**.

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.dls.virginia.gov>).

February 2011 through March 2012

| <u>Volume: Issue</u> | <u>Material Submitted By Noon*</u> | <u>Will Be Published On</u> |
|----------------------|--------------------------------------|-----------------------------|
| 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 |
| 28:8 | November 30, 2011 | December 19, 2011 |
| 28:9 | December 13, 2011 (Tuesday) | January 2, 2012 |
| 28:10 | December 27, 2011 (Tuesday) | January 16, 2012 |
| 28:11 | January 11, 2012 | January 30, 2012 |
| 28:12 | January 25, 2012 | February 13, 2012 |
| 28:13 | February 8, 2012 | February 27, 2012 |
| 28:14 | February 22, 2012 | March 12, 2012 |

*Filing deadlines are Wednesdays unless otherwise specified.

NOTICES OF INTENDED REGULATORY ACTION

TITLE 2. AGRICULTURE

BOARD OF AGRICULTURE AND CONSUMER SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Agriculture and Consumer Services intends to consider amending the following regulation: **2VAC5-60, Rules and Regulations Governing the Operation of Livestock Markets**. The purpose of the proposed action is to provide updated language with respect to disease eradication efforts and animal disease traceability.

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

Statutory Authority: §§ 3.2-6002 and 3.2-6004 of the Code of Virginia.

Public Comment Deadline: March 30, 2011.

Agency Contact: Dr. Charles C. Broaddus, Program Manager, Office of Veterinary Services, Department of Agriculture and Consumer Services, 102 Governor Street, Richmond, VA 23219, telephone (804) 786-2483, FAX (804) 371-2380, TTY (800) 828-1120, or email charles.broaddus@vdacs.virginia.gov.

VA.R. Doc. No. R11-2716; Filed February 9, 2011, 2:48 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Agriculture and Consumer Services intends to consider amending the following regulation: **2VAC5-120, Rules and Regulations Governing the Recordkeeping By Virginia Cattle Dealers for the Control or Eradication of Brucellosis of Cattle**. The purpose of the proposed action is to update language with respect to disease eradication efforts and animal disease traceability.

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

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

Public Comment Deadline: March 30, 2011.

Agency Contact: Dr. Charles C. Broaddus, Program Manager, Office of Veterinary Services, Department of Agriculture and Consumer Services, 102 Governor Street, Richmond, VA 23219, telephone (804) 786-2483, FAX (804) 371-2380, TTY (800) 828-1120, or email charles.broaddus@vdacs.virginia.gov.

VA.R. Doc. No. R11-2717; Filed February 7, 2011, 11:11 a.m.

TITLE 9. ENVIRONMENT

DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Department of Environmental Quality intends to consider promulgating the following regulation: **9VAC15-70, Small Renewable Energy Projects (Combustion) Permit by Rule Regulation**. The purpose of the proposed action is to implement 2009 legislation requiring the Department of Environmental Quality (DEQ) to develop one or more permits-by-rule for combustion energy projects with rated capacity not exceeding 20 megawatts. In this regulatory action, DEQ will determine what requirements, if any, must be met for small combustion renewable energy projects; that is, projects generating electricity from biomass, energy from waste, or municipal solid waste.

Regulatory Panel: The department plans to use a Regulatory Advisory Panel (RAP) to help develop a proposal. Persons interested in assisting in the development of a proposal should notify the agency contact by March 15, 2011, and provide their name, address, phone number, email address, and the organization they represent (if any). The primary function of the panel will be to develop recommended regulation provisions for DEQ consideration through the collaborative approach of regulatory negotiation and consensus. The Director of DEQ will select RAP members from the list of persons who have expressed interest in serving. Multiple applications from a single company, organization, group, or other entity count as one for purposes of making the decision specified in the preceding sentence. Notification of the composition of the panel will be sent to all applicants.

Note: The first meeting of the Combustion Regulatory Advisory Panel will be held on Tuesday, April 12, 2011, at 9:30 a.m. at DEQ's Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia 23060.

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

Statutory Authority: § 10.1-1197.6 of the Code of Virginia.

Public Comment Deadline: March 30, 2011.

Agency Contact: Carol C. Wampler, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4579, FAX (804) 698-4346, or email carol.wampler@deq.virginia.gov.

VA.R. Doc. No. R11-2707; Filed February 7, 2011, 10:07 a.m.

Notices of Intended Regulatory Action

VIRGINIA WASTE MANAGEMENT BOARD

Withdrawal of Notice of Intended Regulatory Action

Notice is hereby given that the Virginia Waste Management Board has WITHDRAWN the Notice of Intended Regulatory Action for **9VAC20-85, Coal Combustion Byproduct Regulations**, that was published in 25:20 VA.R. 3474 June 8, 2009. This action was withdrawn due to the length of time that has passed since the Notice of Intended Regulatory Action was originally issued and because of rulemaking at the federal level that will impact the regulation of coal combustion residuals.

Agency Contact: Melissa S. Porterfield, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4238, FAX (804) 698-4346, or email mporterfield@deq.virginia.gov.

VA.R. Doc. No. R09-1912; Filed February 7, 2011, 4:24 p.m.



TITLE 12. HEALTH

STATE BOARD OF HEALTH

Withdrawal of Notice of Intended Regulatory Action

Notice is hereby given that the State Board of Health has WITHDRAWN the Notice of Intended Regulatory Action for **12VAC5-160, Regulations for the Sanitary Control of the Picking, Packing and Marketing of Crab Meat for Human Consumption**, and **12VAC5-165, Regulations for the Repacking of Crab Meat**, which was published in 24:20 VA.R. 2835 June 9, 2008.

Agency Contact: Bob Croonenberghs, Ph.D., Director, Shellfish Sanitation, Department of Health, 109 Governor Street, Richmond, VA 23219, or email bob.croonenberghs@vdh.virginia.gov.

VA.R. Doc. No. R08-1338; Filed February 11, 2011, 10:24 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Health intends to consider amending the following regulation: **12VAC5-165, Regulations for the Repacking of Crabmeat**. The regulations pertain to the practice of transferring crab meat from the container of one establishment, as the term is defined in § 28.2-800 in the Code of Virginia, into the container of an establishment certified by the Division of Shellfish Sanitation to repack crab meat. These regulations were developed in 2000 to address a situation where one Virginia-certified crab meat dealer would purchase crab meat packed by another certified crab meat dealer, whether of a domestic or foreign origin, and repack the meat into a container. Most crab meat shipped into the United States now originates from a multitude of different processing facilities

but is shipped in one cargo container by one exporter to the U.S. The one-on-one relationship between the original processing plant and the Virginia-certified dealer no longer exists in most instances. Several of the requirements that depended upon this relationship cannot be reliably met. The State Board of Health seeks to revise the regulations to reflect this change in order to assure the safety of crab meat repacked in Virginia.

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

Statutory Authority: § 28.2-801 of the Code of Virginia.

Public Comment Deadline: March 30, 2011.

Agency Contact: Bob Croonenberghs, Ph.D., Department of Health, 109 Governor St., Richmond, VA 23219, telephone (804) 864-7477, FAX (804) 864-7481, or email bob.croonenberghs@vdh.virginia.gov.

VA.R. Doc. No. R11-2705; Filed February 2, 2011, 10:37 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Health intends to consider amending the following regulation: **12VAC5-440, Regulations for Summer Camps**. The purpose of the proposed action is to revise outdated regulations to reflect current industry standards and repeal any sections that are no longer necessary and replace those sections with other regulations.

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

Statutory Authority: §§ 35.1-11 and 35.1-16 of the Code of Virginia.

Public Comment Deadline: March 30, 2011.

Agency Contact: Gary Hagy, Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7455, FAX (804) 864-7475, TTY (800) 828-1120, or email gary.hagy@vdh.virginia.gov.

VA.R. Doc. No. R11-2711; Filed February 2, 2011, 10:37 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Health intends to consider amending the following regulation: **12VAC5-460, Regulations Governing Tourist Establishment Swimming Pools and Other Public Pools**. The purpose of the proposed action is to revise the regulations, which have not been amended since 1962, to bring them up to date with technology and accepted swimming pool design. Several of the sections of the regulations are likely in conflict with the Virginia Uniform Statewide Building Code and, as such, the board intends to delete them. The board seeks to thoroughly amend and eliminate unnecessary provisions of the

Notices of Intended Regulatory Action

regulations; in doing so, the board will seek participation from the swimming pool industry and the Department of Housing and Community Development.

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

Statutory Authority: § 35.1-11 of the Code of Virginia.

Public Comment Deadline: March 30, 2011.

Agency Contact: Gary Hagy, Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7455, FAX (804) 864-7475, TTY (800) 828-1120, or email gary.hagy@vdh.virginia.gov.

VA.R. Doc. No. R11-2712; Filed February 3, 2011, 9:58 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Health intends to consider amending the following regulation: **12VAC5-462, Swimming Pool Regulations Governing the Posting of Water Quality Results.** The State Board of Health adopted the regulations in 1994, but the board has not amended them since. Currently, the water quality posting requirements in the regulations are applicable to only public swimming pools. These planned regulatory actions will amend the regulations to require compliance with the water quality test results posting requirements for other water recreational facilities open to the public where there is body contact with the recirculation of water, such as spray facilities, fountains, etc.

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

Statutory Authority: § 32.1-248.1 of the Code of Virginia.

Public Comment Deadline: March 30, 2011.

Agency Contact: Gary Hagy, Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7455, FAX (804) 864-7475, TTY (800) 828-1120, or email gary.hagy@vdh.virginia.gov.

VA.R. Doc. No. R11-1631; Filed February 3, 2011, 9:59 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Health intends to consider amending the following regulation: **12VAC5-570, Commonwealth of Virginia Sanitary Regulations for Marinas and Boat Moorings.** In response to the evolving marina industry in Virginia, the State Board of Health intends to revise and amend the regulation in an effort to improve boater accommodations and to ensure that boaters will have a place to dispose of sewage in a sanitary matter so as not to present a public health or environmental hazard resulting in a degradation of water quality.

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

Statutory Authority: § 32.1-246 of the Code of Virginia.

Public Comment Deadline: March 30, 2011.

Agency Contact: Preston Smith, Manager, Marina Programs, Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7468, FAX (804) 864-7475, or email preston.smith@vdh.virginia.gov.

VA.R. Doc. No. R11-2688; Filed February 2, 2011, 10:36 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Health intends to consider amending the following regulation: **12VAC5-640, Alternative Discharging Sewage Treatment Regulations for Individual Single Family Dwellings.** The regulations apply to all alternative discharging sewage treatment systems constructed and operated to serve an individual single family dwelling with flows less than or equal to 1,000 gallons per day on a yearly average. These regulations operate in conjunction with the Virginia Department of Environmental Quality's (DEQ) General Permit for Sewage Discharges Less Than or Equal to 1,000 Gallons Per Day (9VAC25-110). The State Board of Health's regulations provide details on applications, construction standards and monitoring requirements, as well as administrative procedures for hearings, variances, etc. The board has not updated these regulations since July 30, 1992. The technological and regulatory landscape has changed considerably since that time. The board is seeking to revise the regulations to reflect technological changes in the field, incorporate numerous policy documents, and consider impacts to the Chesapeake Bay total maximum daily load.

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

Statutory Authority: § 32.1-164 of the Code of Virginia.

Public Comment Deadline: March 30, 2011.

Agency Contact: Marcia Degen, Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 387-1883, FAX (804) 864-7475, or email marcia.degen@vdh.virginia.gov.

VA.R. Doc. No. R11-2735; Filed February 3, 2011, 9:57 a.m.

REGULATIONS

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

Symbol Key

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

TITLE 1. ADMINISTRATION

STATE BOARD OF ELECTIONS

Final Regulation

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

Title of Regulation: **1VAC20-20. General Administration (adding 1VAC20-20-10, 1VAC20-20-30 through 1VAC20-20-80).**

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

Effective Date: Effective upon the filing of the notice of the U.S. Attorney General's preclearance with the Registrar of Regulations.

Agency Contact: Martha Brissette, Policy Analyst, State Board of Elections, 1100 Bank Street, Richmond, VA 23219, telephone (804) 864-8925, or email martha.brissette@sbe.virginia.gov.

Summary:

In 2009 the State Board of Elections undertook an in-depth review of its policies and reaffirmed those policies identified as stating current rules with which general registrars and electoral boards must comply. This proposed regulation restates the board policies so identified as regulations for publication in the Virginia Administrative Code where they will be more accessible to the public and the election community. The proposed regulation restatement is based on board policies 2010-003, 2009-007, 2009-004, 2006-005, 2006-004, 2006-003, 2005-005, 2005-003, 2004-007 as amended September 14, 2010, 2004-001, 2001-007, 1999-002, and 1946-001. The proposed regulation sets forth the general administration of the board.

Since publication of the proposed regulation, the final regulation was amended to add the word "shall" in reference to posting to the Internet the approved list of board delegations to the Secretary of the Board of Elections currently contained in the State Board of Election Town Hall Guidance Document DEL-1.

1VAC20-20-10. Definitions.

The following word and term when used in this chapter shall have the following meaning unless the context clearly indicates otherwise:

"Board" means the Virginia State Board of Elections.

"Secretary" means the Secretary of the State Board of Elections.

1VAC20-20-30. Organization of State Board of Elections; seal.

A. The board shall have a chairman and a vice-chairman of the board, in addition to the ex-officio secretary. The chairman shall preside at all meetings and perform the usual functions of a presiding officer and such other duties as are imposed by these regulations or from time to time by the board. In the chairman's absence, the vice-chairman shall perform these functions and duties. Each member, except the secretary, shall receive a per diem and expenses for attendance. Expenses shall be reported on forms approved by the Department of Accounts. The secretary is authorized to sign the vouchers for the payment of such expenses.

B. The secretary shall be authorized and it shall be the secretary's duty to employ such assistants and to purchase such equipment and supplies as are necessary from time to time, subject to the provisions of the law creating the board and the provisions of the laws and rules relating to the budgetary and personnel systems. The secretary or secretary's designee is authorized to execute necessary vouchers for the payment of the salaries of such assistants and for equipment and supplies so secured.

C. The secretary is authorized and directed to perform all duties of a routine and administrative character imposed upon the board by the law creating the same and other such duties delegated to the secretary by the board.

D. The secretary is authorized to do all things necessary to the proper execution of the law creating and governing the board and in the performance of the duties imposed upon it insofar as the same are not from their nature such as can be performed only by the board in its corporate capacity.

E. The secretary is authorized and directed to consult with and obtain the advice of the Attorney General, on behalf of and in the name of the board, whenever in the secretary's judgment occasion arises.

F. Routine and informal action of the board or of the secretary within the scope of the secretary's authority may be evidenced merely by the signature of the secretary.

G. Two members of the board shall constitute a quorum for the transaction of business at any duly constituted meeting.

H. Notice of each meeting of the board shall be given to all board members either by the secretary or the member calling the meeting at least three business days prior to the meeting except in the case of an emergency as defined in § 2.2-3701 of the Code of Virginia. Notice shall be given to the public as required by § 2.2-3707 of the Code of Virginia. All meetings shall be conducted in accordance with the requirements of the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia). All meetings shall be open to the public unless the board goes into a closed meeting pursuant to § 2.2-3711 of the Code of Virginia.

I. A record of formal official and definitive actions of the board shall be preserved in a record book which may be bound or loose leaf.

J. The secretary shall keep the seal of the board and affix the seal to evidence formal action of the board.

1VAC20-20-40. Virginia's Help America Vote Act plan.

Virginia's plan under the Help America Vote Act of 2002, 42 USC § 15301 et seq., states policy of the board and performance goals for the board to document and measure.

1VAC20-20-50. Fee for nonattendance at annual training.

The board, at its discretion, will impose a fee for noncancellation of attendance at the annual training (workshop). This fee will be limited to individuals who register to attend the training and fail to cancel their attendance within three business days of the event. The fee will be limited to the cost incurred as a result of the noncancellation.

1VAC20-20-60. Delegations to Secretary of State Board of Elections.

A. In addition to the authority described in 1VAC20-20-30, the secretary has the delegations of authority to the secretary detailed in the board's minutes of December 2, 2004, as amended September 14, 2010. Board staff [~~may~~] (i) [may] update that listing to correct citations and (ii) [shall] post the list to the Internet in order that additional delegations or other modifications may be proposed to the board by any interested person.

B. The secretary is authorized to prescribe the paper ballot reconciliation form under § 24.2-666 of the Code of Virginia and to develop, maintain, and prepare instructions for the operation of poll equipment before, during, and after the closing of the polls and in preparation of the statements of results.

C. The secretary shall monitor and control the quality and cost of the copies of Title 24.2 of the Code of Virginia and other election materials that the board provides to electoral boards for use at each precinct.

D. Subject to the board's policy oversight, the secretary has authority to conduct the board's administrative and programmatic operations and to discharge the board's duties consistent with specific delegations of authority.

E. The secretary is authorized to establish and maintain a central repository of forms and instructions approved for use in conducting elections. The forms and instructions shall be organized following a standard naming convention consisting of name taken from the first descriptive line, a statutory or other authority identifier, and revision date.

1VAC20-20-70. Duty to request assistance and to notify voters of denial of applications for voter registration or absentee ballots.

A. A general registrar experiencing difficulty processing applications for voter registration or absentee ballots in a timely manner should immediately notify the secretary to request staff support to assure compliance with federal and state laws.

B. A general registrar should provide applicants with specific reasons whenever their voter registration or absentee applications are denied. The board shall automate the notice process through standard correspondence and the statewide voter registration system.

1VAC20-20-80. Complaints.

A. Any person may make an informal complaint electronically or by telephone. Localities are primarily responsible for responding to all voter complaints they receive and may request board staff for assistance as needed.

B. A person may file a formal written complaint with the board as required by the Help America Vote Act of 2002, 42 USC § 15301 et seq., using the form and instructions available from the board. Formal complaints require review and response by the deputy secretary or secretary who may contact local election officials for information. Any complaints not meeting the criteria for formal complaints will be responded to informally by appropriate staff.

NOTICE: The following forms used in administering the regulation were filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name to access a form. The forms are also available through the agency contact or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS (1VAC20-20)

[Virginia Voters' Election Day Complaint Form (rev. 6/10)]

Regulations

[Virginia Voters' Election Day Complaint Form \(rev. 7/10\).](#)]

DOCUMENTS INCORPORATED BY REFERENCE
(1VAC20-20)

[Virginia State Plan, Help America Vote Act of 2002, adopted July 2003, amended August 2005 and July 2006, Virginia State Board of Elections.](#)

[Help America Vote Act of 2002 Performance Goals, Virginia State Board of Elections, June 19, 2006 \(Virginia State Board of Elections Policy 2006-004\).](#)

[State Board of Election Minutes of December 2, 2004, as amended September 14, 2010.](#)

VA.R. Doc. No. R11-2691; Filed February 4, 2011, 1:22 p.m.

Final Regulation

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

Title of Regulation: 1VAC20-40. Voter Registration (adding 1VAC20-40-70).

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

Effective Date: Effective upon the filing of the notice of the U.S. Attorney General's preclearance with the Registrar of Regulations.

Agency Contact: Martha Brissette, Policy Analyst, State Board of Elections, 1100 Bank Street, Richmond, VA 23219, telephone (804) 864-8925, FAX (804) 786-0760, or email martha.brissette@sbe.virginia.gov.

Summary:

In 2009 the State Board of Elections undertook an in-depth review of its policies and reaffirmed those policies identified as stating current rules with which general registrars and electoral boards must comply. This regulation restates the board policies so identified as regulations for publication in the Virginia Administrative Code where they will be more accessible to the public and the election community. The regulation restatement is based on board policies 2006-008, 2006-002, 2001-007, 1971-001, and 1970-001.

The regulation sets forth requirements regarding the voter registration application form and signature; details standards to assist local election officials in determining what omissions on a voter registration application are not material and when to attempt to obtain certain missing information; and provides persons identified as noncitizens with an opportunity to affirm United States citizenship.

1VAC20-40-70. Applications for voter registration; affirmation of United States citizenship.

A. Form and signature.

1. Applications for voter registration shall be on a form approved by the State Board of Elections or appropriate federal agency.
2. Applications for voter registration must be signed by the applicant or the name and address of the assistant entered on the signature line for an applicant with a physical disability.

B. Material omissions on applications for voter registration in general. The following omissions are not material if any of the following, or combination thereof, exists:

1. Daytime telephone number;
2. Description of a rural address;
3. Mailing address different from residence address;
4. Date of the application;
5. Whether the applicant is interested in working as an election official;
6. Whether the applicant requests to have his residence address excluded from published lists;
7. Whether the applicant has a disability that requires accommodation in order to vote; or
8. Gender.

C. Material omissions from applications for voter registration on a Federal Post Card Application or Federal Write-in Absentee Ballot. The following omissions are not material:

1. Service identification number, rank, grade, or rate on an application that declares active duty military status.
2. Employer name and address on an application that declares temporary overseas residence with no date of last residence.
3. Employer name and address on an application that declares temporary overseas residence with a date of last residence. If practicable, the general registrar should inform the applicant that eligibility for full ballots requires providing the name and address of an employer outside the United States.
4. Date of last residence on an application that declares indefinite overseas residence. The date of last residence for an application declaring indefinite overseas residence without indicating a date of last residence in the United States shall be the date the application is signed.

D. Middle name may be material to determining eligibility to vote. If the applicant does not include a middle name the registrar shall:

1. As far as practical, attempt to contact the applicant and obtain his middle name or lack thereof to determine if the application is complete.
2. If the applicant indicates that he has no middle name, the registrar shall process the application.
3. If the applicant indicates that he has a middle name, the registrar shall inform the applicant that the middle name is required, deny the application, and send the applicant a new application.
4. If the registrar is unable to contact the applicant and therefore unable to determine if the application is incomplete, he shall give the benefit of doubt to the applicant and process the application.

E. Except for gender, the general registrar, if practicable, shall attempt to contact the applicant and obtain the missing information requested on an application for voter registration that is not material to determining eligibility to vote. If the general registrar obtains any missing information, he shall write the information, his name, and the date on the reverse side of the application for voter registration to indicate that the alteration was made by the general registrar.

F. A general registrar shall not change information provided by an applicant on an application for voter registration without written authorization signed by the applicant.

G. Persons identified as noncitizens in reports from the Department of Motor Vehicles shall have the opportunity to affirm United States citizenship status using any approved voter registration application or other form containing the required affirmation. The State Board of Elections shall automate the process for requesting affirmation of United States citizenship prior to cancellation.

H. For cases not covered by this section, the general registrar in consultation with the electoral board and State Board of Elections staff shall determine materiality on a case-by-case basis that may result in further amendment of this regulation.

NOTICE: The following forms used in administering the regulation were filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name to access a form. The forms are also available through the agency contact or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS (1VAC20-40)

[Virginia Voter Registration Application Form, VA-NVRA-1 \(rev. 2/10\).](#)

[National Voter Registration Application Form, Register to Vote in Your State by Using this Postcard Form and Guide \(rev. 3/06\).](#)

[Federal Post Card Application, Standard Form 76A \(rev. 10/05\).](#)

[Federal Write-In Absentee Ballot, Standard Form 186A \(rev. 10/05\).](#)

VA.R. Doc. No. R11-2626; Filed February 4, 2011, 1:22 p.m.

Final Regulation

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

Title of Regulation: **1VAC20-60. Election Administration (adding 1VAC20-60-30, 1VAC20-60-40, 1VAC20-60-50).**

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

Effective Date: Effective upon the filing of the notice of the U.S. Attorney General's preclearance with the Registrar of Regulations.

Agency Contact: Martha Brissette, Policy Analyst, State Board of Elections, 1100 Bank St., Richmond, VA 23219, telephone (804) 864-8925, or email martha.brissette@sbe.virginia.gov.

Summary:

In 2009 the State Board of Elections undertook an in-depth review of its policies and reaffirmed those policies identified as stating current rules with which general registrars and electoral boards must comply. This regulation restates the board policies so identified as regulations for publication in the Virginia Administrative Code where they will be more accessible to the public and the election community. The regulation restatement is based on board policies 2008-010, 2008-009, 2006-009, and 2001-001.

The new regulation (i) provides the rules for use of cell phones or other electronic devices in polling places, (ii) specifies when a vote is considered to be cast, and (iii) establishes safeguards to be used if an optical scan ballot container becomes overfilled with ballots.

Since publication of the proposed regulation, the final regulation was amended to (i) make generally applicable a provision in 1VAC20-60-30 for determination by a majority of the officers of election, and (ii) remove a paragraph dealing with voting equipment programming for placement in a future regulation dealing with voting equipment.

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1VAC20-60-30. Electronic devices in polling place.

A. Representatives of candidates and political parties authorized to observe the election may use cell phones or other electronic devices provided that the device contains no camera or video recording capacity. The officers of election are responsible to monitor the use of electronic devices for observation of the election and may regulate or prohibit any use the officers determine will hinder or delay a voter or officer of election or otherwise impede the orderly conduct of the election.

Whether a particular call or calls by any authorized representative is deemed to interfere or disrupt the voting process is within the discretion of the officers of election at each precinct as a majority. Any authorized representative may be required to cease the call, make or receive any such calls outside the precinct, or be removed from the polling precinct. [Any action taken pursuant to this section is within the judgment of the officers of election as a majority.]

B. Use of cell phones and other electronic devices by other persons at polling places shall be monitored by the officers of election who may regulate or prohibit any use the officer determines will hinder or delay a voter or officer of election or otherwise impede the orderly conduct of the election. Use of electronic devices may not interfere nor disrupt the voting process, nor attempt to solicit or attempt to influence any person in casting his vote. Once a voter enters the prohibited area at the polls as designated in § 24.2-604 of the Code of Virginia, the use of a cell phone or other electronic communication device may be prohibited if deemed a violation of § 24.2-1006 of the Code of Virginia, or if otherwise deemed disruptive to the voting process.

C. Grounds for regulating or prohibiting use of electronic devices include but are not limited to (i) the making or receiving of calls that interfere with or become disruptive to the voting process; (ii) the making or receiving of calls in an attempt to solicit or influence any person in casting his vote; or (iii) the person using the device is conducting himself in a noisy or riotous manner at or about the polls so as to disturb the election.

D. An officer of election may require any individual using an electronic device subject to regulation under subsection C of this section to cease such use, make or receive calls outside the precinct, or remove the use of the device from the polling place.

[E. Any action taken pursuant to this section is within the judgment of the officers of election as a majority.]

[~~E. F.~~] The determination of the officers of election of any dispute concerning the use of electronic devices shall be subject to immediate appeal to the local electoral board.

1VAC20-60-40. When ballot cast [~~; over and under votes~~].

A. A voter, voting in person on election day or voting absentee in-person, has not voted until a permanent record of the voter's intent is preserved.

B. A permanent record is preserved by a voter pressing the vote or cast button on a direct recording electronic machine, inserting an optical scan ballot into an electronic counter, or placing a paper ballot in an official ballot container.

C. A vote has not been cast by the voter unless and until the voter or an officer of election or assistant at the direction of and on behalf of the voter pursuant to § 24.2-649 of the Code of Virginia completes these actions to preserve a permanent record of the vote.

D. If any voter's ballot was not so cast by or at the direction of the voter, then the ballot cannot be cast by any officer of election or other person present.

[~~E. Precinct counting machines, such as precincts that require optical scanning equipment, shall accept ballots that have been overvoted or undervoted.~~]

1VAC20-60-50. Overfull optical scan ballot container.

If an optical scan reader in use in a registrar's office or a polling place malfunctions because the connected ballot container includes too many ballots, election officials may open the ballot container and empty the ballots with the following safeguards:

1. The optical scan ballot container shall be opened in plain sight of any authorized party representatives or other observers and, once the ballots have been deposited into an auxiliary ballot container, both ballot containers shall [~~be~~] remain in plain sight in the polling place.
2. Any such auxiliary ballot container used shall meet the requirements of § 24.2-623 of the Code of Virginia.
3. A minimum of two officers of election, representing both political parties, shall execute such a transfer of ballots.

VA.R. Doc. No. R11-2692; Filed February 4, 2011, 1:23 p.m.

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Proposed Regulation

Titles of Regulations: 9VAC25-20. Fees for Permits and Certificates (amending 9VAC25-20-20, 9VAC25-20-60, 9VAC25-20-70, 9VAC25-20-90, 9VAC25-20-100, 9VAC25-20-110, 9VAC25-20-120, 9VAC25-20-142,

9VAC25-20-146, 9VAC25-20-147, 9VAC25-20-148, 9VAC25-20-149).

9VAC25-31. Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (amending 9VAC25-31-10, 9VAC25-31-60, 9VAC25-31-100, 9VAC25-31-260, 9VAC25-31-280, 9VAC25-31-290, 9VAC25-31-390, 9VAC25-31-420, 9VAC25-31-440, 9VAC25-31-460, 9VAC25-31-475, 9VAC25-31-480, 9VAC25-31-485, 9VAC25-31-490, 9VAC25-31-500, 9VAC25-31-505, 9VAC25-31-510, 9VAC25-31-530, 9VAC25-31-540, 9VAC25-31-550, 9VAC25-31-560, 9VAC25-31-570, 9VAC25-31-580, 9VAC25-31-590, 9VAC25-31-690, 9VAC25-31-710, 9VAC25-31-720; adding 9VAC25-31-543, 9VAC25-31-545, 9VAC25-31-547).

9VAC25-32. Virginia Pollution Abatement (VPA) Permit Regulation (amending 9VAC25-32-10, 9VAC25-32-30, 9VAC25-32-40, 9VAC25-32-60, 9VAC25-32-80, 9VAC25-32-100, 9VAC25-32-140, 9VAC25-32-240, 9VAC25-32-260, 9VAC25-32-300, 9VAC25-32-320, 9VAC25-32-330, 9VAC25-32-360, 9VAC25-32-400, 9VAC25-32-410, 9VAC25-32-420, 9VAC25-32-450, 9VAC25-32-460, 9VAC25-32-480, 9VAC25-32-500, 9VAC25-32-530, 9VAC25-32-540, 9VAC25-32-550, 9VAC25-32-560, 9VAC25-32-570, 9VAC25-32-580, 9VAC25-32-690, 9VAC25-32-700, 9VAC25-32-760; adding 9VAC25-32-303, 9VAC25-32-305, 9VAC25-32-307, 9VAC25-32-313, 9VAC25-32-315, 9VAC25-32-317, 9VAC25-32-356, 9VAC25-32-357, 9VAC25-32-358, 9VAC25-32-359, 9VAC25-32-515, 9VAC25-32-545, 9VAC25-32-665, 9VAC25-32-675, 9VAC25-32-685, 9VAC25-32-770, 9VAC25-32-780, 9VAC25-32-790, 9VAC25-32-800, 9VAC25-32-810, 9VAC25-32-820, 9VAC25-32-830, 9VAC25-32-840, 9VAC25-32-850; repealing 9VAC25-32-310, 9VAC25-32-340, 9VAC25-32-355, 9VAC25-32-370, 9VAC25-32-380, 9VAC25-32-390, 9VAC25-32-440, 9VAC25-32-510, 9VAC25-32-520, 9VAC25-32-590, 9VAC25-32-600, 9VAC25-32-610, 9VAC25-32-620, 9VAC25-32-630, 9VAC25-32-640, 9VAC25-32-650, 9VAC25-32-660, 9VAC25-32-670, 9VAC25-32-680).

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

Public Hearing Information:

March 31, 2011 - 7 p.m. - James River Conference Center, 400 Court Street, Lynchburg, VA

April 5, 2011 - 7 p.m. - Henrico County Board Room, Western Government Center, 4301 East Parham Road, Henrico, VA

April 7, 2011 - 7 p.m. - Turner Ashby High School, 800 North Main Street, Bridgewater, VA

April 12, 2011 - 7 p.m. - Liberty High School, 6300 Independence Avenue, Bealeton, VA

Public Comment Deadline: April 29, 2011.

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 wknorris@deq.virginia.gov.

Basis: The State Water Control Law (Chapter 3.1 of Title 62.1 of the Code of Virginia) is the legal basis for the Virginia Pollution Abatement (VPA) Permit Regulation (9VAC25-32), the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31), and the Fees for Permits and Certificates (Fee) Regulation (9VAC25-20). Section 62.1-44.15 of the Code of Virginia authorizes the State Water Control Board to promulgate regulations necessary to carry out its powers and duties. Specifically, § 62.1-44.19:3 of the Code of Virginia requires the State Water Control Board to include in regulation certain requirements pertaining to land application of sewage sludge (biosolids).

The corresponding federal authority for the criteria for land application of biosolids is found at 40 CFR Part 503. The federal authority and state authority are mandatory.

Purpose: On January 1, 2008, the Virginia Department of Environmental Quality (DEQ) assumed regulatory oversight of all land application of treated sewage sludge, commonly referred to as biosolids. This change in oversight of the Biosolids Use Regulations from the Virginia Department of Health (VDH) to DEQ was at the direction of the 2007 General Assembly, which voted to consolidate the regulatory programs so that all persons land applying biosolids would be subject to uniform requirements and to take advantage of the existing compliance and enforcement structure at DEQ. In addition to directing that DEQ manage the biosolids program, the General Assembly also added additional requirements regarding biosolids permitting and management.

At its September 25, 2007, meeting, the State Water Control Board voted to adopt as a "final exempt" regulatory action the transfer of the substantive content of Biosolids Use Regulations to the VPA, VPDES, and Fee regulations, and Sewage Collection and Treatment Regulations (9VAC25-790). Following this action, DEQ initiated the full regulatory process to consider additional changes to the regulations affecting biosolids.

The full regulatory process was necessary to address outstanding VDH regulatory actions, as well as questions regarding public notice processes, processes to establish appropriate buffers to address health concerns, permit issuance and modification procedures, sampling requirements, nutrient management requirements, animal health issues associated with grazing, and financial assurance procedures.

Also, an expert panel was convened by the Secretary of Health and Human Resources and the Secretary of Natural Resources, pursuant to House Joint Resolution 694 of the

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2007 Acts of Assembly, to explore the health and environmental implications of biosolids use. The final report of the panel was published on December 22, 2008, as House Document No. 27. In this proposed regulatory action, DEQ also considered the panel's report and recommendations.

Substance:

A. Consideration of outstanding State Board of Health amendments: The State Board of Health had three regulatory actions underway to amend the Biosolids Use Regulations (12VAC5-585), which were not completed prior to the transfer of the regulations to the State Water Control Board on January 1, 2008. These amendments pertained to: (i) field storage of biosolids, (ii) permit fees, and (iii) site access control.

(i) Changes needed to be made to the field storage requirements to make the implementation more practical, address potential odor issues, and specify requirements for on-farm storage of biosolids for less than 45 days for sites that would not be regulated by local conditional use permits.

A category newly defined as "staging" has been introduced to address the short term placement of biosolids on any field that is ready to be land applied. Staging may be used as a standard operational procedure or to address inclement weather or equipment breakdowns to stockpile only the biosolids that will be applied to that field or a permitted adjacent field. Biosolids that have been staged for greater than seven days would be required to be spread as soon as field conditions become favorable for land application or removed from the field, and biosolids staged greater than 14 days are required to be covered. (9VAC25-32-545).

Provisions for "on-site storage" were added to address storage up to 45 days on an engineered impermeable surface to serve all sites under control of the operator of the farm where the site is located. All biosolids must be removed by the 45th day after the first day of storage. If malodors related to the stored biosolids are verified by DEQ at any occupied dwelling on surrounding property, the problem must be corrected within 48 hours. If the problem is not corrected within 48 hours, the biosolids must be removed from the storage site. (9VAC25-32-550).

Existing requirements for "routine," or long-term storage, were modified to include requirements for an engineered surface and covers to prevent dewatered biosolids from contacting precipitation. (9VAC25-32-550).

(ii) Permit fee requirements were modified for VPA and VPDES permit holders to clarify application of the specific requirements located in §§ 62.1-44.19:3 and 62.1-44.15:6 of the Code of Virginia. Specific requirements for biosolids fees were added in the 2007

Acts of Assembly that took precedence over existing VPA and VPDES permit fees. DEQ is proposing changes to the regulatory fee structure that better reflect the level of staff resources necessary to process a permit.

For VPDES permits, a \$5,000 new permit fee, \$1,000 permit modification fee, and \$1,000 annual maintenance fee for biosolids land application are proposed to be charged in addition to the existing VPDES permit fees, which for an initial permit range from \$2,000 to \$24,000, and for a major modification range from \$1,000 to \$12,000. Annual permit fees for VPDES permits are equivalent to the new permit fee divided by the term of the permit in years. A provision is included that exempts minor facilities from paying the additional \$1,000 maintenance fee, as well as an exemption to the annual maintenance fee for any VPDES facility if land application was not utilized that year. Further, the modification fee for VPDES permits would only be charged for additions of land application area when a public meeting must be held.

Proposed changes to the fees for VPA permits include a similar provision as VPDES permits in that the modification fee would only be charged for additions of land application area when a public meeting must be held. Also, it is proposed that the annual maintenance fee for VPA permits be reduced from \$750 to \$500 annually, which again represents the new permit fee (\$5000) divided by the term of the permit in years (10). (9VAC25-20-110, 9VAC25-20-120, and 9VAC25-20-142).

(iii) The 2005 Joint Legislative Audit and Review Commission Report (House Document No. 89) entitled "Review of Land Application of Biosolids in Virginia" contained recommendations on site access control. The timeframe was extended during which notification signage is to be present at a site after land application from 48 hours to five business days. (9VAC25-31-485, 9VAC25-32-515, and 9VAC25-32-530).

B. Consistency between VPA and VPDES permit requirements: There are several areas of inconsistency between biosolids land application requirements in the VPA and VPDES regulations. VPDES language regarding monitoring, recordkeeping, reporting, pathogen reduction, and vector attraction reduction, which is based on the Environmental Protection Agency (EPA) 503 Rule, was added to the VPA regulation as new language or to replace existing language. Language was added to the VPDES regulation that refers to the requirements of the VPA Biosolids Use Standards and Practices. Language was added to each of the permit application sections to make VPA and VPDES permit application information consistent. (9VAC25-31-100 and 9VAC25-32-60).

The proposed requirements for permitting do retain an inconsistency related to the location of land application sites. The VPA regulation requires that a separate permit be obtained for each county or municipality where biosolids land application is proposed (9VAC25-32-505). Also, VPDES facilities retain the option of authorizing land application through their VPDES permit or by obtaining a separate VPA permit.

C. Public notice processes and permit modification procedures: The VPDES and VPA regulations were reviewed for requirements concerning public notice during the initial issuance and during permit modifications so that all requirements are consistent. In addition, the public notice process was examined to ensure that adequate provisions are in place to notify neighbors potentially affected by biosolids land application. Modifications have been proposed to clarify new statutory requirements, including public notice and public informational meetings upon receipt of an application for a new permit or a reissuance that will add greater than 50% of the acreage included in the original permit. Also, language was added to treat a request to add greater than 50% of the acreage included in the original permit as a major modification requiring a fee due to the resources necessary to notify adjacent residents and hold the public meeting.

The statute requires a public meeting and opportunity to request a hearing when the addition of acreage is greater than 50% of the acreage in the original permit, but adjacent resident notification only for additions of less than 50% of the acreage in the original permit. The proposed regulation specifies that DEQ will notify (or cause to be notified) adjacent residents whenever acreage is added to a permit, no matter what the percentage of the acreage addition. (9VAC25-31-290 and 9VAC25-32-140).

The notification requirements at the time biosolids are land applied was modified, including a 14-day notice to DEQ and the locality, sign posting along each right-of-way adjacent to the land application field, and a requirement to give daily notification to DEQ and the county. (9VAC25-31-485 and 9VAC25-32-515.)

D. Establishing appropriate buffers to address health concerns: The technical requirements and the timing of establishing additional buffers to address health concerns were modified. The VDH provided considerable input on the topic of health protection and buffers, and the recommendations of the Biosolids Expert Panel were considered as well. Based on these discussions, the proposed changes allow DEQ to extend a residence buffer from the standard 200 feet to 400 feet upon request of the occupant, without medical documentation. An extension beyond 400 feet would require evaluation by a VDH panel. Modifications were also added to clarify the ability of DEQ to extend buffers or waive buffers around an occupied dwelling upon request of the occupant, not simply the landowner. Also,

setbacks for water supply reservoirs, streams, and tributaries with public water supply designation were added. (Refer to 9VAC25-32-560).

In response to the Biosolids Expert Panel recommendation that odor control plans be considered, the proposed language includes requirements for odor control plans from all wastewater treatment facilities where biosolids are produced, as well from the land applier that address control of malodor if problems arise at the land application site. (9VAC25-31-100 and 9VAC25-32-60).

E. Sampling requirements: Few changes to the regulatory requirements are proposed, primarily based on the lack of a scientific basis for the inclusion of additional parameters. The ability of DEQ to request analyses for additional parameters in soils or biosolids on a case-by-case basis has been clarified to account for situations that may warrant additional scrutiny. In effect, the ability to sample for additional parameters is a placeholder available to address new research being conducted by EPA, should those parameters be found to be of concern. (biosolids sampling, 9VAC25-31-540 and 9VAC25-32-356; and soil sampling, 9VAC25-31-543 and 9VAC25-32-460).

A requirement for PCB sampling at the time of initial permit application has also been added along with the analysis method (EPA 1668) to be used. (9VAC25-31-100 and 9VAC25-32-60).

Further, the existing sampling protocol for land applied biosolids was "recommended" but not mandatory. The proposed regulatory revisions clarifies that these protocols are required.

F. Nutrient management requirements: The current language in the regulations addressing nutrient management requirements was originally drafted when nutrient management plans (NMPs) were not required for every biosolids land application site. As statute now makes NMPs mandatory for all sites, there is existing language that is duplicative or inconsistent with Department of Conservation and Recreation (DCR) Nutrient Management Standards and Criteria. The proposed changes to these requirements better align the DEQ regulations with the DCR regulations. Primarily, language from the DEQ regulations that was also found in DCR Nutrient Management Standards and Criteria has been removed, and a reference to those regulations inserted to maintain consistency. Certain practices pertaining to nutrient management that are unique to the way biosolids are managed have been added to the DEQ regulations, specifically a requirement to assure that pH and potassium levels in the soil are in appropriate ranges prior to biosolids land application.

The Biosolids Expert Panel recommended that the TAC examine the methods available to determine the phosphorus application rate. The proposed changes specify that the rate

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will be determined based on the DCR Nutrient Management Standards and Criteria.

The proposed changes include a requirement for NMP approval prior to land application where the soil test phosphorus level is above 35% saturation (135-162 ppm depending on regional differences). (9VAC25-32-560).

G. Animal health issues associated with grazing: Concerns had been raised by the public regarding whether grazing restrictions adequately address equine species and whether there are micronutrient issues that may affect grazers. No changes were made to the grazing restrictions; however, a footnote was added to the ceiling limits for biosolids requiring that biosolids with a molybdenum concentration greater than 40 mg/kg shall not be applied to land used for livestock grazing. (9VAC25-31-540 and 9VAC25-32-356).

H. Financial assurance procedures: Persons holding or applying for permits to land apply biosolids are required to provide written evidence of financial responsibility that shall be available to pay for cleanup costs, personal injury, and property damage related to transportation, storage, or land application of biosolids. The proposed regulations require a minimum of \$2 million in liability coverage and allow various means to meet the financial test, including the corporate financial test, the local government financial test, letter of credit for liability coverage, or trust fund for liability coverage. The proposal recognizes that a municipality will likely need to use different means to meet the financial assurance requirements than a private contractor. (9VAC25-32-770 through 9VAC25-32-850).

I. Permitting procedures: The proposed regulation addresses the concern over the possibility of land application sites being permitted for land application by multiple contractors in two ways: the land application agreement between the farmer and contractor must include certification that there are no concurrent landowner agreements with other companies, and the assignment of a unique control number to each field by DEQ to ensure clear tracking of land application sites. (9VAC25-31-485 and 9VAC25-32-530).

A final expiration date was added for all Biosolids Use Regulations permits of December 31, 2012 (9VAC25-32-300).

J. Miscellaneous issues: Other proposed changes to the regulations in response to the NOIRA, the discussions of the Biosolids Expert Panel, and the discussions of the Biosolids Technical Advisory Committee include the following:

1. Requirements for distribution and marketing of exceptional quality biosolids. Exceptional quality (EQ) biosolids are biosolids materials that contain lower pollutant levels and have been treated to achieve nondetectable levels of pathogens and reduced vector attraction. This material may be distributed to the end-user either in unpackaged (bulk) or packaged (bags,

trucks < 1 ton). All marketing and distribution of fertilizer materials requires a permit and registration with the Virginia Department of Agriculture (VDACS). DEQ supports production of this more highly treated biosolids product, and proposes retaining the exemption from the land application fee.

The proposed changes allow for an exemption to the NMP requirement for EQ biosolids material that is greater than 90% solids, or is blended with other materials and is greater than 40% solids and achieves a carbon to nitrogen ratio of at least 25:1. Recordkeeping and reporting requirements are limited to what is required in the EPA 503 regulations coupled with that required by VDACS regulations. (9VAC25-32-570).

2. Reclamation of mined and disturbed lands. The Biosolids Expert Panel recommended that the TAC examine the regulations related to biosolids use in reclaiming mined and disturbed lands. The proposed regulations include a requirement that an NMP be required for all reclamation sites receiving biosolids, and that the plan be approved by DCR prior to permit issuance. (9VAC25-32-560).

3. Local monitoring reimbursement. Language was added to the fee regulation to clarify when local monitoring costs may be reimbursed above \$2.50 per dry ton, up to \$4.00 per dry ton biosolids applied in the county. The proposal requires prior approval from DEQ to exceed the \$2.50 reimbursement rate. Additionally, the reimbursement procedures were modified such that charges for monitoring not associated with determining compliance with state or federal law would be ineligible for reimbursement. (9VAC25-20-149).

Issues:

A. Consideration of outstanding State Board of Health amendments

1. Storage: The new staging option may be used as a standard operational procedure or to address inclement weather or equipment breakdowns to stockpile only the biosolids that will be applied to that field or a permitted adjacent field. This option will allow greater flexibility for land appliers, as well as potentially reducing the need to site permanent storage facilities.

Provisions for odor abatement at on-site storage and routine storage sites will be an advantage to the public.

Requirements for covered routine storage will reduce the potential for pollution of state waters as well as reducing the potential for odors.

2. Fee Structure: The Commonwealth will benefit from changes proposed to the regulatory fee structure in that it is believed more equitable with the agency resources necessary to process permits. New requirements for

public meetings and adjacent property owner notification can add significant costs to the agency.

Minor VPDES facilities that do not generate large amounts of biosolids will be disadvantaged by the increased permit issuance and modification fees, but will have an advantage in the exemptions to the annual maintenance fee.

VPDES or VPA permit holders will have an advantage in that the permit modification fee would only be charged for additions of land application area when a public meeting must be held.

3. Access Control: The changes to the signage requirements when biosolids are land applied require that the land applier maintain the signs for a longer period of time.

The neighbors to the land application sites should have an advantage in that they will have an extended period of notification.

B. Consistency between VPA and VPDES permit requirements: VPA and VPDES permit holders will benefit from the improvements in consistency as the requirements will be more straightforward for both parties. The public will benefit from increased consistency in that the regulatory requirements for all neighboring land application activities will be the same.

C. Public notice processes and permit modification procedures: VPA and VPDES permit holders will benefit from added clarity as to the requirements for public notice; however, they will experience a disadvantage in the time it takes to process a permit application when all adjacent residents must be notified in all cases. VPA and VPDES permit holders will be required to post additional signs at land application sites if the sites border more than one right-of-way. The Commonwealth will incur additional costs due to the additional resources necessary to notify adjacent residents with all additions of land.

The Commonwealth as well as local government officials will benefit from the additional information provided in the notification procedures, and inspection scheduling should be improved. Neighbors of land application sites should benefit from the additional notification procedures.

D. Establishing appropriate buffers to address health concerns: The revised buffer procedures should add clarity that will benefit the Commonwealth as well as the public by providing predictability as to the process that will be employed to establish buffers.

The Commonwealth as well as the public will benefit from the additional environmental and health protection afforded by the additional setbacks for water supply reservoirs, streams, and tributaries with public water supply

designations. VPA and VPDES permit holders may be disadvantaged by the additional setbacks required.

The requirements for odor control plans may be seen as an additional burden for some VPA and VPDES permit holders; however, some facilities have already implemented such plans. The public will benefit from the requirement for odor control plans through the mandate of procedures to abate malodorous biosolids.

E. Sampling requirements: All parties should benefit from the increased clarity of the regulations. VPA and VPDES permit holders may be disadvantaged by the additional cost of PCB sampling at the time of permitting using the specified method.

F. Nutrient management requirements: All parties should benefit from the increased clarity of the regulations. The VPA and VPDES permit holders may be disadvantaged if they must wait to apply biosolids at a site because nutrient conditions are not at the levels specified in the regulations. Farmers receiving biosolids may initially perceive a disadvantage if they must add lime or potassium to a land application site prior to receiving biosolids, but will benefit from the increased productivity afforded by appropriate nutrient management.

The Commonwealth will benefit from the availability of NMP information at the land application site, making the inspection process more efficient.

The public will benefit from increased assurance that nutrient management practices are being implemented properly at land application sites.

G. Animal health issues associated with grazing: Farmers will benefit from increased assurance that biosolids applications will not adversely affect animal health. VPA and VPDES permit holders will have to choose land application sites that are not grazed if the biosolids to be land applied has a Mb content above 40 mg/kg.

H. Financial assurance procedures: VPA and VPDES permit holders will benefit from the increased clarity of the regulations; however, they may be at a disadvantage if they cannot meet the financial assurance requirements.

The public will benefit from increased assurance that financial resources would be available to pay for any losses that might be incurred due to biosolids land application.

I. Permitting procedures: All parties will benefit from the increased clarity of the regulations.

J. Requirements for distribution and marketing of exceptional quality biosolids: VPA and VPDES permit holders that market EQ biosolids that do not meet the exemption criteria for NMP requirements will be disadvantaged by the requirement to procure a NMP; however, the market for EQ biosolids should not be negatively affected by the regulatory proposal, benefitting the permit holders as well as the public.

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VPA and VPDES permit holders should benefit from simplified recordkeeping requirements.

K. Reclamation of mined and disturbed lands: VPA and VPDES permit holders applying biosolids to mined or disturbed lands may be disadvantaged by the requirement to have a nutrient management plan; however, all parties should benefit from successful land reclamation.

L. Local monitoring reimbursement: All parties should benefit from the increased clarity of the regulations.

Requirements more restrictive than federal:

1. Storage requirements are more prescriptive than the federal requirements regarding timing and best management practices required. These requirements are needed to meet state statutory requirements and address issues that have arisen related to storage of biosolids in the Commonwealth.
2. There are no fee requirements in the federal regulations. Fee requirements are necessary to meet state statutory requirements.
3. The federal requirements for biosolids are self-implementing and do not require individual permitting. Permitting requirements are necessary to meet state statutory requirements.
4. Public notice requirements are more restrictive than federal requirements to meet state statutory requirements.
5. Buffer requirements are more restrictive than federal requirements. Buffers for water quality are based on research that demonstrates reduced nutrient and sediment loss. Buffers for health protection are based on a variety of factors, predominantly an increased measure of precaution recommended by the VDH.
6. Requirements for odor control plans are more restrictive than federal requirements to address issues that may arise in the management of biosolids.
7. The requirements for PCB analysis at the time of permitting and the method required is more restrictive than federal requirements to address proper identification of biosolids that may not meet federal requirements for PCB content.
8. Nutrient management planning requirements are more restrictive than federal requirements to meet state statutory requirements, as well as to provide reasonable protection against nutrient loss to the environment, as consistent with other land application programs in the Commonwealth. This applies to exceptional quality biosolids and land reclamation uses as well.
9. The ceiling limit for molybdenum content in biosolids applied to grazed land is more restrictive than the federal requirement. However, this requirement has been

adopted in at least one other state and is based on research conducted by the USDA-Agricultural Research Service.

10. Financial assurance requirements are more restrictive than federal regulations and are necessary to meet state statutory requirements.

11. Permitting procedures are more restrictive than federal regulations, as the federal regulations are "self-implementing" and do not require that a permit be obtained if the technical requirements are followed. The VPA and VPDES permitting requirements are necessary to meet state statutory requirements, including permit requirements for exceptional quality biosolids.

12. The federal requirements do not include provisions for local monitoring. The requirements related to local monitoring of biosolids are necessary to meet state statutory requirements.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The State Water Control Board proposes to 1) require that all routine dewatered biosolids storage facilities be covered to prevent contact with precipitation, 2) amend the current fees, 3) introduce new public notice requirements, 4) introduce signage requirements that must be visible from each public right-of-way adjacent to the land application field and increase the duration they must be maintained on the property, 5) allow the ability to extend a residence buffer from the standard 200 feet to 400 feet upon request of the occupant, 6) add a requirement for an improved method of PCB testing at the time of initial permit application, 7) increase the financial assurance requirements to a uniform \$2 million across the board for all facilities, 8) require nutrient management plans for exceptional quality biosolids that do not meet specific criteria, and 9) clarify that the localities could only be reimbursed for monitoring costs related to determining compliance.

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

Estimated Economic Impact. These regulations apply to land application of biosolids. Biosolids are the treated form of the sewage sludge generated during wastewater treatment process. Because raw sewage sludge contains pathogens, there are potential health risks associated with application of improperly prepared biosolids. Untreated sewage sludge also has strong objectionable odors and attracts disease vectors such as flies, mosquitoes, rodents, and birds that can transmit diseases. Finally, pollutants and organisms found in untreated sewage sludge may contaminate surface water, groundwater, and soils and may increase human exposure to health risks.

However, once the potential risks are reduced to safe levels by appropriate treatment during the production process, biosolids have beneficial uses. Biosolids are valuable due to their mineral and organic matter content. If properly prepared, biosolids can replace essential fertilizer elements used by plants and reduce artificial fertilizer costs. Land application of biosolids also makes it possible to avoid otherwise costly disposal options such as land filling or incineration.

Beginning January 1, 2008, the Department of Environmental Quality (DEQ) assumed control of the states oversight of land application of biosolids from the Virginia Department of Health (VDH). This change was made in accordance with Chapter 881 of the 2007 Acts of Assembly. At that time, VDH had three regulatory actions underway. These amendments pertained to the field storage of biosolids, permit fees, and site access control. The current regulatory action incorporates those changes and would address the following additional issues: consistency between VPA and VPDES permit requirements, public notice processes, permit modification procedures, processes to establish appropriate buffers to address health concerns, sampling requirements, nutrient management requirements, animal health issues associated with grazing, financial assurance procedures, permitting procedures, distribution and marketing of exceptional quality biosolids, reclamation of mined and disturbed lands, and reimbursement of local monitors. The proposed changes with the significant economic effects are discussed below.

One of the proposed changes will require that all routine dewatered biosolids storage facilities be covered to prevent contact with precipitation. The dewatered biosolids keep the odor down and prevent run off. According to DEQ, the cost of erecting a roof on these storage facilities is about \$100,000 per facility on average. Two or three facilities are expected to construct roof structures to comply with this requirement.

The proposed changes also amend the current fees. The State Water Control Board (the board) proposes to introduce a new fee of \$1,000 for major Virginia Pollutant Discharge Elimination System (VPDES) permit modifications. DEQ expects to receive approximately 12 major modification applications per year. Also, the board proposes to reduce the annual maintenance fee for Virginia Pollutant Abatement (VPA) permit from \$750 to \$500. There are approximately 100 of these permits issued so the expected fiscal impact is about a \$25,000 reduction in fees collected. The main benefit of this change is aligning the fee structure in relation to agency's resources needed for permit applications.

Another proposed change introduces new public notice requirements. Now, major modifications will have to be announced in newspapers which would be paid by the permit applicant. DEQ will also have to issue public notices in the newspapers when the permit modifications are reviewed. It costs approximately \$200 - \$800 for a newspaper notice.

Another proposed change will require that adjacent property owners be notified whenever acreage is added to the permit regardless of the percentage increase. This is expected to introduce additional costs in terms of additional postage and staff time on the agency.

The proposed rules also introduce signage requirements that must be visible from each public right-of-way adjacent to the land application field and increase the duration they must be maintained on the property. This is expected to create a need for an additional 200 - 300 new signs whose costs would be incurred by the permit applicants. This change is expected to benefit the neighboring property owners because they will have an improved and extended period of notification.

Another proposed change will allow DEQ to extend a residence buffer from the standard 200 feet to 400 feet upon request of the occupant. This requirement introduces additional costs on permit holders in terms of the reduced area where biosolids could be applied. However, it affords more protection to the neighbors.

The proposed changes also add a requirement for improved method of polychlorinated biphenyl (PCB) testing at the time of initial permit application. This cost would be paid by the permit applicant and is expected to be about \$750 - \$1,500 per sample. The cost of current required PCB testing is about \$200 - \$300 per sample. There are approximately 100 sources that may be affected by this change. On the other hand, the main benefit of this change is improving the identification process of potentially risky applications.

The proposed regulations will also increase the financial assurance requirements to a uniform \$2 million across the board for all facilities from the current requirement of \$1 million for small facilities and \$2 million for larger facilities. DEQ estimates that approximately 15 contractors will be subject to the increased financial assurance requirements. However, DEQ does not estimate this being a significant cost because of the availability of many alternate methods that can be used to demonstrate financial assurance.

Another change will specify that nutrient management plans for exceptional quality biosolids are required unless the solids content is greater than 90%, or greater than 40% in the case of a biosolids product blended with additional carbon material. Exceptional quality biosolids are biosolids materials that contain lower pollutant levels and have been treated to achieve non-detectable levels of pathogens and reduced vector attraction and they are registered fertilizers with the Virginia Department of Agriculture and Consumer Services.

Finally, the proposed changes will clarify that the localities could only be reimbursed for monitoring costs related to determining compliance. Charges for monitoring not associated with determining compliance with state or federal law would be ineligible for reimbursement. The benefit of

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this change is that the biosolids fees will be used strictly with monitoring of biosolids activity.

Businesses and Entities Affected. There are approximately 40 locality owned wastewater treatment plants and 20 contractors that currently hold permits to land apply biosolids. Since January 2008, there have been 8 contractors and 22 locality owned wastewater treatment plants that land applied biosolids.

Localities Particularly Affected. The proposed regulations apply throughout the Commonwealth.

Projected Impact on Employment. Some of the changes are expected to increase the demand for labor. These changes include having to cover storage facilities, introducing new public notice requirements, and introducing new signage requirements. However, some of the other proposed changes such as no longer requiring nutrient management plans have the potential to reduce the demand for labor and offset some of the expected increase due to other changes.

Effects on the Use and Value of Private Property. Increased buffer requirements may be interpreted as a restriction of the use of ones private property.

Also, the asset values of biosolids land application contractors could be negatively affected due to increased costs as discussed above. However, some of these costs are expected to be offset due to some other changes such as reduced annual maintenance fee for VPA permits.

Small Businesses: Costs and Other Effects. All of the 20 contractors involved in land application of biosolids are believed to be small businesses. Thus, all of the cost and other effects discussed above apply to them.

Small Businesses: Alternative Method that Minimizes Adverse Impact. There are no known alternatives that would minimize the adverse impacts while achieving the same goals.

Real Estate Development Costs. No significant effects on real estate development costs are expected.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 107 (09). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small

businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

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

Summary:

The proposed amendments address the regulation of biosolids (treated sewage sludge) in a comprehensive manner that covers land application permitted under the Virginia Pollutant Abatement Permit (VPA) Regulation as well as the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation. The changes address various issues related to the land application of biosolids, including the following major topics: (i) storage requirements, (ii) permit fees, (iii) site access control, (iv) consistency between VPA and VPDES permit requirements, (v) public notice processes, (vi) permit modification procedures, (vii) processes to establish appropriate buffers to address health concerns, (viii) sampling requirements, (ix) nutrient management requirements, (x) animal health issues associated with grazing, (xi) financial assurance procedures, (xii) permitting procedures, (xiii) distribution and marketing of exceptional quality biosolids, (xiv) reclamation of mined and disturbed lands, and (xv) reimbursement of local monitors.

9VAC25-20-20. Purpose.

Section 62.1-44.15:6 of the Code of Virginia requires the promulgation of regulations establishing a fee assessment and collection system to recover a portion of the State Water Control Board's, Department of Game and Inland Fisheries', and the Department of Conservation and Recreation's direct and indirect costs associated with the processing of an application to issue, reissue, or modify any permit, permit authorization or certificate which the board has the authority to issue from the applicant for such permit, permit authorization or certificate. Section 62.1-44.19:3 of the Code of Virginia requires the promulgation of regulations establishing a fee to be charged to all permit holders and persons applying for permits and permit modifications associated with land application of ~~sewage sludge~~ biosolids. Section 62.1-44.19:3 of the Code of Virginia also requires the promulgation of regulations requiring the payment of a fee by persons land applying ~~sewage sludge~~ biosolids. These

regulations establish the required fee assessment and collection system.

Part II

Payment, Deposits and Use of Fees

9VAC25-20-60. Due dates.

A. Virginia Pollutant Discharge Elimination System (VPDES) and Virginia Pollution Abatement (VPA) permits.

1. Application fees for all new permit applications are due on the day an application is submitted and shall be paid in accordance with 9VAC25-20-70 A. Applications will not be processed without payment of the required fee.

2. For reissuance of permits that expire on or before December 27, 2004, the application fee for new permit applications as set forth in this regulation is due on the day the application is submitted.

3. An application fee is due on the day an application is submitted for either a major modification or a permit reissuance that occurs (and becomes effective) before the stated permit expiration date. There is no application fee for a regularly scheduled renewal of an individual permit for an existing facility, unless the permit for the facility expires on or before December 27, 2004. There is no application fee for a major modification or amendment that is made at the board's initiative.

4. Permit maintenance fees shall be paid to the board by October 1 of each year. Additional permit maintenance fees for facilities that are authorized to land apply biosolids, are in a toxics management program, and for facilities that, or have more than five process wastewater discharge outfalls at a single facility (not including "internal" outfalls) shall also be paid to the board by October 1 of each year. No permit will be reissued or automatically continued without payment of the required fee.

a. Existing individual permit holders with an effective permit as of July 1, 2004; (including permits that have been administratively continued) shall pay the permit maintenance fee or fees to the board by October 1, 2004, unless one of the following conditions apply:

- (1) The permit is terminated prior to October 1, 2004; or
- (2) The permit holder applied or reapplied for a municipal minor VPDES permit with a design flow of 10,000 gallons per day or less between July 1, 2003, and July 1, 2004, and paid the applicable permit application fee.

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

B. Surface Water Withdrawal (SWW) and Ground Water Withdrawal (GWW) permits.

1. All permit application fees are due on the day an application is submitted and shall be paid in accordance with 9VAC25-20-70 A. Applications will not be processed without payment of the required fee. No permit will be ~~automatically~~ administratively continued without payment of the required fee.

2. For reissuance of GWW permits that expire on or before March 27, 2005, the application fee for new permit applications as set forth in this regulation is due on the day the application is submitted.

3. Application fees for major modifications or amendments are due on the day an application is submitted. Applications will not be processed without payment of the required fee. There is no fee for a major modification or amendment that is made at the board's initiative.

C. Virginia Water Protection (VWP) permits.

1. VWP permit application fees shall be paid in accordance with 9VAC25-20-70 A. Review of applications may be initiated before the fee is received; however, draft permits or authorizations shall not be issued prior to payment of the required fee. No permit or permit authorization shall be ~~automatically~~ administratively continued without payment of the required fee.

2. VWP application fees for major modifications shall be paid in accordance with 9VAC25-20-70 A. Review of applications may be initiated before the fee is received; however, major modifications shall not be issued prior to payment of the required fee. There is no application fee for a major modification that is made at the board's initiative.

~~D. Sewage sludge Biosolids land application fees. Except as specified in this regulation, all fees are due on the day specified by the department. Payment of the fee shall be made by land appliers following notification by the department of the fee due. The department may bill the land applier for amounts due following the submission of the monthly land application report. Payments are due 30 days after receipt of a bill from the department. No permit or modification of an existing permit will be approved in the jurisdiction where payment of the established fee by the land applier has not been received by the due date; until such time that the fees are paid in full. Existing permits may be revoked or approved sources may be reclassified as unapproved unless the required fee is paid within 60 days of the notification by the department of the fee due by the due date. No permit will be reissued or administratively continued or modified without full payment of any past due fee.~~

9VAC25-20-70. Method of payment.

A. Fees shall be paid by check, draft or postal money order payable to the Treasurer of Virginia, or submitted

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electronically (if available), and must be in U.S. currency, except that agencies and institutions of the Commonwealth of Virginia may submit Interagency Transfers for the amount of the fee. All fees shall be sent to the following address (or submitted electronically, if available): Department of Environmental Quality, Receipts Control, P.O. Box ~~10150~~ 1104, Richmond, Virginia ~~23240~~ 23218.

B. Required information. All applicants for new permit issuance, permit reissuance or permit modification shall submit the following information along with the fee payment:

1. Applicant name, address and daytime phone number.
2. Applicant Federal Identification Number (FIN).
3. The name of the facility/activity, and the facility/activity location.
4. The type of permit applied for.
5. Whether the application is for a new permit issuance, permit reissuance or permit modification.
6. The amount of fee submitted.
7. The existing permit number, if applicable.

9VAC25-20-90. Deposit and use of fees.

A. Sludge Management Fund. All ~~sewage sludge biosolids~~ land application fees collected from permit holders who land apply ~~sewage sludge biosolids~~ in the Commonwealth of Virginia, and fees collected from permit holders and persons applying for permits and permit modifications pursuant to § 62.1-44.19:3 of the Code of Virginia shall be deposited into the Sludge Management Fund established by, and used and accounted for as specified in § 62.1-44.19:3 of the Code of Virginia. Payments to the Department of Conservation and Recreation for their costs related to implementation of the ~~sewage sludge biosolids~~ land application program and to localities with duly adopted ordinances providing for the testing and monitoring of the land application of ~~sewage sludge biosolids~~ will be made from this fund. Fees collected shall be exempt from statewide indirect costs charged and collected by the Department of Accounts and shall not supplant or reduce the general fund appropriation to the department.

B. State Water Control Board Permit Program Fund. All fees collected in response to this chapter and not deposited into the Sludge Management Fund shall be deposited into the State Water Control Board Permit Program Fund established by, and used and accounted for as specified in § 62.1-44.15:7 of the Code of Virginia. Payment to the Departments of Conservation and Recreation and Game and Inland Fisheries for permit applications they are required under state law to review will be made from this fund. Fees collected shall be exempt from statewide indirect costs charged and collected by the Department of Accounts.

Part III Determination of Fee Amount

9VAC25-20-100. General.

Each application for a new permit, permit authorization or certificate, each application for reissuance of a permit, permit authorization or certificate, each application for major modification of a permit, permit authorization or certificate, each revocation and reissuance of a permit, permit authorization or certificate, and each application of a dry ton of ~~sewage sludge biosolids~~ is a separate action and shall be assessed a separate fee, as applicable. The fees for each type of permit, permit authorization or certificate that the board has the authority to issue, reissue or modify will be as specified in this part.

9VAC25-20-110. Fee schedules for individual VPDES and VPA new permit issuance, and individual VWP, SWW and GWW new permit issuance and existing permit reissuance.

A. Virginia Pollutant Discharge Elimination System (VPDES) permits. The following fee schedules apply to applications for issuance of a new individual VPDES permit or certificate. (Note: All flows listed in the table below are facility "design" flows.)

| | |
|--|----------|
| VPDES Industrial Major | \$24,000 |
| VPDES Municipal Major | \$21,300 |
| VPDES Municipal Major Stormwater/MS4 | \$21,300 |
| VPDES Industrial Minor/No Standard Limits | \$10,200 |
| VPDES Industrial Minor/Standard Limits | \$3,300 |
| VPDES Industrial Stormwater | \$7,200 |
| VPDES Municipal Minor/Greater Than 100,000 GPD | \$7,500 |
| VPDES Municipal Minor/10,001 GPD-100,000 GPD | \$6,000 |
| VPDES Municipal Minor/1,001 GPD-10,000 GPD | \$5,400 |
| VPDES Municipal Minor/1,000 GPD or less | \$2,000 |
| VPDES Municipal Minor/1,000 GPD or less that includes - The authorization for land application of biosolids or land disposal of sewage sludge | \$5,000* |
| VPDES Municipal Minor Stormwater/MS4 | \$2,000 |

*For a new VPDES permit that includes authorization for land application of biosolids or land disposal of sewage sludge, the \$5,000 of the fee will be deposited into the Sludge Management Fund biosolids permit fee will be paid in addition to the required VPDES permit fee.

B. Virginia Pollution Abatement (VPA) permits. The following fee schedules apply to applications for issuance of a new individual VPA permit or certificate. (Note: Land application rates listed in the table below are facility "design" rates.)

| | |
|--|------------|
| VPA Concentrated Animal Feeding Operation | (Reserved) |
| VPA Intensified Animal Feeding Operation | (Reserved) |
| VPA Industrial Wastewater Operation/Land Application of 10 or More Inches Per Year | \$15,000 |
| VPA Industrial Wastewater Operation/Land Application of Less Than 10 Inches Per Year | \$10,500 |
| VPA Industrial Sludge Operation | \$7,500 |
| VPA Municipal Wastewater Operation | \$13,500 |
| VPA Municipal Sludge Biosolids Operation | \$5,000 |
| All other operations not specified above | \$750 |

C. Virginia Water Protection (VWP) permits. The following fee schedules apply to applications for issuance of a new individual and reissuance of an existing individual VWP permit or certificate. Only one permit application fee shall be assessed per application; for a permit application involving more than one of the operations described below, the governing fee shall be based upon the primary purpose of the proposed activity. (Note: Withdrawal amounts shown in the table below are maximum daily withdrawals.)

| | |
|--|---|
| VWP Individual/Surface Water Impacts (Wetlands, Streams and/or Open Water) | \$2,400 plus \$220 for each 4,356 sq. ft. (1/10 acre) (or portion thereof) of incremental impact over 87,120 sq. ft. (two acres) (\$60,000 maximum) |
| VWP Individual/Minimum | \$25,000 |

| | |
|--|--|
| Instream Flow - Withdrawals equal to or greater than 3,000,000 gallons on any day | |
| VWP Individual/Minimum Instream Flow - Withdrawals between 2,000,000 and 2,999,999 gallons on any day | \$20,000 |
| VWP Individual/Minimum Instream Flow - Withdrawals between 1,000,000 and 1,999,999 gallons on any day | \$15,000 |
| VWP Individual/Minimum Instream Flow - Withdrawals less than 1,000,000 gallons on any day that do not otherwise qualify for a general VWP permit for water withdrawals | \$10,000 |
| VWP Individual/Reservoir - Major | \$35,000 |
| VWP Individual/Reservoir - Minor | \$25,000 |
| VWP Individual/Nonmetallic Mineral Mining | \$2,400 plus \$220 for each 4,356 sq. ft. (1/10 acre) (or portion thereof) of incremental impact over 87,120 sq. ft. (two acres) (\$7,500 maximum) |

D. Surface Water Withdrawal (SWW) permits or certificates issued in response to Chapter 24 (§ 62.1-242 et seq.) of Title 62.1 of the Code of Virginia. The following fee schedules apply to applications for issuance of a new individual, and reissuance of an existing individual SWW permit or certificate.

| | |
|--|------------|
| Agricultural withdrawal not exceeding 150 million gallons in any single month | (Reserved) |
| Agricultural withdrawal greater than 150 million gallons but less than 300 million gallons in any single month | (Reserved) |
| Agricultural withdrawal of 300 million gallons or greater in any single month | (Reserved) |
| Surface Water Withdrawal | \$12,000 |

E. Ground Water Withdrawal (GWW) Permits issued in response to Chapter 25 (§ 62.1-254 et seq.) of Title 62.1 of

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the Code of Virginia. The following fee schedules apply to applications for issuance of a new individual, and reissuance of an existing individual GWW permit or certificate.

| | |
|--|------------|
| Agricultural withdrawal not exceeding 150 million gallons in any single month | (Reserved) |
| Agricultural withdrawal greater than 150 million gallons but less than 300 million gallons in any single month | (Reserved) |
| Agricultural withdrawal of 300 million gallons or greater in any single month | (Reserved) |
| Ground Water Withdrawal/Initial Permit for an Existing Withdrawal Based Solely on Historic Withdrawals | \$1,200 |
| Ground Water Withdrawal | \$6,000 |

9VAC25-20-120. Fee schedules for major modification of individual permits or certificates requested by the permit or certificate holder.

A. The following fee schedules apply to applications for major modification of an individual permit or certificate requested by the permit or certificate holder:

1. Virginia Pollutant Discharge Elimination System (VPDES) permits. The application fees listed in the table below apply to a major modification that occurs (and becomes effective) before the stated permit expiration date. ~~(Note: All flows listed in the table below are facility "design" flows.)~~

| | |
|--|----------|
| VPDES Industrial Major | \$12,000 |
| VPDES Municipal Major | \$10,650 |
| VPDES Municipal Major Stormwater/MS4 | \$5,150 |
| VPDES Industrial Minor/No Standard Limits | \$5,100 |
| VPDES Industrial Minor/Standard Limits | \$3,300 |
| VPDES Industrial Stormwater | \$3,600 |
| VPDES Municipal Minor/Greater Than 100,000 GPD | \$3,750 |
| VPDES Municipal Minor/10,001 GPD - 100,000 GPD | \$3,000 |
| VPDES Municipal Minor/1,001 GPD - 10,000 GPD | \$2,700 |

| | |
|---|-----------------|
| <u>VPDES Municipal - modification relating to the authorization for land application of biosolids or land disposal of sewage sludge</u> | <u>\$1,000*</u> |
| VPDES Municipal Minor/1,000 GPD or Less | \$1,000 |
| VPDES Municipal Minor Stormwater/MS4 | \$1,000 |

*The fee for modification of a VPDES permit due to changes relating to authorization for land application of biosolids or land disposal of sewage sludge shall be \$1,000, notwithstanding other modification fees incurred. The modification fee shall apply for the addition of land application sites to a permit when a public meeting is required as specified in 9VAC25-31-290 I 2.

2. Virginia Pollution Abatement (VPA) permits. The application fees listed in the table below apply to a major modification that occurs (and becomes effective) before the stated permit expiration date. ~~(Note: Land application rates listed in the table below are facility "design" rates.)~~

| | |
|--|------------|
| VPA Concentrated Animal Feeding Operation | (Reserved) |
| VPA Intensified Animal Feeding Operation | (Reserved) |
| VPA Industrial Wastewater Operation/Land Application of 10 or More Inches Per Year | \$7,500 |
| VPA Industrial Wastewater Operation/Land Application of Less Than 10 Inches Per Year | \$5,250 |
| VPA Industrial Sludge Operation | \$3,750 |
| VPA Municipal Wastewater Operation | \$6,750 |
| VPA Municipal Sludge <u>Biosolids</u> Operation | \$1,000* |
| All other operations not specified above | \$375 |

*The modification fee shall apply for the addition of land application sites to a permit when a public meeting is required as specified in 9VAC25-32-140 C 2.

3. Virginia Water Protection (VWP) permits. (Note: Only one permit application fee shall be assessed per application; for a permit application involving more than one of the operations described below, the governing fee

shall be based upon the primary purpose of the proposed activity.)

| | |
|--|---|
| VWP Individual/Surface Water Impacts (Wetlands, Streams and/or Open Water) | \$1,200 plus \$110 for each 4,356 sq. ft. (1/10 acre) (or portion thereof) of incremental impact over 87,120 sq. ft. (two acres) (\$30,000 maximum) |
| VWP Individual/Minimum Instream Flow | \$5,000 |
| VWP Individual/Reservoir (Major or Minor) | \$12,500 |
| VWP Individual/Nonmetallic Mineral Mining | \$1,200 plus \$110 for each 4,356 sq. ft. (1/10 acre) (or portion thereof) of incremental impact over 87,120 sq. ft. (two acres) (\$3,750 maximum) |

4. Surface Water Withdrawal (SWW) permits or certificates issued in response to Chapter 24 (§ 62.1-242 et seq.) of Title 62.1 of the Code of Virginia.

| | |
|--|------------|
| Agricultural withdrawal not exceeding 150 million gallons in any single month | (Reserved) |
| Agricultural withdrawal greater than 150 million gallons but less than 300 million gallons in any single month | (Reserved) |
| Agricultural withdrawal of 300 million gallons or greater in any single month | (Reserved) |
| Surface Water Withdrawal | \$6,000 |

5. Ground Water Withdrawal (GWW) Permits issued in response to Chapter 25 (§ 62.1-254 et seq.) of Title 62.1 of the Code of Virginia.

| | |
|--|------------|
| Agricultural withdrawal not exceeding 150 million gallons in any single month | (Reserved) |
| Agricultural withdrawal greater than 150 million gallons but less than 300 million gallons in any single month | (Reserved) |
| Agricultural withdrawal of 300 million gallons or greater in any | (Reserved) |

| | |
|--|---------|
| single month | |
| Ground Water Withdrawal/Initial Permit for an Existing Withdrawal Based Solely on Historic Withdrawals | \$600 |
| Ground Water Withdrawal | \$3,000 |

B. All rates listed in the tables provided in this section are facility "design" rates unless noted otherwise.

9VAC25-20-142. Permit maintenance fees.

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

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

| | |
|--|---------|
| VPDES Industrial Major | \$7,876 |
| VPDES Municipal Major/Greater Than 10 MGD | \$7,794 |
| VPDES Municipal Major/2 MGD - 10 MGD | \$7,138 |
| VPDES Municipal Major/Less Than 2 MGD | \$6,317 |
| VPDES Municipal Major Stormwater/MS4 | \$6,235 |
| VPDES Industrial Minor/No Standard Limits | \$3,347 |
| VPDES Industrial Minor/Standard Limits | \$1,969 |
| VPDES Industrial Minor/Water Treatment System | \$1,969 |
| VPDES Industrial Stormwater | \$2,363 |
| VPDES Municipal Minor/Greater Than 100,000 GPD | \$2,461 |
| VPDES Municipal Minor/10,001 GPD - 100,000 GPD | \$1,969 |
| VPDES Municipal Minor/1,001 GPD - 10,000 GPD | \$1,772 |
| VPDES Municipal Minor/1,000 GPD or Less | \$656 |

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| | |
|--|----------|
| <u>VPDES Municipal Major – land application of biosolids or land disposal of sewage sludge</u> | \$1,000* |
| VPDES Municipal Minor Stormwater/MS4 | \$656 |

*The maintenance fee for the authorization of land application of biosolids or land disposal of sewage sludge shall be \$1,000, in addition to the VPDES municipal maintenance fee, if land application of biosolids or land disposal of sewage sludge has occurred in the 12 months preceding the maintenance fee due date.

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

| | |
|--|--------------------------|
| VPA Industrial Wastewater Operation/Land Application of 10 or More Inches Per Year | \$2,461 |
| VPA Industrial Wastewater Operation/Land Application of Less Than 10 Inches Per Year | \$1,723 |
| VPA Industrial Sludge Operation | \$1,231 |
| VPA Municipal Wastewater Operation | \$2,215 |
| VPA Municipal Sludge Biosolids Operation | \$1,231 \$500 |
| VPA Concentrated Animal Feeding Operation | (Reserved) |
| VPA Intensified Animal Feeding Operation | (Reserved) |
| All other operations not specified above | \$123 |

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

$$F = B \times C$$

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

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

where:

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

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

C = the Consumer Price Index adjustment factor.

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

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

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

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

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

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

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

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

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

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

B. Additional permit maintenance fees.

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

2. An additional permit maintenance fee of \$1,000 shall be paid annually by permittees that have more than five

process wastewater discharge outfalls at a single facility (not including "internal" outfalls).

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

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

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

Part IV

Sewage Sludge Biosolids Fees and Reimbursable Costs

9VAC25-20-146. Established fees.

A. Land appliers shall remit the established fees to the department as specified in this regulation. The land appliers shall collect the required fees from the owners of the sewage treatment works and facilities that generate the biosolids. Such works and facilities shall be approved sources of biosolids in accordance with this regulation. Land application shall only include biosolids from approved sources as listed in the land application permit. The established fee shall be imposed on each dry ton of biosolids that is land applied in the Commonwealth of Virginia in accordance with 9VAC25-31 or 9VAC25-32.

B. The amount of the established fee and disbursement are as follows:

1. The fee shall be \$7.50 per dry ton of biosolids land applied in the Commonwealth of Virginia.
2. Disbursement of the established fees collected by the department shall be made to reimburse or partially reimburse those counties, cities and towns with duly adopted local ordinances that submit documentation of reimbursable expenses acceptable to the department as provided for in this regulation.
3. Disbursement of the established fees collected by the department shall be made to reimburse the Department of Conservation and Recreation's costs for implementation of the sewage sludge biosolids application program.

9VAC25-20-147. Records and reports.

A. Records. Permittees shall maintain complete records of the land application activities and amounts of biosolids that they land apply in the Commonwealth of Virginia. Such records shall be maintained by the permittee for five years after the date of the activity in a form that is available for inspection by the department ~~for five years after the date of~~

~~the activity.~~ Records of land application activities shall include the following at minimum information:

1. Name of permittee, DEQ permit number, and dates of activity.
2. Identification of land application site, including the ~~county where taxes are remitted and permitted site identification name, letters and numbers, as appropriate~~ DEQ control number.
3. The source of biosolids and ~~approximate~~ field area receiving those biosolids.
4. The amount of biosolids applied in dry tons and the method and calculations used to determine the reported value.
- ~~5. Dates and type of any interactions with local monitors and names of individuals involved in the interactions.~~
- ~~6.~~ 5. Name of responsible representative of permittee and a statement signed and dated by that representative indicating that the information submitted has been verified by that representative as correctly reported in accordance with this regulation.

B. Reports and notification. The permittee shall submit a monthly report by the 15th day of the month following the month that land application occurs, unless another date is specified in the permit in accordance with 9VAC25-32-80 I 4; ~~following the month that land application occurs. That~~ The report shall include (i) the recorded information listed in subsection A of this section and ~~present~~ (ii) a calculation of the total fee ~~that is required in accordance with this regulation.~~ The submitted report shall include a summary list of the total amount of biosolids applied and the calculated fee based on the land-applied biosolids for each county in which land application occurred ~~in alphabetical order by county.~~

9VAC25-20-148. Reimbursable local monitoring costs.

~~The following describes the kinds of activities for which expenses may, if reasonable, A. Reasonable expenses for the following types of activities may~~ be submitted for reimbursement:

1. Charges for reviewing the permit to identify potential health and environmental protection issues upon notification by the permittee that operations will be initiated on permitted sites.
2. Charges and expenses, including local travel for site monitoring, inspections, collection and delivery of biosolids or soil samples to a nearby laboratory and examination of records.
3. Charges for recordkeeping.
4. Charges for complaint and incident response.
5. Charges for biosolids and soil sample testing costs.

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6. Charges for the training of local monitors.

B. Charges for site monitoring not associated with determining compliance with state or federal law or regulation are ineligible for reimbursement.

9VAC25-20-149. Reimbursement of local monitoring costs.

A. Reimbursement of local monitoring costs deemed reasonable by the department will be made in order of receipt of an acceptable invoice. Such invoices will be reimbursed for reasonable costs up to \$2.50, as adjusted, per dry ton of biosolids land applied in a county during the period of time specified in the submitted invoice. If sufficient revenue exists from the fees collected monthly, then invoiced claims exceeding \$2.50, as adjusted, per dry ton of biosolids land applied in that county, during the period of time specified in the submitted invoice, may be released for reimbursement. Costs of up to \$4.00 per dry ton of biosolids land applied in that a county during the month period of time that the reimbursable costs were incurred, based on the order of receipt of the invoice may be reimbursed with prior approval from the department.

~~A. B.~~ Application. Local A local government must submit a reimbursement application to request reimbursement from the department. All information ~~is to~~ shall be clearly typed or printed and all required or supporting documents must be attached. The county administrator or designated local biosolids monitor shall sign and date the application where indicated. The original signed application with one copy of each of the supporting documents ~~is to~~ shall be forwarded to the department. Applications may not be submitted by facsimile or through electronic means. A reimbursement invoice form as described in this regulation must be completed before a reimbursement application can be submitted. The invoice form must include all expenses for which reimbursement is requested during the designated time period.

~~B. C.~~ Application forms and submittal. The application for reimbursement must be submitted within 30 days of the last day of the month in which the reimbursable activity occurred. All applications received after this time frame will be ineligible for reimbursement. The following is a description of the application forms and an explanation of their use. The application forms and detailed instructions can be obtained from the department.

1. Form 1 - Reimbursement Application. An invoice form shall be submitted with each application for reimbursement. The invoice form ~~should~~ shall list all reimbursable charges. To be reimbursed for eligible expenses, an applicant must provide documentation to demonstrate that the expenses were incurred. Invoices are acceptable proof of incurred expenses. ~~Include legible copies of invoices~~ Invoices signed by the local biosolids

monitor or agent who performed or managed the monitoring activities shall be legible. All invoices are to include the following:

- a. DEQ permit number and site identification;
- b. ~~Number or site address~~ DEQ control number for application fields;
- c. Biosolids contractor's name;
- d. Date and type of activity monitored;
- e. Name of biosolids monitor;
- f. Number of hours to be reimbursed and charge per hour;
- g. List of expenses for which reimbursement is sought;
- h. Type of sampling activity performed and associated laboratory expense vouchers.

2. The application requires the county administrator to certify that the responsible official has read and understands the requirements for reimbursement and that the application submitted is not fraudulent. The local monitor must attest to the accuracy and completeness of the information provided.

~~2.~~ 3. Form 2 - Multiple Owners Payment Assignment Form. When there are multiple local governments as claimants, a separate, signed and notarized invoice form for each claimant must be filled out and submitted with the application.

~~Submittal of the original completed reimbursement application, including the application worksheets and the appropriate supporting documentation, should be accomplished by mailing these documents to: Department of Environmental Quality, Receipts Control, P.O. Box 1105, Richmond, VA 23218.~~

~~C.~~ D. Processing applications.

1. If contacted by the department regarding an incomplete reimbursement application, an applicant will have 14 days from the date of the call or letter to submit the information requested and ~~are~~ correct any deficiencies. Extensions of the 14-day deadline will not be granted. An application that does not contain all of the required information after the 14-day time frame may be rejected ~~or processed "as is," which can result in complete denial or a partial reimbursement.~~

2. Only invoices pertaining to the monitoring activity claimed in the current application will be accepted. Costs omitted from previous claims are ineligible for reimbursement in subsequent claims. ~~Likewise, invoices~~ Invoices submitted in previous claims ~~will are~~ are not be eligible documentation for reimbursement of costs in subsequent claims. To reduce the risk of disqualification of

costs, costs for different monitoring activities should be invoiced separately. If possible, invoices should be structured so that costs are grouped according to task or activity.

~~D.~~ E. Reconsideration process.

1. Claimants may submit a written response indicating why they believe costs denied on the reimbursement decision should be paid.

2. If the claimant disagrees with the decision in the reimbursement payment package, a notice of intent (NOI) to object and a reconsideration claim form must be submitted to the department within the filing deadlines specified in the reconsideration procedure package

a. If filing deadlines are not met, the decision in the reimbursement payment package is final. This written objection ~~is to~~ shall be in the format specified in the reconsideration procedure package and explain the reasons for disagreement with the decisions in the reimbursement payment letter and supply any additional supporting documentation.

b. Upon receipt of this information and at the claimant's request, the department may schedule a reconsideration meeting to reevaluate the denied costs.

3. Claimants will be given an opportunity to contest the reimbursement decisions in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia). Within the filing deadline, the claimant must submit a written summary of the issues that will be contested using the reconsideration claim form.

4. The reconsideration procedures provide the department the opportunity to correct certain errors. ~~The following types of errors can be corrected as follows:~~

- a. Failure of the reviewer to verify an invoice form that was received prior to completing the verification package for the reimbursement.
- b. Errors the reviewer makes in verifying an invoice form.
- c. Failure of the claimant to submit all invoices.

5. Errors ineligible for reconsideration. Notwithstanding the above, some types of errors cannot be corrected using the reconsideration process. It is the responsibility of the claimant or consultant, or both, to ensure that all application forms (invoice forms, and sampling and testing verification) are ~~completely and accurately filled out complete and accurate~~. ~~Failure to exercise proper care in preparing an application~~ The following types of errors may result in a denial of costs, ~~which cannot be corrected through the reconsideration process, including:~~

~~a. Items omitted from the invoice form will not be eligible for reimbursement;~~

~~b. Unverified sampling and testing results will not be eligible for reimbursement;~~

~~c. No additions~~ Additions or revisions to the invoice forms ~~will be accepted from the claimant submitted~~ after the reviewer forwards the verification package to the department;

d. Using one invoice in multiple claims. Invoices submitted in an application cannot be used as documentation for reimbursement of costs in subsequent claims;

~~e. The following are types of errors that cannot be corrected:~~

~~(1) e.~~ Failure to claim performed work on the invoice form;

~~(2) f.~~ Failure to claim sampling and testing costs as authorized; or

~~(3) Failure to claim all costs in a submitted invoice.~~

~~(4) Failure to submit to the reviewer all supporting documentation to demonstrate the necessity of work performed that exceeds expected activities. Such documentation must be submitted before the reviewer forwards the verification package to the department.~~

g. Failure to obtain prior approval from the department for costs that exceed \$2.50 per dry ton of biosolids land applied.

Part I

Definitions and General Program Requirements

9VAC25-31-10. Definitions.

"Act" means Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 USC § 1251 et seq.

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

"Animal feeding operation" or "AFO" means a lot or facility (other than an aquatic animal production facility) where the following conditions are met: (i) 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 (ii) crops, vegetation forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

"Applicable standards and limitations" means all state, interstate, and federal standards and limitations to which a discharge, a sewage sludge use or disposal practice, or a related activity is subject under the Clean Water Act (CWA)

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(33 USC § 1251 et seq.) and the law, including effluent limitations, water quality standards, standards of performance, toxic effluent standards or prohibitions, best management practices, pretreatment standards, and standards for biosolids use or sewage sludge use or disposal under §§ 301, 302, 303, 304, 306, 307, 308, 403 and 405 of CWA.

"Approval authority" means the Director of the Department of Environmental Quality.

"Approved POTW Pretreatment Program" or "Program" or "POTW Pretreatment Program" means a program administered by a POTW that meets the criteria established in Part VII (9VAC25-31-730 et seq.) of this chapter and which has been approved by the director or by the administrator in accordance with 9VAC25-31-830.

"Approved program" or "approved state" means a state or interstate program which has been approved or authorized by EPA under 40 CFR Part 123 (2005).

"Aquaculture project" means a defined managed water area which uses discharges of pollutants into that designated area for the maintenance or production of harvestable freshwater, estuarine, or marine plants or animals.

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

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

"Best management practices (BMPs)" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in 9VAC25-31-770 and to prevent or reduce the pollution of surface waters. BMPs also include treatment requirements, operating procedures, and practices to control plant site run-off, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

"Board" means the Virginia State Water Control Board or State Water Control Board.

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

"Class I sludge management facility" means any POTW identified under Part VII (9VAC25-31-730 et seq.) of this chapter as being required to have an approved pretreatment program and any other treatment works treating domestic sewage classified as a Class I sludge management facility by the regional administrator, in conjunction with the director, because of the potential for its sludge use or disposal

practices to adversely affect public health and the environment.

"Concentrated animal feeding operation" or "CAFO" means an AFO that is defined as a Large CAFO or as a Medium CAFO, or that is designated as a Medium CAFO or a Small CAFO. Any AFO may be designated as a CAFO by the director in accordance with the provisions of 9VAC25-31-130 B.

1. "Large CAFO." An AFO is defined as a Large CAFO if it stables or confines as many or more than the numbers of animals specified in any of the following categories:

- a. 700 mature dairy cows, whether milked or dry;
- b. 1,000 veal calves;
- c. 1,000 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs;
- d. 2,500 swine each weighing 55 pounds or more;
- e. 10,000 swine each weighing less than 55 pounds;
- f. 500 horses;
- g. 10,000 sheep or lambs;
- h. 55,000 turkeys;
- i. 30,000 laying hens or broilers, if the AFO uses a liquid manure handling system;
- j. 125,000 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;
- k. 82,000 laying hens, if the AFO uses other than a liquid manure handling system;
- l. 30,000 ducks, if the AFO uses other than a liquid manure handling system; or
- m. 5,000 ducks if the AFO uses a liquid manure handling system.

2. "Medium CAFO." The term Medium CAFO includes any AFO with the type and number of animals that fall within any of the ranges below that has been defined or designated as a CAFO. An AFO is defined as a Medium CAFO if:

- a. The type and number of animals that it stables or confines falls within any of the following ranges:
 - (1) 200 to 699 mature dairy cattle, whether milked or dry;
 - (2) 300 to 999 veal calves;
 - (3) 300 to 999 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs;

- (4) 750 to 2,499 swine each weighing 55 pounds or more;
- (5) 3,000 to 9,999 swine each weighing less than 55 pounds;
- (6) 150 to 499 horses;
- (7) 3,000 to 9,999 sheep or lambs;
- (8) 16,500 to 29,999 laying hens or broilers, if the AFO uses a liquid manure handling system;
- (9) 37,500 to 124,999 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;
- (10) 25,000 to 81,999 laying hens, if the AFO uses other than a liquid manure handling system;
- (11) 10,000 to 29,999 ducks, if the AFO uses other than a liquid manure handling system;
- (12) 1,500 to 4,999 ducks, if the AFO uses a liquid manure handling system; and

b. Either one of the following conditions are met:

- (1) Pollutants are discharged into surface waters of the state through a manmade ditch, flushing system, or other similar manmade device; or
- (2) Pollutants are discharged directly into surface waters of the state that originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

3. "Small CAFO." An AFO that is designated as a CAFO and is not a Medium CAFO.

"Concentrated aquatic animal production facility" means a hatchery, fish farm, or other facility which meets the criteria of this definition, or which the board designates under 9VAC25-31-140. A hatchery, fish farm, or other facility is a concentrated aquatic animal production facility if it contains, grows, or holds aquatic animals in either of the following categories:

- 1. Cold water fish species or other cold water aquatic animals in ponds, raceways, or other similar structures which discharge at least 30 days per year but does not include:
 - a. Facilities which produce less than 9,090 harvest weight kilograms (approximately 20,000 pounds) of aquatic animals per year; and
 - b. Facilities which feed less than 2,272 kilograms (approximately 5,000 pounds) of food during the calendar month of maximum feeding; or
- 2. Warm water fish species or other warm water aquatic animals in ponds, raceways, or other similar structures

which discharge at least 30 days per year, but does not include:

- a. Closed ponds which discharge only during periods of excess run-off; or
- b. Facilities which produce less than 45,454 harvest weight kilograms (approximately 100,000 pounds) of aquatic animals per year.

Cold water aquatic animals include, but are not limited to, the Salmonidae family of fish (e.g., trout and salmon).

Warm water aquatic animals include, but are not limited to, the Ictaluridae, Centrarchidae and Cyprinidae families of fish (e.g., respectively, catfish, sunfish and minnows).

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

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

"Control authority" refers to the POTW if the POTW's pretreatment program submission has been approved in accordance with the requirements of 9VAC25-31-830 or the approval authority if the submission has not been approved.

"Co-permittee" means a permittee to a VPDES permit that is only responsible for permit conditions relating to the discharge for which it is the operator.

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

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

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

"Department" means the Virginia Department of Environmental Quality.

"Designated project area" means the portions of surface within which the permittee or permit applicant plans to

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confine the cultivated species, using a method or plan or operation (including, but not limited to, physical confinement) which, on the basis of reliable scientific evidence, is expected to ensure that specific individual organisms comprising an aquaculture crop will enjoy increased growth attributable to the discharge of pollutants, and be harvested within a defined geographic area.

"Direct discharge" means the discharge of a pollutant.

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

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

"Discharge," when used in Part VII (9VAC25-31-730 et seq.) of this chapter, means "indirect discharge" as defined in this section.

"Discharge of a pollutant" means:

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

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

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

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

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

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

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

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

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

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

"General permit" means a VPDES permit authorizing a category of discharges under the CWA and the law within a geographical area.

"Hazardous substance" means any substance designated under the Code of Virginia and 40 CFR Part 116 (2005) pursuant to § 311 of the CWA.

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

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

"Indirect discharge" means the introduction of pollutants into a POTW from any nondomestic source regulated under § 307(b), (c) or (d) of the CWA and the law.

"Indirect discharger" means a nondomestic discharger introducing pollutants to a POTW.

"Individual control strategy" means a final VPDES permit with supporting documentation showing that effluent limits are consistent with an approved wasteload allocation or other documentation that shows that applicable water quality standards will be met not later than three years after the individual control strategy is established.

"Industrial user" or "user" means a source of indirect discharge.

"Interference" means an indirect discharge which, alone or in conjunction with an indirect discharge or discharges from

other sources, both: (i) inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and therefore (ii) is a cause of a violation of any requirement of the POTW's VPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of biosolids use or sewage sludge use or disposal in compliance with the following statutory provisions and regulations or permits issued thereunder (or more stringent state or local regulations): Section 405 of the Clean Water Act, the Solid Waste Disposal Act (SWDA) (including Title II, more commonly referred to as the Resource Conservation and Recovery Act (RCRA) (42 USC § 6901 et seq.), and including state regulations contained in any state sludge management plan prepared pursuant to Subtitle D of the SWDA) the Clean Air Act (42 USC § 701 et seq.), the Toxic Substances Control Act (15 USC § 2601 et seq.), and the Marine Protection, Research and Sanctuaries Act (33 USC § 1401 et seq.).

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

"Land application area" means land under the control of an AFO owner or operator, that is owned, rented, or leased to which manure, litter or process wastewater from the production area may be applied.

"Log sorting" and "log storage facilities" means facilities whose discharges result from the holding of unprocessed wood, for example, logs or roundwood with bark or after removal of bark held in self-contained bodies of water (mill ponds or log ponds) or stored on land where water is applied intentionally on the logs (wet decking).

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

"Manmade" means constructed by man and used for the purpose of transporting wastes.

"Manure" means manure, bedding, compost and raw materials or other materials commingled with manure or set aside for disposal.

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

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

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

"National pretreatment standard," "pretreatment standard," or "standard," when used in Part VII (9VAC25-31-730 et seq.) of this chapter, means any regulation containing pollutant discharge limits promulgated by the EPA in accordance with § 307(b) and (c) of the CWA, which applies to industrial users. This term includes prohibitive discharge limits established pursuant to 9VAC25-31-770.

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

1. From which there is or may be a discharge of pollutants;
2. That did not commence the discharge of pollutants at a particular site prior to August 13, 1979;
3. Which is not a new source; and
4. Which has never received a finally effective VPDES permit for discharges at that site.

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

"New source," except when used in Part VII of this chapter, means any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

- (a) After promulgation of standards of performance under § 306 of the CWA which are applicable to such source; or
- (b) After proposal of standards of performance in accordance with § 306 of the CWA which are applicable to such source, but only if the standards are promulgated in accordance with § 306 of the CWA within 120 days of their proposal.

"New source," when used in Part VII of this chapter, means any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards under § 307(c) of the CWA which will

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be applicable to such source if such standards are thereafter promulgated in accordance with that section, provided that:

1. a. The building, structure, facility or installation is constructed at a site at which no other source is located;

b. The building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or

c. The production of wastewater generating processes of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source should be considered.

2. Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria of subdivision 1 b or c of this definition but otherwise alters, replaces, or adds to existing process or production equipment.

3. Construction of a new source as defined under this subdivision has commenced if the owner or operator has:

a. Begun, or caused to begin, as part of a continuous on-site construction program:

(1) Any placement, assembly, or installation of facilities or equipment; or

(2) Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

b. Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this subdivision.

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

"Owner" means the Commonwealth or any of its political subdivisions including, but not limited to, sanitation district commissions and authorities, and any public or private institution, corporation, association, firm or company organized or existing under the laws of this or any other state or country, or any officer or agency of the United States, or

any person or group of persons acting individually or as a group that owns, operates, charters, rents, or otherwise exercises control over or is responsible for any actual or potential discharge of sewage, industrial wastes, or other wastes to state waters, or any facility or operation that has the capability to alter the physical, chemical, or biological properties of state waters in contravention of § 62.1-44.5 of the Code of Virginia.

"Owner" or "operator" means the owner or operator of any facility or activity subject to regulation under the VPDES program.

"Pass through" means a discharge which exits the POTW into state waters in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the POTW's VPDES permit (including an increase in the magnitude or duration of a violation).

"Permit" means an authorization, certificate, license, or equivalent control document issued by the board to implement the requirements of this chapter. Permit includes a VPDES general permit. Permit does not include any permit which has not yet been the subject of final agency action, such as a draft permit or a proposed permit.

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

"Point source" means any discernible, confined, and discrete conveyance including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel, or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water run-off.

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

1. Sewage from vessels; or

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

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

"POTW treatment plant" means that portion of the POTW which is designed to provide treatment (including recycling and reclamation) of municipal sewage and industrial waste.

"Pretreatment" means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration may be obtained by physical, chemical or biological processes, process changes or by other means, except as prohibited in Part VII of this chapter. Appropriate pretreatment technology includes control equipment, such as equalization tanks or facilities, for protection against surges or slug loadings that might interfere with or otherwise be incompatible with the POTW. However, where wastewater from a regulated process is mixed in an equalization facility with unregulated wastewater or with wastewater from another regulated process, the effluent from the equalization facility must meet an adjusted pretreatment limit calculated in accordance with Part VII of this chapter.

"Pretreatment requirements" means any requirements arising under Part VII of this chapter including the duty to allow or carry out inspections, entry or monitoring activities; any rules, regulations, or orders issued by the owner of a publicly owned treatment works; or any reporting requirements imposed by the owner of a publicly owned treatment works or by the regulations of the board. Pretreatment requirements do not include the requirements of a national pretreatment standard.

"Primary industry category" means any industry category listed in the NRDC settlement agreement (Natural Resources Defense Council et al. v. Train, 8 E.R.C. 2120 (D.D.C. 1976), modified 12 E.R.C. 1833 (D.D.C. 1979)); also listed in 40 CFR Part 122 Appendix A (2005).

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

"Process wastewater" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste

product. Process wastewater from an AFO means water directly or indirectly used in the operation of the AFO for any of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other AFO facilities; direct contact swimming, washing, or spray cooling of the animals; or dust control. Process wastewater from an AFO also includes any water that comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs or bedding.

"Production area" means that part of an AFO that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas. The animal confinement area includes but is not limited to open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes but is not limited to lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage areas includes but is not limited to feed silos, silage bunkers, and bedding materials. The waste containment area includes but is not limited to settling basins, and areas within berms and diversions that separate uncontaminated storm water. Also included in the definition of production area is any egg washing or egg processing facility, and any area used in the storage, handling, treatment, or disposal of mortalities.

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

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

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

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

"Rock crushing and gravel washing facilities" means facilities which process crushed and broken stone, gravel, and riprap.

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

"Secondary industry category" means any industry category which is not a primary industry category.

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

"Septage" means the liquid and solid material pumped from a septic tank, cesspool, or similar domestic sewage treatment system, or a holding tank when the system is cleaned or maintained.

"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.

"Sewage from vessels" means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes that are discharged from vessels and regulated under § 312 of CWA.

"Sewage sludge" means any solid, semisolid, or liquid residue removed during the treatment of municipal waste water or domestic sewage. Sewage sludge includes, but is not limited to, solids removed during primary, secondary, or advanced waste water treatment, scum, domestic septage, portable toilet pumpings, type III marine sanitation device pumpings, and sewage sludge products. Sewage sludge does not include grit or screenings, or ash generated during the incineration of sewage sludge.

"Sewage sludge use" or "disposal practice" means the collection, storage, treatment, transportation, processing, monitoring, use of biosolids, or disposal of sewage sludge.

"Significant industrial user" or "SIU" means:

1. Except as provided in subdivisions 2 and 3 of this definition:
 - a. All industrial users subject to categorical pretreatment standards under 9VAC25-31-780 and incorporated by reference in 9VAC25-31-30; and
 - b. Any other industrial user that: discharges an average of 25,000 gallons per day or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewater); contributes a process wastestream which makes up 5.0% or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or is designated as such by the Control Authority, on the basis that the industrial user

has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement.

2. The control authority may determine that an industrial user subject to categorical pretreatment standards under 9VAC25-31-780 and 40 CFR chapter I, subchapter N is a nonsignificant categorical industrial user rather than a significant industrial user on a finding that the industrial user never discharges more than 100 gallons per day (gpd) of total categorical wastewater (excluding sanitary, noncontact cooling and boiler blowdown wastewater, unless specifically included in the pretreatment standard) and the following conditions are met:

- a. The industrial user, prior to control authority's finding, has consistently complied with all applicable categorical pretreatment standards and requirements;
- b. The industrial user annually submits the certification statement required in 9VAC25-31-840 together with any additional information necessary to support the certification statement; and
- c. The industrial user never discharges any untreated concentrated wastewater.

3. Upon a finding that an industrial user meeting the criteria in subdivision 1 b of this definition has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the control authority may at any time, on its own initiative or in response to a petition received from an industrial user or POTW, and in accordance with Part VII (9VAC25-31-730 et seq.) of this chapter, determine that such industrial user is not a significant industrial user.

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

"Silvicultural point source" means any discernible, confined and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage facilities which are operated in connection with silvicultural activities and from which pollutants are discharged into surface waters. The term does not include nonpoint source silvicultural activities such as nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance from which there is natural run-off. However, some of these activities (such as

stream crossing for roads) may involve point source discharges of dredged or fill material which may require a CWA § 404 permit.

"Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

"Sludge-only facility" means any treatment works treating domestic sewage whose methods of biosolids use or sewage sludge use or disposal are subject to regulations promulgated pursuant to the law and § 405(d) of the CWA, and is required to obtain a VPDES permit.

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

"Standards for biosolids use or sewage sludge use or disposal" means the regulations promulgated pursuant to the law and § 405(d) of the CWA which govern minimum requirements for sludge quality, management practices, and monitoring and reporting applicable to sewage sludge or the use of biosolids or disposal of sewage sludge by any person.

"State" means the Commonwealth of Virginia.

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

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

"Storm water" means storm water run-off, snow melt run-off, and surface run-off and drainage.

"Storm water discharge associated with industrial activity" means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the VPDES program. For the categories of industries identified in this definition, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters; sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and final products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the purposes of this definition, material handling activities include the storage, loading and

unloading, transportation, or conveyance of any raw material, intermediate product, final product, by-product, or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities (including industrial facilities that are federally, state, or municipally owned or operated that meet the description of the facilities listed in subdivisions 1 through 10 of this definition) include those facilities designated under the provisions of 9VAC25-31-120 A 1 c. The following categories of facilities are considered to be engaging in industrial activity for purposes of this subsection:

1. Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards (except facilities with toxic pollutant effluent standards which are exempted under category 10);

2. Facilities classified as Standard Industrial Classifications 24 (except 2434), 26 (except 265 and 267), 28 (except 283), 29, 311, 32 (except 323), 33, 3441, 373;

3. Facilities classified as Standard Industrial Classifications 10 through 14 (mineral industry) including active or inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area under 40 CFR 434.11(1) (2005) because the performance bond issued to the facility by the appropriate SMCRA authority has been released, or except for areas of non-coal mining operations which have been released from applicable state or federal reclamation requirements after December 17, 1990) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, by-products, or waste products located on the site of such operations; (inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner/operator; inactive mining sites do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined materials, nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim);

4. Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under Subtitle C of RCRA (42 USC § 6901 et seq.);

5. Landfills, land application sites, and open dumps that receive or have received any industrial wastes (waste that is received from any of the facilities described under this

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subsection) including those that are subject to regulation under Subtitle D of RCRA (42 USC § 6901 et seq.);

6. Facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093;

7. Steam electric power generating facilities, including coal handling sites;

8. Transportation facilities classified as Standard Industrial Classifications 40, 41, 42 (except 4221-25), 43, 44, 45, and 5171 which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations, or which are otherwise identified under subdivisions 1 through 7 or 9 and 10 of this definition are associated with industrial activity;

9. Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of 1.0 mgd or more, or required to have an approved pretreatment program. Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with § 405 of the CWA; and

10. Facilities under Standard Industrial Classifications 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, and 4221-25.

"Submission" means: (i) a request by a POTW for approval of a pretreatment program to the regional administrator or the director; (ii) a request by POTW to the regional administrator or the director for authority to revise the discharge limits in categorical pretreatment standards to reflect POTW pollutant removals; or (iii) a request to the EPA by the director for approval of the Virginia pretreatment program.

"Surface waters" means:

1. All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which 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. Which 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. Which are used or could be used for industrial purposes by industries in interstate commerce.

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

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

6. The territorial sea; and

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

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

"Total dissolved solids" means the total dissolved (filterable) solids as determined by use of the method specified in 40 CFR Part 136 (2005).

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

"Treatment facility" means only those mechanical power driven devices necessary for the transmission and treatment of pollutants (e.g., pump stations, unit treatment processes).

"Treatment works" means any devices and systems used for the storage, treatment, recycling or reclamation of sewage or liquid industrial waste, or other waste or necessary to recycle or reuse water, including intercepting sewers, outfall sewers, sewage collection systems, individual systems, pumping, power and other equipment and their appurtenances; extensions, improvements, remodeling, additions, or alterations thereof; and any works, including land that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from such treatment; or any other method or system used for preventing, abating,

reducing, storing, treating, separating, or disposing of municipal waste or industrial waste, including waste in combined sewer water and sanitary sewer systems.

"Treatment works treating domestic sewage" means a POTW or any other sewage sludge or waste water treatment devices or systems, regardless of ownership (including federal facilities), used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated for the disposal of sewage sludge. This definition does not include septic tanks or similar devices. For purposes of this definition, domestic sewage includes waste and waste water from humans or household operations that are discharged to or otherwise enter a treatment works.

"TWTDS" means treatment works treating domestic sewage.

"Uncontrolled sanitary landfill" means a landfill or open dump, whether in operation or closed, that does not meet the requirements for run-on or run-off controls established pursuant to subtitle D of the Solid Waste Disposal Act (42 USC § 6901 et seq.).

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

"Variance" means any mechanism or provision under § 301 or § 316 of the CWA or under 40 CFR Part 125 (2005), or in the applicable effluent limitations guidelines which allows modification to or waiver of the generally applicable effluent limitation requirements or time deadlines of the CWA. This includes provisions which allow the establishment of alternative limitations based on fundamentally different factors or on §§ 301(c), 301(g), 301(h), 301(i), or 316(a) of the CWA.

"Virginia Pollutant Discharge Elimination System (VPDES) permit" means a document issued by the board pursuant to this chapter authorizing, under prescribed conditions, the potential or actual discharge of pollutants from a point source to surface waters and the use of biosolids or disposal of sewage sludge. Under the approved state program, a VPDES permit is equivalent to an NPDES permit.

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

"Wastewater," when used in Part VII of this chapter, means liquid and water carried industrial wastes and domestic sewage from residential dwellings, commercial buildings,

industrial and manufacturing facilities and institutions, whether treated or untreated, which are contributed to the POTW.

"Wastewater works operator" means any individual employed or appointed by any owner, and who is designated by such owner to be the person in responsible charge, such as a supervisor, a shift operator, or a substitute in charge, and whose duties include testing or evaluation to control wastewater works operations. Not included in this definition are superintendents or directors of public works, city engineers, or other municipal or industrial officials whose duties do not include the actual operation or direct supervision of wastewater works.

"Water Management Division Director" means the director of the Region III Water Management Division of the Environmental Protection Agency or this person's delegated representative.

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

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

9VAC25-31-60. Effect of a permit.

A. Compliance with a permit.

1. Except for any toxic effluent standards and prohibitions imposed under § 307 of the CWA and standards for biosolids use or sewage sludge ~~use or~~ disposal under § 405(d) of the CWA, compliance with a permit during its term constitutes compliance, for purposes of enforcement, with the law and with §§ 301, 302, 306, 307, 318, 403, and 405 (a) through (b) of the CWA. However, a permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in this chapter.

2. Compliance with a permit condition which implements a particular standard for biosolids use or sewage sludge ~~use or~~ disposal shall be an affirmative defense in any enforcement action brought for a violation of that standard for biosolids use or sewage sludge ~~use or~~ disposal pursuant to the law and §§ 309 and 405(e) of the CWA.

B. The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.

C. The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of state or local law or regulations.

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Part II

Permit Applications and Special VPDES Permit Programs

9VAC25-31-100. Application for a permit.

~~A. Duty to apply. Any person who discharges or proposes to discharge pollutants or who owns or operates a sludge-only facility whose sewage sludge use or disposal practice is regulated by 9VAC25-31-420 through 9VAC25-31-720 and who does not have an effective permit, except persons covered by general permits, excluded from the requirement for a permit by this chapter, or a user of a privately owned treatment works unless the board requires otherwise, The following shall submit a complete application to the department in accordance with this section. The requirements for concentrated animal feeding operations are described in subdivisions C 1 and 3 of 9VAC25-31-130.~~

1. Any person who discharges or proposes to discharge pollutants; and

2. Any person who owns or operates a sludge-only facility whose biosolids use or sewage sludge disposal practice is regulated by 9VAC25-31-420 through 9VAC25-31-720 and who does not have an effective permit.

All concentrated animal feeding operations have a duty to seek coverage under a VPDES permit.

B. Exceptions: The following are not required to submit a complete application to the department in accordance with this section unless the board requires otherwise:

1. Persons covered by general permits;

2. Persons excluded from the requirement for a permit by this chapter; or

3. A user of a privately owned treatment works.

~~B. C. Who applies. When a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a permit.~~

1. The owner of the facility or operation.

2. When a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a permit.

3. Notwithstanding the requirements of subdivision 2 of this subsection, biosolids land application by the operator may be authorized by the owner's permit.

~~C. D. Time to apply.~~

1. Any person proposing a new discharge, shall submit an application at least 180 days before the date on which the discharge is to commence, unless permission for a later date has been granted by the board. Facilities proposing a new discharge of storm water associated with industrial activity shall submit an application 180 days before that facility commences industrial activity which may result in

a discharge of storm water associated with that industrial activity. Different submittal dates may be required under the terms of applicable general permits. Persons proposing a new discharge are encouraged to submit their applications well in advance of the 90 or 180 day requirements to avoid delay. New discharges composed entirely of storm water, other than those dischargers identified in 9VAC25-31-120 A 1, shall apply for and obtain a permit according to the application requirements in 9VAC25-31-120 B.

2. All TWTDS whose sewage sludge biosolids use or sewage sludge disposal practices are regulated by 9VAC25-31-420 through 9VAC25-31-720 must submit permit applications according to the applicable schedule in subdivision 2 a or b of this subsection.

a. A TWTDS with a currently effective VPDES permit must submit a permit application at the time of its next VPDES permit renewal application. Such information must be submitted in accordance with subsection D of this section.

b. Any other TWTDS not addressed under subdivision 2 a of this subsection must submit the information listed in subdivisions 2 b (1) through (5) of this subsection to the department within one year after publication of a standard applicable to its sewage sludge biosolids use or sewage sludge disposal ~~practice(s)~~ practice or practices, using a form provided by the department. The board will determine when such TWTDS must submit a full permit application.

(1) The TWTDS's name, mailing address, location, and status as federal, state, private, public or other entity;

(2) The applicant's name, address, telephone number, and ownership status;

(3) A description of the sewage sludge biosolids use or sewage sludge disposal practices. Unless the sewage sludge biosolids meets the requirements of subdivision ~~8-d~~ 9 d of this section, the description must include the name and address of any facility where biosolids or sewage sludge is sent for treatment or disposal and the location of any land application sites;

(4) Annual amount of sewage sludge generated, treated, used or disposed (estimated dry weight basis); and

(5) The most recent data the TWTDS may have on the quality of the biosolids or sewage sludge.

c. Notwithstanding subdivision 2 a or b of this subsection, the board may require permit applications from any TWTDS at any time if the board determines that a permit is necessary to protect public health and the environment from any potential adverse effects that may occur from toxic pollutants in sewage sludge.

d. Any TWTDS that commences operations after promulgation of an applicable standard for ~~sewage sludge biosolids~~ use or ~~sewage sludge~~ disposal shall submit an application to the department at least 180 days prior to the date proposed for commencing operations.

~~D.~~ E. Duty to reapply. All permittees with a currently effective permit shall submit a new application at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the board. The board shall not grant permission for applications to be submitted later than the expiration date of the existing permit.

~~E.~~ F. Completeness.

1. The board shall not issue a permit before receiving a complete application for a permit except for VPDES general permits. An application for a permit is complete when the board receives an application form and any supplemental information which are completed to its satisfaction. The completeness of any application for a permit shall be judged independently of the status of any other permit application or permit for the same facility or activity.

2. No application for a VPDES permit to discharge sewage into or adjacent to state waters from a privately owned treatment works serving, or designed to serve, 50 or more residences shall be considered complete unless the applicant has provided the department with notification from the State Corporation Commission that the applicant is incorporated in the Commonwealth and is in compliance with all regulations and relevant orders of the State Corporation Commission.

3. No application for a new individual VPDES permit authorizing a new discharge of sewage, industrial wastes, or other wastes shall be considered complete unless it contains notification from the county, city, or town in which the discharge is to take place that the location and operation of the discharging facility are consistent with applicable ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2 of the Code of Virginia. The county, city or town shall inform in writing the applicant and the board of the discharging facility's compliance or noncompliance not more than 30 days from receipt by the chief administrative officer, or his agent, of a request from the applicant. Should the county, city or town fail to provide such written notification within 30 days, the requirement for such notification is waived. The provisions of this subsection shall not apply to any discharge for which a valid VPDES permit had been issued prior to March 10, 2000.

4. A permit application shall not be considered complete if the board has waived application requirements under subsection J or P of this section and the EPA has disapproved the waiver application. If a waiver request has

been submitted to the EPA more than 210 days prior to permit expiration and the EPA has not disapproved the waiver application 181 days prior to permit expiration, the permit application lacking the information subject to the waiver application shall be considered complete.

5. In accordance with § 62.1-44.19:3 A of the Code of Virginia, no application for a permit or variance to authorize the storage of ~~sewage sludge biosolids~~ shall be complete unless it contains certification from the governing body of the locality in which the ~~sewage sludge biosolids~~ is to be stored that the storage site is consistent with all applicable ordinances. The governing body shall confirm or deny consistency within 30 days of receiving a request for certification. If the governing body does not so respond, the site shall be deemed consistent.

6. No application for a permit to land apply biosolids in accordance with Part VI (9VAC25-31-420 et seq.) of this chapter shall be complete unless it includes the written consent of the landowner to apply biosolids on his property.

~~F.~~ G. Information requirements. All applicants for VPDES permits, other than POTWs and other TWTDS, shall provide the following information to the department, using the application form provided by the department (additional information required of applicants is set forth in subsections ~~G~~ H through ~~K~~ L of this section).

1. The activities conducted by the applicant which require it to obtain a VPDES permit;
2. Name, mailing address, and location of the facility for which the application is submitted;
3. Up to four SIC codes which best reflect the principal products or services provided by the facility;
4. The operator's name, address, telephone number, ownership status, and status as federal, state, private, public, or other entity;
5. Whether the facility is located on Indian lands;
6. A listing of all permits or construction approvals received or applied for under any of the following programs:
 - a. Hazardous Waste Management program under RCRA (42 USC § 6921);
 - b. UIC program under SDWA (42 USC § 300h);
 - c. VPDES program under the CWA and the law;
 - d. Prevention of Significant Deterioration (PSD) program under the Clean Air Act (42 USC § 4701 et seq.);
 - e. Nonattainment program under the Clean Air Act (42 USC § 4701 et seq.);

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f. National Emission Standards for Hazardous Pollutants (NESHAPS) preconstruction approval under the Clean Air Act (42 USC § 4701 et seq.);

g. Ocean dumping permits under the Marine Protection Research and Sanctuaries Act (33 USC § 14 et seq.);

h. Dredge or fill permits under § 404 of the CWA; and

i. Other relevant environmental permits, including state permits.

7. A topographic map (or other map if a topographic map is unavailable) extending one mile beyond the property boundaries of the source, depicting the facility and each of its intake and discharge structures; each of its hazardous waste treatment, storage, or disposal facilities; each well where fluids from the facility are injected underground; and those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant in the map area; and

8. A brief description of the nature of the business.

~~G. H.~~ Application requirements for existing manufacturing, commercial, mining, and silvicultural dischargers. Existing manufacturing, commercial mining, and silvicultural dischargers applying for VPDES permits, except for those facilities subject to the requirements of ~~9VAC25-31-100 H~~ subsection I of this section, shall provide the following information to the department, using application forms provided by the department.

1. The latitude and longitude of each outfall to the nearest 15 seconds and the name of the receiving water.

2. A line drawing of the water flow through the facility with a water balance, showing operations contributing wastewater to the effluent and treatment units. Similar processes, operations, or production areas may be indicated as a single unit, labeled to correspond to the more detailed identification under subdivision 3 of this subsection. The water balance must show approximate average flows at intake and discharge points and between units, including treatment units. If a water balance cannot be determined (for example, for certain mining activities), the applicant may provide instead a pictorial description of the nature and amount of any sources of water and any collection and treatment measures.

3. A narrative identification of each type of process, operation, or production area which contributes wastewater to the effluent for each outfall, including process wastewater, cooling water, and storm water run-off; the average flow which each process contributes; and a description of the treatment the wastewater receives, including the ultimate disposal of any solid or fluid wastes other than by discharge. Processes, operations, or production areas may be described in general terms (for example, dye-making reactor, distillation tower). For a

privately owned treatment works, this information shall include the identity of each user of the treatment works. The average flow of point sources composed of storm water may be estimated. The basis for the rainfall event and the method of estimation must be indicated.

4. If any of the discharges described in subdivision 3 of this subsection are intermittent or seasonal, a description of the frequency, duration and flow rate of each discharge occurrence (except for storm water run-off, spillage or leaks).

5. If an effluent guideline promulgated under § 304 of the CWA applies to the applicant and is expressed in terms of production (or other measure of operation), a reasonable measure of the applicant's actual production reported in the units used in the applicable effluent guideline. The reported measure must reflect the actual production of the facility.

6. If the applicant is subject to any present requirements or compliance schedules for construction, upgrading or operation of waste treatment equipment, an identification of the abatement requirement, a description of the abatement project, and a listing of the required and projected final compliance dates.

7. ~~a.~~ Information on the discharge of pollutants specified in this subdivision (except information on storm water discharges which is to be provided as specified in 9VAC25-31-120).

a. When quantitative data for a pollutant are required, the applicant must collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136 (2005). When no analytical method is approved, the applicant may use any suitable method but must provide a description of the method. When an applicant has two or more outfalls with substantially identical effluents, the board may allow the applicant to test only one outfall and report that the quantitative data also apply to the substantially identical outfalls. The requirements in ~~e and f of this subdivision~~ 7 e and f of this subsection that an applicant must provide quantitative data for certain pollutants known or believed to be present do not apply to pollutants present in a discharge solely as the result of their presence in intake water; however, an applicant must report such pollutants as present. Grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, and fecal streptococcus. For all other pollutants, 24-hour composite samples must be used. However, a minimum of one grab sample may be taken for effluents from holding ponds or other impoundments with a retention period greater than 24 hours. In addition, for discharges other than storm water discharges, the board may waive composite sampling for any outfall for which the applicant demonstrates that the

use of an automatic sampler is infeasible and that the minimum of four grab samples will be a representative sample of the effluent being discharged.

b. For storm water discharges, all samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inch and at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. Where feasible, the variance in the duration of the event and the total rainfall of the event should not exceed 50% from the average or median rainfall event in that area. For all applicants, a flow-weighted composite shall be taken for either the entire discharge or for the first three hours of the discharge. The flow-weighted composite sample for a storm water discharge may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of 15 minutes (applicants submitting permit applications for storm water discharges under 9VAC25-31-120 C may collect flow-weighted composite samples using different protocols with respect to the time duration between the collection of sample aliquots, subject to the approval of the board). However, a minimum of one grab sample may be taken for storm water discharges from holding ponds or other impoundments with a retention period greater than 24 hours. For a flow-weighted composite sample, only one analysis of the composite of aliquots is required. For storm water discharge samples taken from discharges associated with industrial activities, quantitative data must be reported for the grab sample taken during the first 30 minutes (or as soon thereafter as practicable) of the discharge for all pollutants specified in 9VAC25-31-120 B 1. For all storm water permit applicants taking flow-weighted composites, quantitative data must be reported for all pollutants specified in 9VAC25-31-120 except pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, and fecal streptococcus. The board may allow or establish appropriate site-specific sampling procedures or requirements, including sampling locations, the season in which the sampling takes place, the minimum duration between the previous measurable storm event and the storm event sampled, the minimum or maximum level of precipitation required for an appropriate storm event, the form of precipitation sampled (snow melt or rain fall), protocols for collecting samples under 40 CFR Part 136 (2005), and additional time for submitting data on a case-by-case basis. An applicant is expected to know or have reason to believe that a pollutant is present in an effluent based on an evaluation of the expected use, production, or storage of the pollutant, or on any previous analyses for the pollutant. (For example, any pesticide

manufactured by a facility may be expected to be present in contaminated storm water run-off from the facility.)

c. Every applicant must report quantitative data for every outfall for the following pollutants:

- (1) Biochemical oxygen demand (BOD₅)
- (2) Chemical oxygen demand
- (3) Total organic carbon
- (4) Total suspended solids
- (5) Ammonia (as N)
- (6) Temperature (both winter and summer)
- (7) pH

d. The board may waive the reporting requirements for individual point sources or for a particular industry category for one or more of the pollutants listed in subdivision 7 c of this subsection if the applicant has demonstrated that such a waiver is appropriate because information adequate to support issuance of a permit can be obtained with less stringent requirements.

e. Each applicant with processes in one or more primary industry category (see 40 CFR Part 122 Appendix A (2005)) contributing to a discharge must report quantitative data for the following pollutants in each outfall containing process wastewater, except as indicated in subdivisions 7 c (3), (4), and (5) of this subsection:

(1) The organic toxic pollutants in the fractions designated in Table I of 40 CFR Part 122 Appendix D (2005) for the applicant's industrial category or categories unless the applicant qualifies as a small business under subdivision 8 of this subsection. Table II of 40 CFR Part 122 Appendix D (2005) lists the organic toxic pollutants in each fraction. The fractions result from the sample preparation required by the analytical procedure which uses gas chromatography/mass spectrometry. A determination that an applicant falls within a particular industrial category for the purposes of selecting fractions for testing is not conclusive as to the applicant's inclusion in that category for any other purposes; ~~and~~

(2) The pollutants listed in Table III of 40 CFR Part 122 Appendix D (2005) (the toxic metals, cyanide, and total phenols).

(3) Subdivision H 7 e (1) of this section and the corresponding portions of the VPDES application Form 2C are suspended as they apply to coal mines.

(4) Subdivision H 7 e (1) of this section and the corresponding portions of Item V-C of the VPDES application Form 2C are suspended as they apply to:

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(a) Testing and reporting for all four organic fractions in the Greige Mills Subcategory of the Textile Mills industry (subpart C-Low water use processing of 40 CFR Part 410 (2005)), and testing and reporting for the pesticide fraction in all other subcategories of this industrial category.

(b) Testing and reporting for the volatile, base/neutral and pesticide fractions in the Base and Precious Metals Subcategory of the Ore Mining and Dressing industry (subpart B of 40 CFR Part 440 (2005)), and testing and reporting for all four fractions in all other subcategories of this industrial category.

(c) Testing and reporting for all four GC/MS fractions in the Porcelain Enameling industry.

(5) Subdivision H 7 e (1) of this section and the corresponding portions of Item V-C of the VPDES application Form 2C are suspended as they apply to:

(a) Testing and reporting for the pesticide fraction in the Tall Oil Rosin Subcategory (subpart D) and Rosin-Based Derivatives Subcategory (subpart F) of the Gum and Wood Chemicals industry (40 CFR Part 454 (2005)), and testing and reporting for the pesticide and base-neutral fractions in all other subcategories of this industrial category.

(b) Testing and reporting for the pesticide fraction in the leather tanning and finishing, paint and ink formulation, and photographic supplies industrial categories.

(c) Testing and reporting for the acid, base/neutral, and pesticide fractions in the petroleum refining industrial category.

(d) Testing and reporting for the pesticide fraction in the Papergrade Sulfite Subcategories (subparts J and U) of the Pulp and Paper industry (40 CFR Part 430 (2005)); testing and reporting for the base/neutral and pesticide fractions in the following subcategories: Deink (subpart Q), Dissolving Kraft (subpart F), and Paperboard from Waste Paper (subpart E); testing and reporting for the volatile, base/neutral, and pesticide fractions in the following subcategories: BCT Bleached Kraft (subpart H), Semi-Chemical (subparts B and C), and Nonintegrated-Fine Papers (subpart R); and testing and reporting for the acid, base/neutral, and pesticide fractions in the following subcategories: Fine Bleached Kraft (subpart I), Dissolving Sulfite Pulp (subpart K), Groundwood-Fine Papers (subpart O), Market Bleached Kraft (subpart G), Tissue from Wastepaper (subpart T), and Nonintegrated-Tissue Papers (subpart S).

(e) Testing and reporting for the base/neutral fraction in the Once-Through Cooling Water, Fly Ash and Bottom Ash Transport Water process waste streams of the Steam Electric Power Plant industrial category.

f. (4) Each applicant must indicate whether it knows or has reason to believe that any of the pollutants in Table IV of 40 CFR Part 122 Appendix D (2005) (certain conventional and nonconventional pollutants) is discharged from each outfall. If an applicable effluent limitations guideline either directly limits the pollutant or, by its express terms, indirectly limits the pollutant through limitations on an indicator, the applicant must report quantitative data. For every pollutant discharged which is not so limited in an effluent limitations guideline, the applicant must either report quantitative data or briefly describe the reasons the pollutant is expected to be discharged.

(2) g. Each applicant must indicate whether it knows or has reason to believe that any of the pollutants listed in Table II or Table III of 40 CFR Part 122 Appendix D (2005) (the toxic pollutants and total phenols) for which quantitative data are not otherwise required under subdivision 7 e of this subsection, is discharged from each outfall. For every pollutant expected to be discharged in concentrations of 10 ppb or greater the applicant must report quantitative data. For acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4,6 dinitrophenol, where any of these four pollutants are expected to be discharged in concentrations of 100 ppb or greater the applicant must report quantitative data. For every pollutant expected to be discharged in concentrations less than 10 ppb, or in the case of acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4,6 dinitrophenol, in concentrations less than 100 ppb, the applicant must either submit quantitative data or briefly describe the reasons the pollutant is expected to be discharged. An applicant qualifying as a small business under subdivision 8 of this subsection is not required to analyze for pollutants listed in Table II of 40 CFR Part 122 Appendix D (2005) (the organic toxic pollutants).

~~g.~~ h. Each applicant must indicate whether it knows or has reason to believe that any of the pollutants in Table V of 40 CFR Part 122 Appendix D (2005) (certain hazardous substances and asbestos) are discharged from each outfall. For every pollutant expected to be discharged, the applicant must briefly describe the reasons the pollutant is expected to be discharged, and report any quantitative data it has for any pollutant.

~~h.~~ i. Each applicant must report qualitative data, generated using a screening procedure not calibrated with analytical standards, for 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) if it:

(1) Uses or manufactures 2,4,5-trichlorophenoxy acetic acid (2,4,5,-T); 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5,-TP); 2-(2,4,5-trichlorophenoxy) ethyl, 2,2-dichloropropionate (Erbon); O,O-dimethyl O-

(2,4,5-trichlorophenyl) phosphorothioate (Ronnel); 2,4,5-trichlorophenol (TCP); or hexachlorophene (HCP); or

(2) Knows or has reason to believe that TCDD is or may be present in an effluent.

8. An applicant which qualifies as a small business under one of the following criteria is exempt from the requirements in subdivision 7 e (1) or 7 f (4) of this subsection to submit quantitative data for the pollutants listed in Table II of 40 CFR Part 122 Appendix D (2005) (the organic toxic pollutants):

a. For coal mines, a probable total annual production of less than 100,000 tons per year; or

b. For all other applicants, gross total annual sales averaging less than \$100,000 per year (in second quarter 1980 dollars).

9. A listing of any toxic pollutant which the applicant currently uses or manufactures as an intermediate or final product or byproduct. The board may waive or modify this requirement for any applicant if the applicant demonstrates that it would be unduly burdensome to identify each toxic pollutant and the board has adequate information to issue the permit.

10. Reserved.

11. An identification of any biological toxicity tests which the applicant knows or has reason to believe have been made within the last three years on any of the applicant's discharges or on a receiving water in relation to a discharge.

12. If a contract laboratory or consulting firm performed any of the analyses required by subdivision 7 of this subsection, the identity of each laboratory or firm and the analyses performed.

13. In addition to the information reported on the application form, applicants shall provide to the board, at its request, such other information, including pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the board, as the board may reasonably require to assess the discharges of the facility and to determine whether to issue a VPDES permit. The additional information may include additional quantitative data and bioassays to assess the relative toxicity of discharges to aquatic life and requirements to determine the cause of the toxicity.

~~H.~~ I. Application requirements for manufacturing, commercial, mining and silvicultural facilities which discharge only nonprocess wastewater. Except for storm water discharges, all manufacturing, commercial, mining and silvicultural dischargers applying for VPDES permits which discharge only nonprocess wastewater not regulated by an

effluent limitations guideline or new source performance standard shall provide the following information to the department using application forms provided by the department:

1. Outfall number, latitude and longitude to the nearest 15 seconds, and the name of the receiving water;

2. Date of expected commencement of discharge;

3. An identification of the general type of waste discharged, or expected to be discharged upon commencement of operations, including sanitary wastes, restaurant or cafeteria wastes, or noncontact cooling water. An identification of cooling water additives (if any) that are used or expected to be used upon commencement of operations, along with their composition if existing composition is available;

4. a. Quantitative data for the pollutants or parameters listed below, unless testing is waived by the board. The quantitative data may be data collected over the past 365 days, if they remain representative of current operations, and must include maximum daily value, average daily value, and number of measurements taken. The applicant must collect and analyze samples in accordance with 40 CFR Part 136 (2005). Grab samples must be used for pH, temperature, oil and grease, total residual chlorine, and fecal coliform. For all other pollutants, 24-hour composite samples must be used. New dischargers must include estimates for the pollutants or parameters listed below instead of actual sampling data, along with the source of each estimate. All levels must be reported or estimated as concentration and as total mass, except for flow, pH, and temperature.

(1) Biochemical oxygen demand (BOD₅).

(2) Total suspended solids (TSS).

(3) Fecal coliform (if believed present or if sanitary waste is or will be discharged).

(4) Total residual chlorine (if chlorine is used).

(5) Oil and grease.

(6) Chemical oxygen demand (COD) (if noncontact cooling water is or will be discharged).

(7) Total organic carbon (TOC) (if noncontact cooling water is or will be discharged).

(8) Ammonia (as N).

(9) Discharge flow.

(10) pH.

(11) Temperature (winter and summer).

b. The board may waive the testing and reporting requirements for any of the pollutants or flow listed in

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subdivision 4 a of this subsection if the applicant submits a request for such a waiver before or with his application which demonstrates that information adequate to support issuance of a permit can be obtained through less stringent requirements.

c. If the applicant is a new discharger, he must submit the information required in subdivision 4 a of this subsection by providing quantitative data in accordance with that section no later than two years after commencement of discharge. However, the applicant need not submit testing results which he has already performed and reported under the discharge monitoring requirements of his VPDES permit.

d. The requirements of subdivisions 4 a and 4 c of this subsection that an applicant must provide quantitative data or estimates of certain pollutants do not apply to pollutants present in a discharge solely as a result of their presence in intake water. However, an applicant must report such pollutants as present. Net credit may be provided for the presence of pollutants in intake water if the requirements of 9VAC25-31-230 G are met;

5. A description of the frequency of flow and duration of any seasonal or intermittent discharge (except for storm water run-off, leaks, or spills);

6. A brief description of any treatment system used or to be used;

7. Any additional information the applicant wishes to be considered, such as influent data for the purpose of obtaining net credits pursuant to 9VAC25-31-230 G;

8. Signature of certifying official under 9VAC25-31-110; and

9. Pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the board.

J. Application requirements for new and existing concentrated animal feeding operations and aquatic animal production facilities. New and existing concentrated animal feeding operations and concentrated aquatic animal production facilities shall provide the following information to the department, using the application form provided by the department:

1. For concentrated animal feeding operations:

- a. The name of the owner or operator;
- b. The facility location and mailing address;
- c. Latitude and longitude of the production area (entrance to the production area);
- d. A topographic map of the geographic area in which the CAFO is located showing the specific location of the

production area, in lieu of the requirements of subdivision F 7 of this section;

e. Specific information about the number and type of animals, whether in open confinement or housed under roof (beef cattle, broilers, layers, swine weighing 55 pounds or more, swine weighing less than 55 pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, other);

f. The type of containment and storage (anaerobic lagoon, roofed storage shed, storage ponds, underfloor pits, above ground storage tanks, below ground storage tanks, concrete pad, impervious soil pad, other) and total capacity for manure, litter, and process wastewater storage (tons/gallons);

g. The total number of acres under control of the applicant available for land application of manure, litter, or process wastewater;

h. Estimated amounts of manure, litter, and process wastewater generated per year (tons/gallons); and

i. For CAFOs required to seek coverage under a permit after December 31, 2009, a nutrient management plan that at a minimum satisfies the requirements specified in subsection E of 9VAC25-31-200 and subdivision C 9 of 9VAC25-31-130, including, for all CAFOs subject to 40 CFR Part 412 Subpart C or Subpart D (2009), the requirements of 40 CFR 412.4(c) (2009), as applicable.

2. For concentrated aquatic animal production facilities:

a. The maximum daily and average monthly flow from each outfall;

b. The number of ponds, raceways, and similar structures;

c. The name of the receiving water and the source of intake water;

d. For each species of aquatic animals, the total yearly and maximum harvestable weight;

e. The calendar month of maximum feeding and the total mass of food fed during that month; and

f. Pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the board.

J. Application requirements for new and existing POTWs and treatment works treating domestic sewage. Unless otherwise indicated, all POTWs and other dischargers designated by the board must provide to the department, at a minimum, the information in this subsection using an application form provided by the department. Permit applicants must submit all information available at the time of permit application. The information may be provided by referencing information previously submitted to the

department. The board may waive any requirement of this subsection if it has access to substantially identical information. The board may also waive any requirement of this subsection that is not of material concern for a specific permit, if approved by the regional administrator. The waiver request to the regional administrator must include the board's justification for the waiver. A regional administrator's disapproval of the board's proposed waiver does not constitute final agency action but does provide notice to the board and permit applicant(s) that the EPA may object to any board-issued permit issued in the absence of the required information.

1. All applicants must provide the following information:
 - a. Name, mailing address, and location of the facility for which the application is submitted;
 - b. Name, mailing address, and telephone number of the applicant and indication as to whether the applicant is the facility's owner, operator, or both;
 - c. Identification of all environmental permits or construction approvals received or applied for (including dates) under any of the following programs:
 - (1) Hazardous Waste Management program under the Resource Conservation and Recovery Act (RCRA), Subpart C;
 - (2) Underground Injection Control program under the Safe Drinking Water Act (SDWA);
 - (3) NPDES program under the Clean Water Act (CWA);
 - (4) Prevention of Significant Deterioration (PSD) program under the Clean Air Act;
 - (5) Nonattainment program under the Clean Air Act;
 - (6) National Emission Standards for Hazardous Air Pollutants (NESHAPS) preconstruction approval under the Clean Air Act;
 - (7) Ocean dumping permits under the Marine Protection Research and Sanctuaries Act;
 - (8) Dredge or fill permits under § 404 of the CWA; and
 - (9) Other relevant environmental permits, including state permits;
 - d. The name and population of each municipal entity served by the facility, including unincorporated connector districts. Indicate whether each municipal entity owns or maintains the collection system and whether the collection system is separate sanitary or combined storm and sanitary, if known;
 - e. Information concerning whether the facility is located in Indian country and whether the facility discharges to a receiving stream that flows through Indian country;

- f. The facility's design flow rate (the wastewater flow rate the plant was built to handle), annual average daily flow rate, and maximum daily flow rate for each of the previous three years;
- g. Identification of type(s) of collection system(s) used by the treatment works (i.e., separate sanitary sewers or combined storm and sanitary sewers) and an estimate of the percent of sewer line that each type comprises; and
- h. The following information for outfalls to surface waters and other discharge or disposal methods:
 - (1) For effluent discharges to surface waters, the total number and types of outfalls (e.g., treated effluent, combined sewer overflows, bypasses, constructed emergency overflows);
 - (2) For wastewater discharged to surface impoundments:
 - (a) The location of each surface impoundment;
 - (b) The average daily volume discharged to each surface impoundment; and
 - (c) Whether the discharge is continuous or intermittent;
 - (3) For wastewater applied to the land:
 - (a) The location of each land application site;
 - (b) The size of each land application site, in acres;
 - (c) The average daily volume applied to each land application site, in gallons per day; and
 - (d) Whether land application is continuous or intermittent;
 - (4) For effluent sent to another facility for treatment prior to discharge:
 - (a) The means by which the effluent is transported;
 - (b) The name, mailing address, contact person, and phone number of the organization transporting the discharge, if the transport is provided by a party other than the applicant;
 - (c) The name, mailing address, contact person, phone number, and VPDES permit number (if any) of the receiving facility; and
 - (d) The average daily flow rate from this facility into the receiving facility, in millions of gallons per day; and
 - (5) For wastewater disposed of in a manner not included in subdivisions 1 h (1) through (4) of this subsection (e.g., underground percolation, underground injection):
 - (a) A description of the disposal method, including the location and size of each disposal site, if applicable;
 - (b) The annual average daily volume disposed of by this method, in gallons per day; and

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(c) Whether disposal through this method is continuous or intermittent;

2. All applicants with a design flow greater than or equal to 0.1 mgd must provide the following information:

a. The current average daily volume of inflow and infiltration, in gallons per day, and steps the facility is taking to minimize inflow and infiltration;

b. A topographic map (or other map if a topographic map is unavailable) extending at least one mile beyond property boundaries of the treatment plant, including all unit processes, and showing:

(1) Treatment plant area and unit processes;

(2) The major pipes or other structures through which wastewater enters the treatment plant and the pipes or other structures through which treated wastewater is discharged from the treatment plant. Include outfalls from bypass piping, if applicable;

(3) Each well where fluids from the treatment plant are injected underground;

(4) Wells, springs, and other surface water bodies listed in public records or otherwise known to the applicant within 1/4 mile of the treatment works' property boundaries;

(5) Sewage sludge management facilities (including on-site treatment, storage, and disposal sites); and

(6) Location at which waste classified as hazardous under RCRA enters the treatment plant by truck, rail, or dedicated pipe;

c. Process flow diagram or schematic.

(1) A diagram showing the processes of the treatment plant, including all bypass piping and all backup power sources or redundancy in the system. This includes a water balance showing all treatment units, including disinfection, and showing daily average flow rates at influent and discharge points, and approximate daily flow rates between treatment units; and

(2) A narrative description of the diagram; and

d. The following information regarding scheduled improvements:

(1) The outfall number of each outfall affected;

(2) A narrative description of each required improvement;

(3) Scheduled or actual dates of completion for the following:

(a) Commencement of construction;

(b) Completion of construction;

(c) Commencement of discharge; and

(d) Attainment of operational level; and

(4) A description of permits and clearances concerning other federal or state requirements;

3. Each applicant must provide the following information for each outfall, including bypass points, through which effluent is discharged, as applicable:

a. The following information about each outfall:

(1) Outfall number;

(2) State, county, and city or town in which outfall is located;

(3) Latitude and longitude, to the nearest second;

(4) Distance from shore and depth below surface;

(5) Average daily flow rate, in million gallons per day;

(6) The following information for each outfall with a seasonal or periodic discharge:

(a) Number of times per year the discharge occurs;

(b) Duration of each discharge;

(c) Flow of each discharge; and

(d) Months in which discharge occurs; and

(7) Whether the outfall is equipped with a diffuser and the type (e.g., high-rate) of diffuser used.

b. The following information, if known, for each outfall through which effluent is discharged to surface waters:

(1) Name of receiving water;

(2) Name of watershed/river/stream system and United States Soil Conservation Service 14-digit watershed code;

(3) Name of State Management/River Basin and United States Geological Survey 8-digit hydrologic cataloging unit code; and

(4) Critical flow of receiving stream and total hardness of receiving stream at critical low flow (if applicable).

c. The following information describing the treatment provided for discharges from each outfall to surface waters:

(1) The highest level of treatment (e.g., primary, equivalent to secondary, secondary, advanced, other) that is provided for the discharge for each outfall and:

(a) Design biochemical oxygen demand (BOD₅ or CBOD₅) removal (percent);

(b) Design suspended solids (SS) removal (percent); and, where applicable;

- (c) Design phosphorus (P) removal (percent);
- (d) Design nitrogen (N) removal (percent); and
- (e) Any other removals that an advanced treatment system is designed to achieve.
- (2) A description of the type of disinfection used, and whether the treatment plant dechlorinates (if disinfection is accomplished through chlorination).

4. Effluent monitoring for specific parameters.

a. As provided in subdivisions 4 b through ~~j~~ 4 k of this subsection, all applicants must submit to the department effluent monitoring information for samples taken from each outfall through which effluent is discharged to surface waters, except for CSOs. The board may allow applicants to submit sampling data for only one outfall on a case-by-case basis, where the applicant has two or more outfalls with substantially identical effluent. The board may also allow applicants to composite samples from one or more outfalls that discharge into the same mixing zone.

b. All applicants must sample and analyze for the following pollutants:

- (1) Biochemical oxygen demand (BOD₅ or CBOD₅);
- (2) Fecal coliform;
- (3) Design flow rate;
- (4) pH;
- (5) Temperature; and
- (6) Total suspended solids.

c. All applicants with a design flow greater than or equal to 0.1 mgd must sample and analyze for the following pollutants:

- (1) Ammonia (as N);
- (2) Chlorine (total residual, TRC);
- (3) Dissolved oxygen;
- (4) Nitrate/Nitrite;
- (5) Kjeldahl nitrogen;
- (6) Oil and grease;
- (7) Phosphorus; and
- (8) Total dissolved solids.

d. Facilities that do not use chlorine for disinfection, do not use chlorine elsewhere in the treatment process, and have no reasonable potential to discharge chlorine in their effluent may delete chlorine.

~~e~~ e. All POTWs with a design flow rate equal to or greater than one million gallons per day, all POTWs with

approved pretreatment programs or POTWs required to develop a pretreatment program, and other POTWs, as required by the board must sample and analyze for the pollutants listed in Table 2 of 40 CFR Part 122 Appendix J (2005), and for any other pollutants for which the board or EPA have established water quality standards applicable to the receiving waters.

~~f~~ f. The board may require sampling for additional pollutants, as appropriate, on a case-by-case basis.

~~f~~ g. Applicants must provide data from a minimum of three samples taken within 4-1/2 years prior to the date of the permit application. Samples must be representative of the seasonal variation in the discharge from each outfall. Existing data may be used, if available, in lieu of sampling done solely for the purpose of this application. The board may require additional samples, as appropriate, on a case-by-case basis.

~~g~~ h. All existing data for pollutants specified in subdivisions 4 b through ~~e~~ 4 f of this subsection that is collected within 4-1/2 years of the application must be included in the pollutant data summary submitted by the applicant. If, however, the applicant samples for a specific pollutant on a monthly or more frequent basis, it is only necessary, for such pollutant, to summarize all data collected within one year of the application.

~~h~~ i. Applicants must collect samples of effluent and analyze such samples for pollutants in accordance with analytical methods approved under 40 CFR Part 136 (2005) unless an alternative is specified in the existing VPDES permit. Grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, and fecal coliform. For all other pollutants, 24-hour composite samples must be used. For a composite sample, only one analysis of the composite of aliquots is required.

~~i~~ j. The effluent monitoring data provided must include at least the following information for each parameter:

- (1) Maximum daily discharge, expressed as concentration or mass, based upon actual sample values;
- (2) Average daily discharge for all samples, expressed as concentration or mass, and the number of samples used to obtain this value;
- (3) The analytical method used; and
- (4) The threshold level (i.e., method detection limit, minimum level, or other designated method endpoints) for the analytical method used.

~~j~~ k. Unless otherwise required by the board, metals must be reported as total recoverable.

5. Effluent monitoring for whole effluent toxicity.

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a. All applicants must provide an identification of any whole effluent toxicity tests conducted during the 4-1/2 years prior to the date of the application on any of the applicant's discharges or on any receiving water near the discharge.

b. As provided in subdivisions 5 c through i of this subsection, the following applicants must submit to the department the results of valid whole effluent toxicity tests for acute or chronic toxicity for samples taken from each outfall through which effluent is discharged to surface waters, except for combined sewer overflows:

(1) All POTWs with design flow rates greater than or equal to one million gallons per day;

(2) All POTWs with approved pretreatment programs or POTWs required to develop a pretreatment program;

(3) Other POTWs, as required by the board, based on consideration of the following factors:

(a) The variability of the pollutants or pollutant parameters in the POTW effluent (based on chemical-specific information, the type of treatment plant, and types of industrial contributors);

(b) The ratio of effluent flow to receiving stream flow;

(c) Existing controls on point or nonpoint sources, including total maximum daily load calculations for the receiving stream segment and the relative contribution of the POTW;

(d) Receiving stream characteristics, including possible or known water quality impairment, and whether the POTW discharges to a coastal water, or a water designated as an outstanding natural resource water; or

(e) Other considerations (including, but not limited to, the history of toxic impacts and compliance problems at the POTW) that the board determines could cause or contribute to adverse water quality impacts.

c. Where the POTW has two or more outfalls with substantially identical effluent discharging to the same receiving stream segment, the board may allow applicants to submit whole effluent toxicity data for only one outfall on a case-by-case basis. The board may also allow applicants to composite samples from one or more outfalls that discharge into the same mixing zone.

d. Each applicant required to perform whole effluent toxicity testing pursuant to subdivision 5 b of this subsection must provide:

(1) Results of a minimum of four quarterly tests for a year, from the year preceding the permit application; or

(2) Results from four tests performed at least annually in the 4-1/2 year period prior to the application, provided

the results show no appreciable toxicity using a safety factor determined by the board.

e. Applicants must conduct tests with multiple species (no less than two species, e.g., fish, invertebrate, plant) and test for acute or chronic toxicity, depending on the range of receiving water dilution. The board recommends that applicants conduct acute or chronic testing based on the following dilutions: (i) acute toxicity testing if the dilution of the effluent is greater than 100:1 at the edge of the mixing zone or (ii) chronic toxicity testing if the dilution of the effluent is less than or equal to 100:1 at the edge of the mixing zone.

f. Each applicant required to perform whole effluent toxicity testing pursuant to subdivision 5 b of this subsection must provide the number of chronic or acute whole effluent toxicity tests that have been conducted since the last permit reissuance.

g. Applicants must provide the results using the form provided by the department, or test summaries if available and comprehensive, for each whole effluent toxicity test conducted pursuant to subdivision 5 b of this subsection for which such information has not been reported previously to the department.

h. Whole effluent toxicity testing conducted pursuant to subdivision 5 b of this subsection must be conducted using methods approved under 40 CFR Part 136 (2005), as directed by the board.

i. For whole effluent toxicity data submitted to the department within 4-1/2 years prior to the date of the application, applicants must provide the dates on which the data were submitted and a summary of the results.

j. Each POTW required to perform whole effluent toxicity testing pursuant to subdivision 5 b of this subsection must provide any information on the cause of toxicity and written details of any toxicity reduction evaluation conducted, if any whole effluent toxicity test conducted within the past 4-1/2 years revealed toxicity.

6. Applicants must submit the following information about industrial discharges to the POTW:

a. Number of significant industrial users (SIUs) and categorical industrial users (CIUs) discharging to the POTW; and

b. POTWs with one or more SIUs shall provide the following information for each SIU, as defined in 9VAC25-31-10, that discharges to the POTW:

(1) Name and mailing address;

(2) Description of all industrial processes that affect or contribute to the SIU's discharge;

(3) Principal products and raw materials of the SIU that affect or contribute to the SIU's discharge;

(4) Average daily volume of wastewater discharged, indicating the amount attributable to process flow and nonprocess flow;

(5) Whether the SIU is subject to local limits;

(6) Whether the SIU is subject to categorical standards and, if so, under which category and subcategory; and

(7) Whether any problems at the POTW (e.g., upsets, pass through, interference) have been attributed to the SIU in the past 4-1/2 years.

c. The information required in subdivisions 6 a and b of this subsection may be waived by the board for POTWs with pretreatment programs if the applicant has submitted either of the following that contain information substantially identical to that required in subdivisions 6 a and b of this subsection:

(1) An annual report submitted within one year of the application; or

(2) A pretreatment program.

7. Discharges from hazardous waste generators and from waste cleanup or remediation sites. POTWs receiving Resource Conservation and Recovery Act (RCRA), Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), or RCRA Corrective Action wastes or wastes generated at another type of cleanup or remediation site must provide the following information:

a. If the POTW receives, or has been notified that it will receive, by truck, rail, or dedicated pipe any wastes that are regulated as RCRA hazardous wastes pursuant to 40 CFR Part 261 (2005), the applicant must report the following:

(1) The method by which the waste is received (i.e., whether by truck, rail, or dedicated pipe); and

(2) The hazardous waste number and amount received annually of each hazardous waste.

b. If the POTW receives, or has been notified that it will receive, wastewaters that originate from remedial activities, including those undertaken pursuant to CERCLA and § 3004(u) or 3008(h) of RCRA, the applicant must report the following:

(1) The identity and description of the site or facility at which the wastewater originates;

(2) The identities of the wastewater's hazardous constituents, as listed in Appendix VIII of 40 CFR Part 261 (2005), if known; and

(3) The extent of treatment, if any, the wastewater receives or will receive before entering the POTW.

c. Applicants are exempt from the requirements of subdivision 7 b of this subsection if they receive no more than 15 kilograms per month of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e) (2005).

8. Each applicant with combined sewer systems must provide the following information:

a. The following information regarding the combined sewer system:

(1) A map indicating the location of the following:

(a) All CSO discharge points;

(b) Sensitive use areas potentially affected by CSOs (e.g., beaches, drinking water supplies, shellfish beds, sensitive aquatic ecosystems, and outstanding national resource waters); and

(c) Waters supporting threatened and endangered species potentially affected by CSOs; and

(2) A diagram of the combined sewer collection system that includes the following information:

(a) The location of major sewer trunk lines, both combined and separate sanitary;

(b) The locations of points where separate sanitary sewers feed into the combined sewer system;

(c) In-line and off-line storage structures;

(d) The locations of flow-regulating devices; and

(e) The locations of pump stations.

b. The following information for each CSO discharge point covered by the permit application:

(1) The following information on each outfall:

(a) Outfall number;

(b) State, county, and city or town in which outfall is located;

(c) Latitude and longitude, to the nearest second;

(d) Distance from shore and depth below surface;

(e) Whether the applicant monitored any of the following in the past year for this CSO: (i) rainfall, (ii) CSO flow volume, (iii) CSO pollutant concentrations, (iv) receiving water quality, or (v) CSO frequency; and

(f) The number of storm events monitored in the past year;

(2) The following information about CSO overflows from each outfall:

(a) The number of events in the past year;

(b) The average duration per event, if available;

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- (c) The average volume per CSO event, if available; and
- (d) The minimum rainfall that caused a CSO event, if available, in the last year;

(3) The following information about receiving waters:

- (a) Name of receiving water;
- (b) Name of watershed/stream system and the United States Soil Conservation Service watershed (14-digit) code, if known; and
- (c) Name of State Management/River Basin and the United States Geological Survey hydrologic cataloging unit (8-digit) code, if known; and
- (4) A description of any known water quality impacts on the receiving water caused by the CSO (e.g., permanent or intermittent beach closings, permanent or intermittent shellfish bed closings, fish kills, fish advisories, other recreational loss, or exceedance of any applicable state water quality standard).

9. All applicants must provide the name, mailing address, telephone number, and responsibilities of all contractors responsible for any operational or maintenance aspects of the facility.

10. All applications must be signed by a certifying official in compliance with 9VAC25-31-110.

11. Pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the board.

~~K.~~ L. Application requirements for new sources and new discharges. New manufacturing, commercial, mining and silvicultural dischargers applying for VPDES permits (except for new discharges of facilities subject to the requirements of subsection H of this section or new discharges of storm water associated with industrial activity which are subject to the requirements of 9VAC25-31-120 B 1 and this subsection) shall provide the following information to the department, using the application forms provided by the department:

- 1. The expected outfall location in latitude and longitude to the nearest 15 seconds and the name of the receiving water;
- 2. The expected date of commencement of discharge;
- 3. a. Description of the treatment that the wastewater will receive, along with all operations contributing wastewater to the effluent, average flow contributed by each operation, and the ultimate disposal of any solid or liquid wastes not discharged;
 - b. A line drawing of the water flow through the facility with a water balance as described in subdivision G 2;
 - c. If any of the expected discharges will be intermittent or seasonal, a description of the frequency, duration and

maximum daily flow rate of each discharge occurrence (except for storm water run-off, spillage, or leaks); and

4. If a new source performance standard promulgated under § 306 of the CWA or an effluent limitation guideline applies to the applicant and is expressed in terms of production (or other measure of operation), a reasonable measure of the applicant's expected actual production reported in the units used in the applicable effluent guideline or new source performance standard for each of the first three years. Alternative estimates may also be submitted if production is likely to vary;

5. The requirements in subdivisions H 4 a, b, and c of this section that an applicant must provide estimates of certain pollutants expected to be present do not apply to pollutants present in a discharge solely as a result of their presence in intake water; however, an applicant must report such pollutants as present. Net credits may be provided for the presence of pollutants in intake water if the requirements of 9VAC25-31-230 G are met. All levels (except for discharge flow, temperature, and pH) must be estimated as concentration and as total mass.

a. Each applicant must report estimated daily maximum, daily average, and source of information for each outfall for the following pollutants or parameters. The board may waive the reporting requirements for any of these pollutants and parameters if the applicant submits a request for such a waiver before or with his application which demonstrates that information adequate to support issuance of the permit can be obtained through less stringent reporting requirements.

- (1) Biochemical oxygen demand (BOD).
- (2) Chemical oxygen demand (COD).
- (3) Total organic carbon (TOC).
- (4) Total suspended solids (TSS).
- (5) Flow.
- (6) Ammonia (as N).
- (7) Temperature (winter and summer).
- (8) pH.

b. Each applicant must report estimated daily maximum, daily average, and source of information for each outfall for the following pollutants, if the applicant knows or has reason to believe they will be present or if they are limited by an effluent limitation guideline or new source performance standard either directly or indirectly through limitations on an indicator pollutant: all pollutants in Table IV of 40 CFR Part 122 Appendix D (2005) (certain conventional and nonconventional pollutants).

c. Each applicant must report estimated daily maximum, daily average and source of information for the following

pollutants if he knows or has reason to believe that they will be present in the discharges from any outfall:

(1) The pollutants listed in Table III of 40 CFR Part 122 Appendix D (2005) (the toxic metals, in the discharge from any outfall, Total cyanide, and total phenols);

(2) The organic toxic pollutants in Table II of 40 CFR Part 122 Appendix D (2005) (except bis (chloromethyl) ether, dichlorofluoromethane and trichlorofluoromethane). This requirement is waived for applicants with expected gross sales of less than \$100,000 per year for the next three years, and for coal mines with expected average production of less than 100,000 tons of coal per year.

d. The applicant is required to report that 2,3,7,8 Tetrachlorodibenzo-P-Dioxin (TCDD) may be discharged if he uses or manufactures one of the following compounds, or if he knows or has reason to believe that TCDD will or may be present in an effluent:

(1) 2,4,5-trichlorophenoxy acetic acid (2,4,5-T) (CAS #93-76-5);

(2) 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5-TP) (CAS #93-72-1);

(3) 2-(2,4,5-trichlorophenoxy) ethyl 2,2-dichloropropionate (Erbon) (CAS #136-25-4);

(4) 0,0-dimethyl 0-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel) (CAS #299-84-3);

(5) 2,4,5-trichlorophenol (TCP) (CAS #95-95-4); or

(6) Hexachlorophene (HCP) (CAS #70-30-4);

e. Each applicant must report any pollutants listed in Table V of 40 CFR Part 122 Appendix D (2005) (certain hazardous substances) if he believes they will be present in any outfall (no quantitative estimates are required unless they are already available).

f. No later than two years after the commencement of discharge from the proposed facility, the applicant is required to submit the information required in subsection G of this section. However, the applicant need not complete those portions of subsection G of this section requiring tests which he has already performed and reported under the discharge monitoring requirements of his VPDES permit;

6. Each applicant must report the existence of any technical evaluation concerning his wastewater treatment, along with the name and location of similar plants of which he has knowledge;

7. Any optional information the permittee wishes to have considered;

8. Signature of certifying official under 9VAC25-31-110; and

9. Pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the board.

~~L.~~ M. Variance requests by non-POTWs. A discharger which is not a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under any of the following statutory or regulatory provisions within the times specified in this subsection:

1. Fundamentally different factors.

a. A request for a variance based on the presence of fundamentally different factors from those on which the effluent limitations guideline was based shall be filed as follows:

(1) For a request from best practicable control technology currently available (BPT), by the close of the public comment period for the draft permit; or

(2) For a request from best available technology economically achievable (BAT) and/or best conventional pollutant control technology (BCT), by no later than:

(a) July 3, 1989, for a request based on an effluent limitation guideline promulgated before February 4, 1987, to the extent July 3, 1989, is not later than that provided under previously promulgated regulations; or

(b) 180 days after the date on which an effluent limitation guideline is published in the Federal Register for a request based on an effluent limitation guideline promulgated on or after February 4, 1987.

b. The request shall explain how the requirements of the applicable regulatory or statutory criteria have been met.

2. A request for a variance from the BAT requirements for CWA § 301(b)(2)(F) pollutants (commonly called nonconventional pollutants) pursuant to § 301(c) of the CWA because of the economic capability of the owner or operator, or pursuant to § 301(g) of the CWA (provided however that a § 301(g) variance may only be requested for ammonia; chlorine; color; iron; total phenols (when determined by the Administrator to be a pollutant covered by § 301(b)(2)(F) of the CWA) and any other pollutant which the administrator lists under § 301(g)(4) of the CWA) must be made as follows:

a. For those requests for a variance from an effluent limitation based upon an effluent limitation guideline by:

(1) Submitting an initial request to the regional administrator, as well as to the department, stating the name of the discharger, the permit number, the outfall number(s), the applicable effluent guideline, and whether the discharger is requesting a § 301(c) or 301(g) of the

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CWA modification, or both. This request must have been filed not later than 270 days after promulgation of an applicable effluent limitation guideline; and

(2) Submitting a completed request no later than the close of the public comment period for the draft permit demonstrating that: (i) all reasonable ascertainable issues have been raised and all reasonably available arguments and materials supporting their position have been submitted; and (ii) that the applicable requirements of 40 CFR Part 125 (2005) have been met. Notwithstanding this provision, the complete application for a request under § 301(g) of the CWA shall be filed 180 days before EPA must make a decision (unless the Regional Division Director establishes a shorter or longer period); or

b. For those requests for a variance from effluent limitations not based on effluent limitation guidelines, the request need only comply with subdivision 2 a (2) of this subsection and need not be preceded by an initial request under subdivision 2 a (1) of this subsection.

3. A modification under § 302(b)(2) of the CWA of requirements under § 302(a) of the CWA for achieving water quality related effluent limitations may be requested no later than the close of the public comment period for the draft permit on the permit from which the modification is sought.

4. A variance for alternate effluent limitations for the thermal component of any discharge must be filed with a timely application for a permit under this section, except that if thermal effluent limitations are established on a case-by-case basis or are based on water quality standards the request for a variance may be filed by the close of the public comment period for the draft permit. A copy of the request shall be sent simultaneously to the department.

~~M~~. N. Variance requests by POTWs. A discharger which is a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under any of the following statutory provisions as specified in this paragraph:

1. A request for a modification under § 301(h) of the CWA of requirements of § 301(b)(1)(B) of the CWA for discharges into marine waters must be filed in accordance with the requirements of 40 CFR Part 125, Subpart G (2005).

2. A modification under § 302(b)(2) of the CWA of the requirements under § 302(a) of the CWA for achieving water quality based effluent limitations shall be requested no later than the close of the public comment period for the draft permit on the permit from which the modification is sought.

~~N~~. O. Expedited variance procedures and time extensions.

1. Notwithstanding the time requirements in subsections ~~L~~ M and ~~M~~ N of this section, the board may notify a permit applicant before a draft permit is issued that the draft permit will likely contain limitations which are eligible for variances. In the notice the board may require the applicant as a condition of consideration of any potential variance request to submit a request explaining how the requirements of 40 CFR Part 125 (2005) applicable to the variance have been met and may require its submission within a specified reasonable time after receipt of the notice. The notice may be sent before the permit application has been submitted. The draft or final permit may contain the alternative limitations which may become effective upon final grant of the variance.

2. A discharger who cannot file a timely complete request required under subdivisions ~~L 2 a (2) or L 2 b~~ M 2 a (2) or M 2 b of this section may request an extension. The extension may be granted or denied at the discretion of the board. Extensions shall be no more than six months in duration.

~~O~~. P. Recordkeeping. Except for information required by subdivision ~~C 2 D 2~~ D 2 of this section, which shall be retained for a period of at least five years from the date the application is signed (or longer as required by Part VI (9VAC25-31-420 et seq.) of this chapter), applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under this section for a period of at least three years from the date the application is signed.

~~P~~. Q. Sewage sludge management. All TWTDS subject to subdivision ~~C 2 a D 2 a~~ D 2 a of this section must provide the information in this subsection to the department using an application form approved by the department. New applicants must submit all information available at the time of permit application. The information may be provided by referencing information previously submitted to the department. The board may waive any requirement of this subsection if it has access to substantially identical information. The board may also waive any requirement of this subsection that is not of material concern for a specific permit, if approved by the regional administrator. The waiver request to the regional administrator must include the board's justification for the waiver. A regional administrator's disapproval of the board's proposed waiver does not constitute final agency action, but does provide notice to the board and the permit applicant that the EPA may object to any board issued permit issued in the absence of the required information.

1. All applicants must submit the following information:

- a. The name, mailing address, and location of the TWTDS for which the application is submitted;
- b. Whether the facility is a Class I Sludge Management Facility;

- c. The design flow rate (in million gallons per day);
 - d. The total population served;
 - e. The TWTDS's status as federal, state, private, public, or other entity;
 - f. The name, mailing address, and telephone number of the applicant; and
 - g. Indication whether the applicant is the owner, operator, or both.
2. All applicants must submit the facility's VPDES permit number, if applicable, and a listing of all other federal, state, and local permits or construction approvals received or applied for under any of the following programs:
- a. Hazardous Waste Management program under the Resource Conservation and Recovery Act (RCRA);
 - b. UIC program under the Safe Drinking Water Act (SDWA);
 - c. NPDES program under the Clean Water Act (CWA);
 - d. Prevention of Significant Deterioration (PSD) program under the Clean Air Act;
 - e. Nonattainment program under the Clean Air Act;
 - f. National Emission Standards for Hazardous Air Pollutants (NESHAPS) preconstruction approval under the Clean Air Act;
 - g. Dredge or fill permits under § 404 of the CWA;
 - h. Other relevant environmental permits, including state or local permits.
3. All applicants must identify any generation, treatment, storage, land application of biosolids, or disposal of sewage sludge that occurs in Indian country.
4. All applicants must submit a topographic map (or other map if a topographic map is unavailable) extending one mile beyond property boundaries of the facility and showing the following information:
- a. All sewage sludge management facilities, including on-site treatment, storage, and disposal sites; and
 - b. Wells, springs, and other surface water bodies that are within 1/4 mile of the property boundaries and listed in public records or otherwise known to the applicant.
5. All applicants must submit a line drawing and/or a narrative description that identifies all sewage sludge management practices employed during the term of the permit, including all units used for collecting, dewatering, storing, or treating sewage sludge; the destination(s) of all liquids and solids leaving each such unit; and all processes used for pathogen reduction and vector attraction reduction.

6. All applicants must submit an odor control plan that contains at minimum:

- a. Methods used to minimize odor in producing biosolids;
- b. Methods used to identify malodorous biosolids before land application (at the generating facility);
- c. Methods used to identify and abate malodorous biosolids that have been delivered to the field, prior to land application; and
- d. Methods used to abate malodor from biosolids if land applied.

~~6.~~ 7. The applicant must submit ~~sewage sludge~~ biosolids monitoring data for the pollutants for which limits in ~~sewage sludge~~ biosolids have been established in Part VI (9VAC25-31-420 et seq.) of this chapter for the applicant's use or disposal practices on the date of permit application with the following conditions:

a. When applying for authorization to land apply a biosolids source not previously included in a VPDES or Virginia Pollution Abatement Permit, the biosolids shall be sampled and analyzed for PCBs. The sample results shall be submitted with the permit application or request to add the source.

~~a.~~ b. The board may require sampling for additional pollutants, as appropriate, on a case-by-case basis.

~~b.~~ c. Applicants must provide data from a minimum of three samples taken within 4-1/2 years prior to the date of the permit application. Samples must be representative of the ~~sewage sludge~~ biosolids and should be taken at least one month apart. Existing data may be used in lieu of sampling done solely for the purpose of this application.

~~e.~~ d. Applicants must collect and analyze samples in accordance with analytical methods specified in 9VAC25-31-490 unless an alternative has been specified in an existing ~~sewage sludge~~ biosolids use permit. Samples for PCB analysis shall be collected and analyzed in accordance with EPA Method 1668 B.

~~d.~~ e. The monitoring data provided must include at least the following information for each parameter:

- (1) Average monthly concentration for all samples (mg/kg dry weight), based upon actual sample values;
- (2) The analytical method used; and
- (3) The method detection level.

~~7.~~ 8. If the applicant is a person who prepares biosolids or sewage sludge, as defined in 9VAC25-31-500, the applicant must provide the following information:

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a. If the applicant's facility generates biosolids or sewage sludge, the total dry metric tons per 365-day period generated at the facility.

b. If the applicant's facility receives biosolids or sewage sludge from another facility, the following information for each facility from which biosolids or sewage sludge is received:

(1) The name, mailing address, and location of the other facility;

(2) The total dry metric tons per 365-day period received from the other facility; and

(3) A description of any treatment processes occurring at the other facility, including blending activities and treatment to reduce pathogens or vector attraction characteristics.

c. If the applicant's facility changes the quality of biosolids or sewage sludge through blending, treatment, or other activities, the following information:

(1) Whether the Class A pathogen reduction requirements in 9VAC25-31-710 A or the Class B pathogen reduction requirements in 9VAC25-31-710 B are met, and a description of any treatment processes used to reduce pathogens in sewage sludge;

(2) Whether any of the vector attraction reduction options of 9VAC25-31-720 B 1 through 8 are met, and a description of any treatment processes used to reduce vector attraction properties in sewage sludge; and

(3) A description of any other blending, treatment, or other activities that change the quality of sewage sludge.

d. If ~~sewage sludge~~ biosolids from the applicant's facility meets the ceiling concentrations in 9VAC25-31-540 B 1, the pollutant concentrations in 9VAC25-31-540 B 3, the Class A pathogen requirements in 9VAC25-31-710 A, and one of the vector attraction reduction requirements in 9VAC25-31-720 B 1 through 8, and if the ~~sewage sludge~~ biosolids is applied to the land, the applicant must provide the total dry metric tons per 365-day period of sewage sludge subject to this subsection that is applied to the land.

e. If ~~sewage sludge~~ biosolids from the applicant's facility is sold or given away in a bag or other container for application to the land, and the ~~sewage sludge~~ biosolids is not subject to subdivision 7 8 d of this subsection, the applicant must provide the following information:

(1) The total dry metric tons per 365-day period of ~~sewage sludge~~ biosolids subject to this subsection that is sold or given away in a bag or other container for application to the land; and

(2) A copy of all labels or notices that accompany the ~~sewage sludge~~ biosolids being sold or given away.

f. If biosolids or sewage sludge from the applicant's facility is provided to another person who prepares ~~sewage sludge, biosolids~~, as defined in 9VAC25-31-500, and the ~~sewage sludge biosolids~~ is not subject to subdivision 7 8 d of this subsection, the applicant must provide the following information for each facility receiving the biosolids or sewage sludge:

(1) The name and mailing address of the receiving facility;

(2) The total dry metric tons per 365-day period of biosolids or sewage sludge subject to this subsection that the applicant provides to the receiving facility;

(3) A description of any treatment processes occurring at the receiving facility, including blending activities and treatment to reduce pathogens or vector attraction characteristic;

(4) A copy of the notice and necessary information that the applicant is required to provide the receiving facility under 9VAC25-31-530 G; and

(5) If the receiving facility places ~~sewage sludge~~ biosolids in bags or containers for sale or give-away ~~to~~ for application to the land, a copy of any labels or notices that accompany the ~~sewage sludge~~ biosolids.

8- 9. If ~~sewage sludge~~ biosolids from the applicant's facility is applied to the land in bulk form and is not subject to subdivision 7 8 d, e, or f of this subsection, the applicant must provide the following information:

a. The total dry metric tons per 365-day period of ~~sewage sludge~~ biosolids subject to this subsection that is applied to the land.

b. If any land application sites are located in states other than the state where the ~~sewage sludge~~ biosolids is prepared, a description of how the applicant will notify the permitting authority for the state(s) where the land application sites are located.

c. The following information for each land application site that has been identified at the time of permit application:

(1) The ~~name (if any), DEQ control number, if previously assigned, identifying the land application field or site and the site's location for the land application site;~~

(2) The site's latitude and longitude to the nearest second, and method of determination;

(3) ~~A topographic map (or other map if a topographic map is unavailable) that shows the site's location; A~~ legible topographic map of proposed application areas to scale as needed to depict the following features:

- (a) Property boundaries;
 - (b) Surface water courses;
 - (c) Water supply wells and springs;
 - (d) Roadways;
 - (e) Rock outcrops;
 - (f) Slopes;
 - (g) Frequently flooded areas (National Resources Conservation Service (NRCS) designation); and
 - (h) The gross acreage of the fields where biosolids will be applied;
 - (4) County map or other map of sufficient detail to show general location of the site and proposed transport vehicle haul routes to be utilized from the treatment plant;
 - (5) County tax maps for each farm to be included in the permit, which may include multiple fields;
 - (6) A USDA soil survey map, if available, of proposed sites for land application of biosolids;
 - ~~(4)~~ (7) The name, mailing address, and telephone number of the site owner, if different from the applicant;
 - ~~(5)~~ (8) The name, mailing address, and telephone number of the person who applies ~~sewage sludge~~ biosolids to the site, if different from the applicant;
 - ~~(6)~~ (9) Whether the site is agricultural land, forest, a public contact site, or a reclamation site, as such site types are defined in 9VAC25-31-500;
 - ~~(7)~~ (10) The type of vegetation grown on the site, if known, and the nitrogen requirement for this vegetation
Description of agricultural practices including a list of proposed crops to be grown;
 - ~~(8)~~ (11) Whether either of the vector attraction reduction options of 9VAC25-31-720 B 9 or 10 is met at the site, and a description of any procedures employed at the time of use to reduce vector attraction properties in ~~sewage sludge~~ biosolids; and
 - (12) Pertinent calculations justifying storage and land area requirements for biosolids application including an annual biosolids balance incorporating such factors as precipitation, evapotranspiration, soil percolation rates, wastewater loading, and monthly storage (input and drawdown); and
 - ~~(9)~~ (13) Other information that describes how the site will be managed, as specified by the board.
- d. For permit applications proposing frequent application of biosolids, the following additional site information will be necessary:

- (1) Information specified (subdivisions 2 a and 4 of this subsection);
 - (2) Representative soil borings and test pits to a depth of five feet or to bedrock if shallower are to be coordinated for each major soil type and the following tests performed and data collected:
 - (a) Soil type;
 - (b) Soil texture for each horizon (USDA classification);
 - (c) Soil color for each horizon;
 - (d) Depth from surface to mottling and bedrock if less than two feet;
 - (e) Depth from surface to subsoil restrictive layer;
 - (f) Indicated infiltration rate (surface soil); and
 - (g) Indicated permeability of subsoil restrictive layer.
 - (3) Additional soil testing in accordance with Table 6 (9VAC25-32-460); and
 - (4) Ground water monitoring plans for the land treatment area including pertinent geohydrologic data to justify upgradient and downgradient well location and depth.
- ~~d. e.~~ The following information for each land application site that has been identified at the time of permit application, if the applicant intends to apply bulk ~~sewage sludge~~ biosolids subject to the cumulative pollutant loading rates in 9VAC25-31-540 B 2 to the site:
- (1) Whether the applicant has contacted the permitting authority in the state where the bulk ~~sewage sludge~~ biosolids subject to 9VAC25-31-540 B 2 will be applied, to ascertain whether bulk ~~sewage sludge~~ biosolids subject to 9VAC25-31-540 B 2 has been applied to the site on or since July 20, 1993, and if so, the name of the permitting authority and the name and phone number of a contact person at the permitting authority;
 - (2) Identification of facilities other than the applicant's facility that have sent, or are sending, ~~sewage sludge~~ biosolids subject to the cumulative pollutant loading rates in 9VAC25-31-540 B 2 to the site since July 20, 1993, if, based on the inquiry in subdivision ~~8-d~~ 9 e (1) of this subsection, bulk ~~sewage sludge~~ biosolids subject to cumulative pollutant loading rates in 9VAC25-31-540 B 2 has been applied to the site since July 20, 1993.
- ~~e. f.~~ If not all land application sites have been identified at the time of permit application, the applicant must submit a land application plan that, at a minimum:
- (1) Describes the geographical area covered by the plan;
 - (2) Identifies the site selection criteria;
 - (3) Describes how the site(s) will be managed;

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~~(4) Provides for advance notice to the board department of specific land application sites and reasonable time for the board to object prior to land application of the sewage sludge and to notify persons residing on property bordering such sites for the purpose of receiving written comments from those persons for a period not to exceed 30 days. The department shall, based upon these comments, determine whether additional site specific requirements should be included in the authorization for land application at the site in a manner prescribed by 9VAC25-31-485 D; and~~

~~(5) Provides for advance notice of land application sites in a manner prescribed by 9VAC25-31-290.~~

~~(5) Provides for advance public notice of land application sites in a newspaper of general circulation in the area of the land application site.~~

~~A request to increase the acreage authorized by the initial permit by 50% or more shall be treated as a new application for purposes of public notice and public hearings.~~

10. Biosolids storage facilities not located at the site of the wastewater treatment plant. Plans and specifications for biosolids storage facilities not located at the site of the wastewater treatment plant generating the biosolids, including routine and on-site storage, shall be submitted for issuance of a certificate to construct and a certificate to operate in accordance with the Sewage Collection and Treatment Regulations (9VAC25-790) and shall depict the following information:

a. Site layout on a recent 7.5 minute topographic quadrangle or other appropriate scaled map;

b. Location of any required soil, geologic, and hydrologic test holes or borings;

c. Location of the following field features within 0.25 miles of the site boundary (indicate on map) with the approximate distances from the site boundary:

(1) Water wells (operating or abandoned);

(2) Surface waters;

(3) Springs;

(4) Public water supplies;

(5) Sinkholes;

(6) Underground and surface mines;

(7) Mine pool (or other) surface water discharge points;

(8) Mining spoil piles and mine dumps;

(9) Quarries;

(10) Sand and gravel pits;

(11) Gas and oil wells;

(12) Diversion ditches;

(13) Occupied dwellings, including industrial and commercial establishments;

(14) Landfills and dumps;

(15) Other unlined impoundments;

(16) Septic tanks and drainfields; and

(17) Injection wells;

d. Topographic map (10-foot contour preferred) of sufficient detail to clearly show the following information:

(1) Maximum and minimum percent slopes;

(2) Depressions on the site that may collect water;

(3) Drainage ways that may attribute to rainfall run-on to or run-off from this site; and

(4) Portions of the site, if any, that are located within the 100-year floodplain;

e. Data and specifications for the liner proposed for seepage control;

f. Scaled plan view and cross-sectional view of the facilities showing inside and outside slopes of all embankments and details of all appurtenances;

g. Calculations justifying impoundment capacity; and

h. Ground water monitoring plans for the facilities including pertinent geohydrological data to justify upgradient and downgradient well location and depth.

11. Staging. Generic plans are required for staging of biosolids.

12. A biosolids operations management plan shall be provided that includes the following minimum site specific information at the time of permit application:

a. A comprehensive, general description of the operation shall be provided, including biosolids source or sources, quantities, flow diagram illustrating treatment works biosolids flows and solids handling units, site description, methodology of biosolids handling for application periods, including storage and nonapplication period storage, and alternative management methods when storage is not provided.

b. A nutrient management plan approved by the Department of Conservation and Recreation shall be required for application sites prior to board authorization under the following conditions:

(1) Sites operated by an owner or lessee of a confined animal feeding operation, as defined in subsection A of

§ 62.1-44.17:1 of the Code of Virginia, or confined poultry feeding operation, as defined in subsection A of § 62.1-44.17:1.1 of the Code of Virginia;

(2) Sites where land application is proposed more frequently than once every three years at greater than 50% of the annual agronomic rate; and

(3) Mined land sites where land application is proposed at greater than agronomic rates.

13. Biosolids transport.

a. Description and specifications on the bed or the tank vehicle;

b. Haul routes to be used from the biosolids generator to the storage unit and land application sites;

c. Procedures for biosolids offloading at the biosolids facilities and the land application site together with spill prevention, cleanup (including vehicle cleaning), field reclamation, and emergency spill notification and cleanup measures; and

d. Voucher system used for documentation and recordkeeping.

14. Field operations.

a. Storage.

(1) Routine storage – supernatant handling and disposal, biosolids handling, and loading of transport vehicles, equipment cleaning, freeboard maintenance, and inspections for structural integrity;

(2) On-site storage – procedures for department/board approval and implementation;

(3) Staging – procedures to be followed including either designated site locations provided in the "Design Information" or the specific site criteria for such locations including the liner/cover requirements and the time limit assigned to such use; and

(4) Field reclamation of offloading (staging) areas.

b. Application methodology.

(1) Description and specifications on spreader vehicles;

(2) Procedures for calibrating equipment for various biosolids contents to ensure uniform distribution and appropriate loading rates on a day-to-day basis; and

(3) Procedures used to ensure that operations address the following constraints: application of biosolids to frozen ground, pasture/hay fields, crops for direct human consumption and saturate or ice-covered or snow-covered ground; maintenance buffer zones, slopes, prohibited access for beef and dairy animals, and soil pH requirements; and proper site specific biosolids loading rates on a field-by-field basis.

~~9. 15. An applicant for a permit authorizing the land application of sewage sludge biosolids shall provide to the department, and to each locality in which the applicant proposes to land apply sewage sludge, biosolids, written evidence of financial responsibility, including both current liability and pollution insurance, or such other evidence of financial responsibility as the board may establish by regulation in an amount not less than \$1 million per occurrence, which shall be available to pay claims for cleanup costs, personal injury, bodily injury and property damage resulting from the transport, storage and land application of sewage sludge in Virginia. The aggregate amount of financial liability to be maintained by the applicant shall be \$1 million for companies with less than \$5 million in annual gross revenue and shall be \$2 million for companies with \$5 million or more in annual gross revenue. Evidence of financial responsibility shall be provided in accordance with requirements specified in Article 6 (9VAC25-32-770 et seq.) of Part IX of the Virginia Pollution Abatement (VPA) Permit Regulation~~

~~10. 16. If sewage sludge from the applicant's facility is placed on a surface disposal site, the applicant must provide the following information:~~

~~a. The total dry metric tons of sewage sludge from the applicant's facility that is placed on surface disposal sites per 365-day period.~~

~~b. The following information for each surface disposal site receiving sewage sludge from the applicant's facility that the applicant does not own or operate:~~

~~(1) The site name or number, contact person, mailing address, and telephone number for the surface disposal site; and~~

~~(2) The total dry metric tons from the applicant's facility per 365-day period placed on the surface disposal site.~~

~~c. The following information for each active sewage sludge unit at each surface disposal site that the applicant owns or operates:~~

~~(1) The name or number and the location of the active sewage sludge unit;~~

~~(2) The unit's latitude and longitude to the nearest second, and method of determination;~~

~~(3) If not already provided, a topographic map (or other map if a topographic map is unavailable) that shows the unit's location;~~

~~(4) The total dry metric tons placed on the active sewage sludge unit per 365-day period;~~

~~(5) The total dry metric tons placed on the active sewage sludge unit over the life of the unit;~~

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(6) A description of any liner for the active sewage sludge unit, including whether it has a maximum permeability of 1×10^{-7} cm/sec;

(7) A description of any leachate collection system for the active sewage sludge unit, including the method used for leachate disposal, and any federal, state, and local permit number(s) for leachate disposal;

(8) If the active sewage sludge unit is less than 150 meters from the property line of the surface disposal site, the actual distance from the unit boundary to the site property line;

(9) The remaining capacity (dry metric tons) for the active sewage sludge unit;

(10) The date on which the active sewage sludge unit is expected to close, if such a date has been identified;

(11) The following information for any other facility that sends sewage sludge to the active sewage sludge unit:

(a) The name, contact person, and mailing address of the facility; and

(b) Available information regarding the quality of the sewage sludge received from the facility, including any treatment at the facility to reduce pathogens or vector attraction characteristics;

(12) Whether any of the vector attraction reduction options of 9VAC25-31-720 B 9 through 11 is met at the active sewage sludge unit, and a description of any procedures employed at the time of disposal to reduce vector attraction properties in sewage sludge;

(13) The following information, as applicable to any ~~groundwater~~ ground water monitoring occurring at the active sewage sludge unit:

(a) A description of any ~~groundwater~~ ground water monitoring occurring at the active sewage sludge unit;

(b) Any available ~~groundwater~~ ground water monitoring data, with a description of the well locations and approximate depth to ~~groundwater~~ ground water;

(c) A copy of any ~~groundwater~~ ground water monitoring plan that has been prepared for the active sewage sludge unit;

(d) A copy of any certification that has been obtained from a qualified ~~groundwater~~ ground water scientist that the aquifer has not been contaminated; and

(14) If site-specific pollutant limits are being sought for the sewage sludge placed on this active sewage sludge unit, information to support such a request.

~~17.~~ 17. If sewage sludge from the applicant's facility is fired in a sewage sludge incinerator, the applicant must provide the following information:

a. The total dry metric tons of sewage sludge from the applicant's facility that is fired in sewage sludge incinerators per 365-day period.

b. The following information for each sewage sludge incinerator firing the applicant's sewage sludge that the applicant does not own or operate:

(1) The name and/or number, contact person, mailing address, and telephone number of the sewage sludge incinerator; and

(2) The total dry metric tons from the applicant's facility per 365-day period fired in the sewage sludge incinerator.

~~12.~~ 18. If sewage sludge from the applicant's facility is sent to a municipal solid waste landfill (MSWLF), the applicant must provide the following information for each MSWLF to which sewage sludge is sent:

a. The name, contact person, mailing address, location, and all applicable permit numbers of the MSWLF;

b. The total dry metric tons per 365-day period sent from this facility to the MSWLF;

c. A determination of whether the sewage sludge meets applicable requirements for disposal of sewage sludge in a MSWLF, including the results of the paint filter liquids test and any additional requirements that apply on a site-specific basis; and

d. Information, if known, indicating whether the MSWLF complies with criteria set forth in the Virginia Solid Waste Management Regulations, 9VAC20-80.

~~13.~~ 19. All applicants must provide the name, mailing address, telephone number, and responsibilities of all contractors responsible for any operational or maintenance aspects of the facility related to biosolids or sewage sludge generation, treatment, use, or disposal.

~~14.~~ 20. At the request of the board, the applicant must provide any other information necessary to determine the appropriate standards for permitting under Part VI (9VAC25-31-420 et seq.) of this chapter, and must provide any other information necessary to assess the ~~sewage sludge~~ biosolids use and sewage sludge disposal practices, determine whether to issue a permit, or identify appropriate permit requirements; and pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the board.

~~15.~~ 21. All applications must be signed by a certifying official in compliance with 9VAC25-31-110.

~~R.~~ R. Applications for facilities with cooling water intake structures.

1. Application requirements. New facilities with new or modified cooling water intake structures. New facilities

with cooling water intake structures as defined in 9VAC25-31-165 must report the information required under subdivisions 2, 3, and 4 of this subsection and under 9VAC25-31-165. Requests for alternative requirements under 9VAC25-31-165 must be submitted with the permit application.

2. Source water physical data. These include:

- a. A narrative description and scaled drawings showing the physical configuration of all source water bodies used by the facility, including area dimensions, depths, salinity and temperature regimes, and other documentation that supports the determination of the water body type where each cooling water intake structure is located;
- b. Identification and characterization of the source water body's hydrological and geomorphologic features, as well as the methods used to conduct any physical studies to determine the intake's area of influence within the water body and the results of such studies; and
- c. Location maps.

3. Cooling water intake structure data. These include:

- a. A narrative description of the configuration of each cooling water intake structure and where it is located in the water body and in the water column;
- b. Latitude and longitude in degrees, minutes, and seconds for each cooling water intake structure;
- c. A narrative description of the operation of each cooling water intake structure, including design intake flow, daily hours of operation, number of days of the year in operation and seasonal changes, if applicable;
- d. A flow distribution and water balance diagram that includes all sources of water to the facility, recirculation flows and discharges; and
- e. Engineering drawings of the cooling water intake structure.

4. Source water baseline biological characterization data. This information is required to characterize the biological community in the vicinity of the cooling water intake structure and to characterize the operation of the cooling water intake structures. The department may also use this information in subsequent permit renewal proceedings to determine if the design and construction technology plan as required in 9VAC25-31-165 should be revised. This supporting information must include existing data if available. Existing data may be supplemented with data from newly conducted field studies. The information must include:

- a. A list of the data in subdivisions 4 b through 4 f of this subsection that is not available and efforts made to identify sources of the data;

b. A list of species (or relevant taxa) for all life stages and their relative abundance in the vicinity of the cooling water intake structure;

c. Identification of the species and life stages that would be most susceptible to impingement and entrainment. Species evaluated should include the forage base as well as those most important in terms of significance to commercial and recreational fisheries;

d. Identification and evaluation of the primary period of reproduction, larval recruitment, and period of peak abundance for relevant taxa;

e. Data representative of the seasonal and daily activities (e.g., feeding and water column migration) of biological organisms in the vicinity of the cooling water intake structure;

f. Identification of all threatened, endangered, and other protected species that might be susceptible to impingement and entrainment at the cooling water intake structures;

g. Documentation of any public participation or consultation with federal or state agencies undertaken in development of the plan; and

h. If information requested in subdivision 4 of this subsection is supplemented with data collected using field studies, supporting documentation for the source water baseline biological characterization must include a description of all methods and quality assurance procedures for sampling, and data analysis including a description of the study area; taxonomic identification of sampled and evaluated biological assemblages (including all life stages of fish and shellfish); and sampling and data analysis methods. The sampling and/or data analysis methods used must be appropriate for a quantitative survey and based on consideration of methods used in other biological studies performed within the same source water body. The study area should include, at a minimum, the area of influence of the cooling water intake structure.

~~Note 1: Until further notice subdivision G 7 e (1) of this section and the corresponding portions of the VPDES application Form 2C are suspended as they apply to coal mines.~~

~~Note 2: Until further notice subdivision G 7 e (1) of this section and the corresponding portions of Item V C of the VPDES application Form 2C are suspended as they apply to:~~

- ~~a. Testing and reporting for all four organic fractions in the Greige Mills Subcategory of the Textile Mills industry (subpart C Low water use processing of 40 CFR Part 410 (2005)), and testing and reporting for the pesticide fraction in all other subcategories of this industrial category.~~

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~~b. Testing and reporting for the volatile, base/neutral and pesticide fractions in the Base and Precious Metals Subcategory of the Ore Mining and Dressing industry (subpart B of 40 CFR Part 440 (2005)), and testing and reporting for all four fractions in all other subcategories of this industrial category.~~

~~e. Testing and reporting for all four GC/MS fractions in the Porcelain Enameling industry.~~

~~Note 3: Until further notice subdivision G 7 e (1) of this section and the corresponding portions of Item V C of the VPDES application Form 2C are suspended as they apply to:~~

~~a. Testing and reporting for the pesticide fraction in the Tall Oil Rosin Subcategory (subpart D) and Rosin Based Derivatives Subcategory (subpart F) of the Gum and Wood Chemicals industry (40 CFR Part 454 (2005)), and testing and reporting for the pesticide and base neutral fractions in all other subcategories of this industrial category.~~

~~b. Testing and reporting for the pesticide fraction in the leather tanning and finishing, paint and ink formulation, and photographic supplies industrial categories.~~

~~e. Testing and reporting for the acid, base/neutral and pesticide fractions in the petroleum refining industrial category.~~

~~d. Testing and reporting for the pesticide fraction in the Papergrade Sulfite Subcategories (subparts J and U) of the Pulp and Paper industry (40 CFR Part 430 (2005)); testing and reporting for the base/neutral and pesticide fractions in the following subcategories: Deink (subpart Q), Dissolving Kraft (subpart F), and Paperboard from Waste Paper (subpart E); testing and reporting for the volatile, base/neutral and pesticide fractions in the following subcategories: BCT Bleached Kraft (subpart H), Semi-Chemical (subparts B and C), and Nonintegrated Fine Papers (subpart R); and testing and reporting for the acid, base/neutral, and pesticide fractions in the following subcategories: Fine Bleached Kraft (subpart I), Dissolving Sulfite Pulp (subpart K), Groundwood Fine Papers (subpart O), Market Bleached Kraft (subpart G), Tissue from Wastepaper (subpart T), and Nonintegrated Tissue Papers (subpart S).~~

~~e. Testing and reporting for the base/neutral fraction in the Once Through Cooling Water, Fly Ash and Bottom Ash Transport Water process wastestreams of the Steam Electric Power Plant industrial category.~~

Part IV Public Involvement

9VAC25-31-260. Draft permits.

A. Once an application is complete, the board shall tentatively decide whether to prepare a draft permit or to deny the application.

B. If the board tentatively decides to deny the permit application, the owner shall be advised of that decision and of the changes necessary to obtain approval. The owner may withdraw the application prior to board action. If the application is not withdrawn or modified to obtain the tentative approval to issue, the board shall provide public notice and opportunity for a public hearing prior to board action on the application.

C. If the board tentatively decides to issue a VPDES general permit, a draft general permit shall be prepared under subsection D of this section.

D. If the board decides to prepare a draft permit, the draft permit shall contain the following information:

1. All conditions under 9VAC25-31-190 and 9VAC25-31-210;
2. All compliance schedules under 9VAC25-31-250;
3. All monitoring requirements under 9VAC25-31-220; and
4. Effluent limitations, standards, prohibitions, standards for biosolids use or sewage sludge use or disposal, and conditions under 9VAC25-31-190, 9VAC25-31-200, 9VAC25-31-220, and Part VI (9VAC25-31-370 et seq.), and all variances that are to be included.

9VAC25-31-280. Fact sheet.

A. A fact sheet shall be prepared for every draft permit for a major VPDES facility or activity, for every Class I sludge management facility, for every VPDES general permit, for every VPDES draft permit that incorporates a variance or requires an explanation under subsection B 8 of this section, for every draft permit that includes a sewage sludge biosolids land application plan under 9VAC25-31-100 C 2, and for every draft permit which the board finds is the subject of wide-spread public interest or raises major issues. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The board shall send this fact sheet to the applicant and, on request, to any other person.

B. The fact sheet shall include, when applicable:

1. A brief description of the type of facility or activity which is the subject of the draft permit;
2. The type and quantity of wastes, fluids, or pollutants which are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged;
3. A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions;
4. Reasons why any requested variances or alternatives to required standards do or do not appear justified;

5. A description of the procedures for reaching a final decision on the draft permit including:

- a. The beginning and ending dates of the comment period for the draft permit and the address where comments will be received;
- b. Procedures for requesting a public hearing and the nature of that hearing; and
- c. Any other procedures by which the public may participate in the final decision;

6. Name and telephone number of a person to contact for additional information;

7. Any calculations or other necessary explanation of the derivation of specific effluent limitations and conditions or standards for biosolids use or sewage sludge use or disposal, including a citation to the applicable effluent limitation guideline, performance standard, or standard for biosolids use or sewage sludge use or disposal and reasons why they are applicable or an explanation of how the alternate effluent limitations were developed;

8. When the draft permit contains any of the following conditions, an explanation of the reasons why such conditions are applicable:

- a. Limitations to control toxic pollutants;
- b. Limitations on internal waste streams;
- c. Limitations on indicator pollutants;
- d. Technology-based or sewage sludge disposal limitations set on a case-by-case basis;
- e. Limitations to meet the criteria for permit issuance under 9VAC25-31-50; or
- f. Waivers from monitoring requirements granted under 9VAC25-31-220 A;

9. For every permit to be issued to a treatment works owned by a person other than a state or municipality, an explanation of the board's decision on regulation of users;

10. When appropriate, a sketch or detailed description of the location of the discharge or regulated activity described in the application;

11. For permits that include a sewage sludge biosolids land application plan under 9VAC25-31-100 P 8 e, a brief description of how each of the required elements of the land application plan are addressed in the permit; and

12. Justification of waiver of any application requirements under 9VAC25-31-100 J or P.

9VAC25-31-290. Public notice of permit actions and public comment period.

A. Scope.

1. The ~~board~~ department shall give public notice that the following actions have occurred:

- a. A draft permit has been prepared under 9VAC25-31-260 D;
- b. A public hearing has been scheduled under 9VAC25-31-310; or
- c. A VPDES new source determination has been made under 9VAC25-31-180.

2. No public notice is required when a request for permit modification, revocation and reissuance, or termination is denied under 9VAC25-31-370 B. Written notice of that denial shall be given to the requester and to the permittee.

3. Public notice shall not be required for submission or approval of plans and specifications or conceptual engineering reports not required to be submitted as part of the application.

~~3.~~ 4. Public notices may describe more than one permit or permit actions.

B. Timing.

1. Public notice of the preparation of a draft permit required under subsection A of this section shall allow at least 30 days for public comment.

2. Public notice of a public hearing shall be given at least 30 days before the hearing. (Public notice of the hearing may be given at the same time as public notice of the draft permit and the two notices may be combined.)

C. Methods. Public notice of activities described in subdivision A 1 of this section shall be given by the following methods:

1. By mailing a copy of a notice to the following persons (any person otherwise entitled to receive notice under this subdivision may waive his or her rights to receive notice for any classes and categories of permits):

- a. The applicant (except for VPDES general permits when there is no applicant);
- b. Any other agency which the ~~board~~ department knows has issued or is required to issue a VPDES, ~~sludge~~ biosolids management permit;
- c. Federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources and over coastal zone management plans, the Advisory Council on Historic Preservation, State Historic Preservation Officers, including any affected states (Indian Tribes);

d. Any state agency responsible for plan development under § 208(b)(2), 208(b)(4) or § 303(e) of the CWA and the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service;

Regulations

e. Any user identified in the permit application of a privately owned treatment works;

f. Persons on a mailing list developed by:

(1) Including those who request in writing to be on the list;

(2) Soliciting persons for area lists from participants in past permit proceedings in that area; and

(3) Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as EPA regional and state funded newsletters, environmental bulletins, or state law journals. (The ~~board~~ department may update the mailing list from time to time by requesting written indication of continued interest from those listed. The ~~board~~ department may delete from the list the name of any person who fails to respond to such a request.);

g. ~~(4)~~ Any unit of local government having jurisdiction over the area where the facility is proposed to be located; and

~~(2)~~ h. Each state agency having any authority under state law with respect to the construction or operation of such facility;

2. Except for permits for concentrated animal feeding operations as defined in 9VAC25-31-10 or designated in accordance with 9VAC25-31-130 B, by publication once a week for two successive weeks in a newspaper of general circulation in the area affected by the discharge. The cost of public notice shall be paid by the owner; and

3. Any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

D. Contents.

1. All public notices issued under this part shall contain the following minimum information:

a. Name and address of the office processing the permit action for which notice is being given;

b. Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit, except in the case of VPDES draft general permits;

c. A brief description of the business conducted at the facility or activity described in the permit application or the draft permit, for VPDES general permits when there is no application;

d. Name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit or draft general

permit, as the case may be, statement of basis or fact sheet, and the application;

e. A brief description of the procedures for submitting comments and the time and place of any public hearing that will be held, including a statement of procedures to request a public hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final permit decision;

f. A general description of the location of each existing or proposed discharge point and the name of the receiving water and the sludge use and disposal practice or practices and the location of each sludge treatment works treating domestic sewage and use or disposal sites known at the time of permit application. For draft general permits, this requirement will be satisfied by a map or description of the permit area;

g. Requirements applicable to cooling water intake structures under § 316 of the CWA, in accordance with 9VAC25-31-165; and

h. Any additional information considered necessary or proper.

2. In addition to the general public notice described in subdivision 1 of this subsection, the public notice of a public hearing under 9VAC25-31-310 shall contain the following information:

a. Reference to the date of previous public notices relating to the permit;

b. Date, time, and place of the public hearing;

c. A brief description of the nature and purpose of the public hearing, including the applicable rules and procedures; and

d. A concise statement of the issues raised by the persons requesting the public hearing.

3. Public notice of a VPDES draft permit for a discharge where a request for alternate thermal effluent limitations has been filed shall include:

a. A statement that the thermal component of the discharge is subject to effluent limitations incorporated in 9VAC25-31-30 and a brief description, including a quantitative statement, of the thermal effluent limitations proposed under § 301 or § 306 of the CWA;

b. A statement that an alternate thermal effluent limitation request has been filed and that alternative less stringent effluent limitations may be imposed on the thermal component of the discharge under the law and § 316(a) of the CWA and a brief description, including a quantitative statement, of the alternative effluent limitations, if any, included in the request; and

c. If the applicant has filed an early screening request for a CWA § 316(a) variance, a statement that the applicant has submitted such a plan.

E. In addition to the general public notice described in subdivision D 1 of this section, all persons identified in subdivisions C 1 a, b, c, and d of this section shall be mailed a copy of the fact sheet or statement of basis, the permit application (if any) and the draft permit (if any).

F. Upon receipt of an application for the issuance of a new or modified permit other than those for agricultural production or aquacultural production activities, the ~~board~~ department shall :

1. Notify, in writing, the locality wherein the discharge or, as applicable, the associated land application of ~~sewage sludge biosolids~~, or land disposal of treated sewage, stabilized sewage sludge or stabilized septage does or is proposed to take place of, at a minimum:

- a. The name of the applicant;
- b. The nature of the application and proposed discharge;
- c. The availability and timing of any comment period; and
- d. Upon request, any other information known to, or in the possession of, the board or the department regarding the applicant not required to be held confidential by this chapter.

~~2. Establish a date for a public meeting to discuss technical issues relating to proposals for land application of sewage sludge, or land disposal of treated sewage, stabilized sewage sludge or stabilized septage. The department shall give notice of the date, time, and place of the public meeting and a description of the proposal by publication in a newspaper of general circulation in the city or county where the proposal is to take place. Public notice of the scheduled meeting shall occur no fewer than seven or more than 14 days prior to the meeting. The board shall not issue the permit until the public meeting has been held and comment has been received from the local governing body, or until 30 days have lapsed from the date of the public meeting.~~

~~3.~~ 2. Except for land application of ~~sewage sludge biosolids~~ or land disposal of treated sewage, stabilized sewage sludge or stabilized septage, make a good faith effort to provide this same notice and information to (i) each locality and riparian property owner to a distance one-quarter mile downstream and one-quarter mile upstream or to the fall line whichever is closer on tidal waters and (ii) each locality and riparian property owner to a distance one-half mile downstream on nontidal waters. Distances shall be measured from the point, or proposed point, of discharge. If the receiving river at the point or proposed point of discharge is two miles wide or greater, the riparian

property owners on the opposite shore need not be notified. Notice to property owners shall be based on names and addresses taken from local tax rolls. Such names and addresses shall be provided by the commissioners of the revenue or the tax assessor's office of the affected jurisdictions upon request by the board.

~~4. For a site that is to be added to an existing permit authorizing land application of sewage sludge, notify persons residing on property bordering such site and receive written comments from those persons for a period not to exceed 30 days. Based upon the written comments, the department shall determine whether additional site-specific requirements should be included in the authorization for land application at the site.~~

G. Whenever the department receives an application for a new permit for land application of biosolids or land disposal of treated sewage, stabilized sewage sludge, or stabilized septage, or an application to reissue with the addition of sites increasing acreage by 50% or more of that authorized by the initial permit, the department shall establish a date for a public meeting to discuss technical issues relating to proposals for land application of biosolids or land disposal of treated sewage, stabilized sewage sludge, or stabilized septage. The department shall give notice of the date, time, and place of the public meeting and a description of the proposal by publication in a newspaper of general circulation in the city or county where the proposal is to take place. Public notice of the scheduled meeting shall occur no fewer than seven or more than 14 days prior to the meeting. The department shall not issue the permit until the public meeting has been held and comment has been received from the local governing body or until 30 days have lapsed from the date of the public meeting.

H. Following the submission of an application for a new permit for land application of biosolids or land disposal of treated sewage, stabilized sewage sludge, or stabilized septage, DEQ shall notify or cause to be notified persons residing on property bordering the sites that contain the proposed land application fields. This notification shall be in a manner selected by the department. For the purposes of this subsection, "site" means all contiguous land under common ownership, but which may contain more than one tax parcel.

I. Following the submission of an application to add a site that is not contiguous to sites included in an existing permit authorizing the land application of biosolids:

1. The department shall notify persons residing on property bordering such site and shall receive written comments from those persons for a period of 30 days. Based upon written comments, the department shall determine whether additional site-specific requirements should be included in the authorization for land application at the site.

Regulations

2. An application for any permit amendment to increase the acreage authorized by the initial permit by 50% or more shall be considered a major modification and shall be treated as a new application for purposes of public notice and public hearings. The increase in acreage for the purpose of determining the need for the public meeting is the sum of all acreage that has been added to the permit since the last public meeting, plus that proposed to be added.

~~G. I.~~ Before issuing any permit, if the ~~board~~ department finds that there are localities particularly affected by the permit, the ~~board~~ department shall:

1. Publish, or require the applicant to publish, a notice in a local paper of general circulation in the localities affected at least 30 days prior to the close of any public comment period. Such notice shall contain a statement of the estimated local impact of the proposed permit, which at a minimum shall include information on the specific pollutants involved and the total quantity of each which may be discharged;~~and,~~

2. Mail the notice to the chief elected official and chief administrative officer and planning district commission for those localities.

~~Written~~ 3. Accept written comments shall be accepted by the board for at least up to 15 days after any public hearing on the permit, unless the board votes department decides to shorten the period. For the purposes of this section, the term "locality particularly affected" means any locality which bears any identified disproportionate material water quality impact which would not be experienced by other localities.

4. For the purposes of this section, consider the term "locality particularly affected" to mean any locality that bears any identified disproportionate material water quality impact that would not be experienced by other localities.

9VAC25-31-390. Modification or revocation and reissuance of permits.

A. Causes for modification. The following are causes for modification but not revocation and reissuance of permits except when the permittee requests or agrees.

1. There are material and substantial alterations or additions to the permitted facility or activity (including a change or changes in the permittee's sludge use or disposal practice) which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.

2. The department has received new information. Permits may be modified during their terms for this cause only if the information was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of

different permit conditions at the time of issuance. For VPDES general permits this cause includes any information indicating that cumulative effects on the environment are unacceptable. For new source or new discharger VPDES permits this cause shall include any significant information derived from effluent testing required on the permit application after issuance of the permit.

3. The standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued. Permits may be modified during their terms for this cause only as follows:

a. For promulgation of amended standards or regulations, when:

(1) The permit condition requested to be modified was based on a promulgated effluent limitation guideline, EPA approved or promulgated water quality standards, or the Secondary Treatment Regulations incorporated by reference in 9VAC25-31-30; and

(2) EPA has revised, withdrawn, or modified that portion of the regulation or effluent limitation guideline on which the permit condition was based, or has approved a state action with regard to a water quality standard on which the permit condition was based; and

(3) A permittee requests modification in accordance with this chapter within 90 days after Federal Register notice of the action on which the request is based;

b. For judicial decisions, a court of competent jurisdiction has remanded and stayed EPA promulgated regulations or effluent limitation guidelines, if the remand and stay concern that portion of the regulations or guidelines on which the permit condition was based and a request is filed by the permittee in accordance with this chapter within 90 days of judicial remand; or

c. For changes based upon modified state certifications of VPDES permits.

4. The board determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy. However, in no case may a VPDES compliance schedule be modified to extend beyond an applicable CWA statutory deadline.

5. When the permittee has filed a request for a variance pursuant to 9VAC25-31-100 L or M within the time specified in this chapter.

6. When required to incorporate an applicable CWA § 307(a) toxic effluent standard or prohibition.

7. When required by the reopener conditions in a permit which are established under 9VAC25-31-220 B or C or 9VAC25-31-800 E.

8. a. Upon request of a permittee who qualifies for effluent limitations on a net basis under 9VAC25-31-230 G.

b. When a discharger is no longer eligible for net limitations as provided in 9VAC25-31-230 G 1 b.

9. As necessary under 9VAC25-31-800 E for a pretreatment program.

10. Upon failure to notify another state whose waters may be affected by a discharge.

11. When the level of discharge of any pollutant which is not limited in the permit exceeds the level which can be achieved by the technology-based treatment requirements appropriate to the permittee.

12. To establish a notification level as provided in 9VAC25-31-220 F.

13. To modify a schedule of compliance to reflect the time lost during construction of an innovative or alternative facility, in the case of a POTW which has received a grant under § 202(a)(3) of the CWA for 100% of the costs to modify or replace facilities constructed with a grant for innovative and alternative wastewater technology under § 202(a)(2) of the CWA. In no case shall the compliance schedule be modified to extend beyond an applicable CWA statutory deadline for compliance.

14. To correct technical mistakes, such as errors in calculation, or mistaken interpretations of law made in determining permit conditions.

15. When the discharger has installed the treatment technology considered by the permit writer in setting effluent limitations imposed under the law and § 402(a)(1) of the CWA and has properly operated and maintained the facilities but nevertheless has been unable to achieve those effluent limitations. In this case, the limitations in the modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by a subsequently promulgated effluent limitations guideline).

16. When required by a permit condition to incorporate a land application plan for beneficial reuse of ~~sewage sludge~~ biosolids, to revise an existing land application plan, or to add a land application plan.

B. Causes for modification or revocation and reissuance. The following are causes to modify or, alternatively, revoke and reissue a permit:

1. Cause exists for termination under 9VAC25-31-410, and the board determines that modification or revocation and reissuance is appropriate; or

2. The department has received notification of a proposed transfer of the permit. A permit also may be modified to reflect a transfer after the effective date of an automatic transfer but will not be revoked and reissued after the effective date of the transfer except upon the request of the new permittee.

Part VI

Standards for the Use of Biosolids or Disposal of Sewage Sludge

Article 1

General Requirements

9VAC25-31-420. Purpose and applicability.

A. This part establishes standards, which consist of general requirements, pollutant limits, management practices, and operational standards, for the final use of biosolids or disposal of sewage sludge generated during the treatment of domestic sewage in a treatment works. Standards are included in this part for ~~sewage sludge~~ biosolids applied to the land or sewage sludge placed on a surface disposal site. Also included in this part are pathogen and alternative vector attraction reduction requirements for ~~sewage sludge~~ biosolids applied to the land or sewage sludge placed on a surface disposal site.

B. In addition, the standards in this part include the frequency of monitoring and recordkeeping requirements when ~~sewage sludge~~ biosolids is applied to the land or sewage sludge is placed on a surface disposal site. Also included in this part are reporting requirements for Class I sludge management facilities, publicly owned treatment works (POTWs) with a design flow rate equal to or greater than one million gallons per day, and POTWs that serve 10,000 people or more.

~~B.~~ C. Applicability.

1. This part applies to any person who prepares sewage sludge or biosolids, or applies ~~sewage sludge~~ biosolids to the land and to the owner/operator of a surface disposal site.

2. This part applies to ~~sewage sludge~~ biosolids applied to the land or sewage sludge placed on a surface disposal site.

3. This part applies to land where ~~sewage sludge~~ biosolids is applied and to a surface disposal site.

9VAC25-31-440. Permits and direct enforceability.

A. The requirements in this part may be implemented through a permit issued to a treatment works treating domestic sewage, in accordance with this chapter. Treatment works treating domestic sewage shall submit a permit application in accordance with this chapter.

B. No person shall use biosolids or dispose of sewage sludge through any practice for which requirements are established in this part except in accordance with such requirements.

Regulations

9VAC25-31-460. Additional or more stringent requirements.

A. On a case-by-case basis, the board may impose requirements for the use of biosolids or disposal of sewage sludge in addition to or more stringent than the requirements in this part when necessary to protect public health and the environment from any adverse effect of a pollutant in the biosolids or sewage sludge.

B. Nothing in this part precludes another state agency with responsibility for regulating biosolids or sewage sludge or any political subdivision of Virginia or an interstate agency from imposing requirements for the use of biosolids or disposal of sewage sludge more stringent than the requirements in this part or from imposing additional requirements for the use of biosolids or disposal of sewage sludge.

C. For ~~sewage sludge~~ biosolids land application where, because of site-specific conditions, including soil type, identified during the permit application review process, the department determines that special requirements are necessary to protect the environment or the health, safety or welfare of persons residing in the vicinity of a proposed land application site, the department may incorporate in the permit at the time it is issued reasonable special conditions regarding buffering, transportation routes, slope, material source, methods of handling and application, and time of day restrictions exceeding those required by this regulation. The permit applicant shall have at least 14 days in which to review and respond to the proposed conditions.

9VAC25-31-475. Local enforcement of sewage sludge regulations.

A. In the event of a dispute concerning the existence of a violation between a permittee and a locality that has adopted a local ordinance for testing and monitoring of the land application of sewage sludge and a permittee concerning the existence of a violation biosolids, the activity alleged to be in violation shall be halted pending a determination by the director. ~~The decision of the director shall be final and binding unless reversed on judicial appeal pursuant to § 2.2-4026 of the Code of Virginia. If the activity is not halted, the director may seek an injunction compelling the halting of the activity from a court having jurisdiction.~~

B. Upon determination by the director that there has been a violation of § 62.1-44.19:3, 62.1-44.19:3.1 or 62.1-44.19:3.3 of the Code of Virginia, or of any regulation promulgated under those sections, and that such violation poses an imminent threat to public health, safety or welfare, the department shall commence appropriate action to abate the violation and immediately notify the chief administrative officer of any locality potentially affected by the violation.

C. Local governments shall promptly notify the department of all results from the testing and monitoring of the land

application of ~~sewage sludge~~ biosolids performed by persons employed by local governments and any violation of § 62.1-44.19:3, 62.1-44.19:3.1, or 62.1-44.19:3.3 of the Code of Virginia.

D. ~~Localities~~ Local governments receiving complaints concerning land application of ~~sewage sludge~~ biosolids shall notify the department and the permit holder within 24 hours of receiving the complaint.

9VAC25-31-480. Requirement Requirements for a person who prepares biosolids or sewage sludge.

A. Any person who prepares biosolids shall ensure that the applicable requirements in this part are met when biosolids is applied to the land.

B. Any person who prepares sewage sludge shall ensure that the applicable requirements in this part are met when the sewage sludge is ~~applied to the land~~, or placed on a surface disposal site.

9VAC25-31-485. Requirements for permittees who land apply sewage sludge biosolids.

A. Any person who land applies ~~sewage sludge~~ biosolids authorized by a VPDES permit shall be certified in accordance with requirements specified in the Virginia Pollution Abatement Permit Regulation (~~9VAC25-32~~), Article 5, Certification of Land Applicators, as set forth in 9VAC25-32-690 through 9VAC25-32-760.

~~B. Persons authorized to land apply sewage sludge under a VPDES permit shall report all complaints received by them to the department and the local governing body of the jurisdiction in which the complaint originates.~~

B. When an application for a permit that authorizes the land application of biosolids is submitted to the department:

1. Permit holders shall use a unique control number assigned by the department as an identifier for fields permitted for land application.

2. A written agreement shall be established between the landowner and permit applicant or permit holder to be submitted with the permit application, whereby the landowner shall consent to the application of biosolids on his property and certify that no concurrent agreements are in effect for the fields to be permitted for biosolids application. The landowner agreement shall include an acknowledgment by the landowner of any site restrictions identified in the permit. The responsibility for obtaining and maintaining the agreements lies with the permit holder.

3. New or revised landowner agreements shall be submitted to the department if new land is being added to the permit or if there have been changes in ownership of land included in a permit reissuance request.

C. The permit holder shall ensure that the landowner agreement is still valid at the time of land application.

D. Notification requirements.

~~C. 1.~~ 1. At least 100 days prior to commencing land application of sewage sludge biosolids at a permitted site the permittee shall deliver or cause to be delivered written notification to the chief executive officer or his designee for the local government where the site is located. The notice shall identify the location of the permitted site and the expected sources of the sewage sludge biosolids to be applied to the site. This requirement may be satisfied by providing a list of all available permitted sites in the locality at least 100 days prior to commencing the application at any site on the list. If the site is located in more than one county, the notice shall be provided to all jurisdictions where the site is located.

2. At least 14 days prior to commencing land application of biosolids at a permitted site, the permit holder shall deliver or cause to be delivered written notification to the department and the chief executive officer or designee for the local government where the site is located. The notice shall include the following:

a. The name, address, and telephone number of the permit holder, including the name of a representative knowledgeable of the permit;

b. Identification by tax map number and the DEQ control number for sites on which land application is to take place;

c. A map indicating haul routes on each site where land application is to take place;

d. The name or title and phone number of at least one individual designated by the permit holder to respond to questions and complaints related to the land application project;

e. The approximate dates on which land application is to begin and end at the site;

f. The name and telephone number of the person or persons at the department to be contacted in connection with the permit; and

g. The name, address, and telephone number of the wastewater treatment facility, or facilities, from which the biosolids will originate, including the name or title of a representative of the treatment facility that is knowledgeable about the land application operation.

If multiple sites are included in the notification, the permit holder shall make a good faith effort to identify the most probable order that land application will commence.

~~D. 3.~~ 3. The permittee shall deliver or cause to be delivered written notification to the department as least 14 days prior

~~to commencing land application of sewage sludge at a permitted site. The notice shall identify the location of the permitted site and the expected sources of the sewage sludge to be applied to the site and to the chief executive officer or designee for the local government where the site is located, daily notification prior to commencing planned land application activities.~~

~~E. The permittee shall provide to the department, and to each locality in which it is permitted to land apply sewage sludge, written evidence of financial responsibility, including both current liability and pollution insurance, or such other evidence of financial responsibility as the board may establish by regulation in an amount not less than \$1 million per occurrence, which shall be available to pay claims for cleanup costs, personal injury, bodily injury and property damage resulting from the transport, storage and land application of sewage sludge in Virginia. The aggregate amount of financial liability maintained by the permittee shall be \$1 million for companies with less than \$5 million in annual gross revenue and shall be \$2 million for companies with \$5 million or more in annual gross revenue. Evidence of financial responsibility shall be provided in accordance with requirements specified in Article 6 (9VAC25-32-770 et seq.) of Part IX of the Virginia Pollution Abatement (VPA) Permit Regulation.~~

F. Posting signs.

1. At least five business days prior to delivery of biosolids for land application on any site permitted under this regulation, the permit holder shall post signs at the site that comply with this section, are visible and legible from the public right-of-way in both directions of travel, and conform to the specifications herein. The sign shall remain in place for at least five business days after land application has been completed at the site.

a. If the site is located adjacent to a public right-of-way, signs shall be posted along each road frontage beside the field to be land applied.

b. If the site is not located adjacent to a public right-of-way, the sign shall be posted at or near the intersection of the public right-of-way and the main site access road or driveway to the site.

c. The department may grant a waiver to the requirements in this section, or require alternative posting options due to extenuating circumstances or to be consistent with local government ordinances and other requirements regulating the use of signs.

2. The sign shall be made of weather-resistant materials and shall be sturdily mounted so as to be capable of remaining in place and legible throughout the period that the sign is required at the site. Signs required by this section shall be temporary, nonilluminated, and four square

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feet or more in area, and only contain the following information:

- a. A statement that biosolids are being land applied at the site;
- b. The name and telephone number of the permit holder and the name (or title) and telephone number of an individual designated by the permit holder to respond to complaints and inquiries; and
- c. Contact information for the department, including a telephone number for complaints and inquiries.

3. The permit holder shall make a good faith effort to replace or repair any sign that has been removed from a land application site or that has been damaged so as to render any of its required information illegible prior to five business days after completion of land application.

G. Operations management plan.

1. The permit holder shall maintain an operations management plan, which shall consist of three components:

- a. The materials, including site booklets, developed and submitted at the time of permit application or permit modification adding a site to the permit in accordance with 9VAC25-31-100 Q;
- b. Nutrient management plan for each site, in accordance with 9VAC25-31-505; and
- c. Operation and maintenance (O&M) manual, developed and submitted to the department within 90 days of the effective date of the permit.

2. The O&M manual shall include at a minimum:

- a. Equipment maintenance and calibration procedures and schedules;
- b. Storage facility maintenance procedures and schedules;
- c. Sampling schedules for:
 - (1) Required monitoring; and
 - (2) Operational control testing;
- d. Sample collection, preservation and analysis procedures, including laboratories and methods used; and
- e. Instructions for recording and reporting all monitoring activities.

3. Current VPDES permit holders who land apply biosolids may use their existing VPDES O&M plan addressing land application to satisfy the requirements of this section if the existing plan addresses all of the required minimum components identified in this section.

H. Handling of complaints.

1. Within 24 hours of receiving notification of a complaint, the permit holder shall commence investigation of the complaint and shall determine whether the complaint is substantive. The permit holder shall confirm receipt of all substantive complaints by phone, email, or facsimile to the department, the chief executive officer or designee for the local government of the jurisdiction in which the complaint originates, and the owner of the treatment facility from which the biosolids originated within 24 hours after receiving the complaint.

2. For the purposes of this section, a substantive complaint shall be deemed to be any complaint alleging a violation of these regulations, state law, or local ordinance; a release of biosolids to state waters or to a public right-of-way or to any location not authorized in the permit; or failure to comply with the nutrient management plan for the land application site.

9VAC25-31-490. Sampling and analysis.

A. Representative samples of ~~sewage sludge~~ biosolids that is applied to the land, or placed on a surface disposal site shall be collected and analyzed.

B. Methods in the materials listed below shall be used to analyze samples of ~~sewage sludge~~ biosolids and calculation procedures in the materials shall be used to calculate the percent volatile solids reduction for ~~sewage sludge~~ biosolids.

1. Enteric viruses.

ASTM Designation: D 4994-89, "Standard Practice for Recovery of Viruses From Wastewater Sludges," Annual Book of ASTM Standards: Section 11 - Water and Environmental Technology, ASTM, Philadelphia, PA., 1992.

2. Fecal coliform.

Part 9221 E. or Part 9222 D., "Standard Methods for the Examination of Water and Wastewater," 18th Edition, American Public Health Association, Washington, D.C., 1992.

3. Helminth ova.

Yanko, W.A., "Occurrence of Pathogens in Distribution and Marketing Municipal Sludges," EPA 600/1-87-014, 1987. PB 88-154273/AS, National Technical Information Service, Springfield, Virginia.

4. Inorganic pollutants.

"Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, Third Edition (1986) with Revision I. PB88-239223, National Technical Information Service, Springfield, Virginia.

5. Salmonella sp. bacteria.

Part 9260 D., "Standard Methods for the Examination of Water and Wastewater," 18th Edition, American Public Health Association, Washington, D.C., 1992; or

Kenner, B.A. and H.P. Clark, "Detection and enumeration of Salmonella and Pseudomonas aeruginosa," J. Water Pollution Control Federation, 46(9):2163-2171, 1974.

6. Specific oxygen uptake rate.

Part 2710 B., "Standard Methods for the Examination of Water and Wastewater," 18th Edition, American Public Health Association, Washington, D.C., 1992.

7. Total, fixed, and volatile solids.

Part 2540 G., "Standard Methods for the Examination of Water and Wastewater," 18th Edition, American Public Health Association, Washington, D.C., 1992.

8. Percent volatile solids reduction calculation.

"Environmental Regulations and Technology - Control of Pathogens and Vector Attraction in Sewage Sludge," EPA-625/R-92/013, U.S. Environmental Protection Agency, Cincinnati, Ohio, 1992.

9VAC25-31-500. Definitions.

In addition to the definitions given in Part I (9VAC25-31-10 et seq.) of this chapter, the following definitions apply to Part VI (9VAC25-31-420 et seq.) of this chapter. Where the same term is defined in both parts, the definition of Part VI of this chapter applies to the use of the term in Part VI of this chapter.

"Active sewage sludge unit" means a sewage sludge unit that has not closed.

"Aerobic digestion" means the biochemical decomposition of organic matter in sewage sludge into carbon dioxide and water by microorganisms in the presence of air.

"Agricultural land" means land on which a food crop, a feed crop, or a fiber crop is grown. This includes range land and land used as pasture.

"Agronomic rate" means the whole sludge application rate (dry weight basis) designed: (i) to provide the amount of nitrogen needed by the food crop, feed crop, fiber crop, cover crop, or vegetation grown on the land and (ii) to minimize the amount of nitrogen in the ~~sewage sludge biosolids~~ that passes below the root zone of the crop or vegetation grown on the land to the ~~groundwater~~ ground water.

"Anaerobic digestion" means the biochemical decomposition of organic matter in sewage sludge into methane gas and carbon dioxide by microorganisms in the absence of air.

"Annual pollutant loading rate (~~APLR~~)" or "APLR" means the maximum amount of a pollutant that can be applied to a unit area of land during a 365-day period.

"Annual whole sludge application rate (~~AWSAR~~)" or "AWSAR" means the maximum amount of ~~sewage sludge biosolids~~ (dry weight basis) that can be applied to a unit area of land during a 365-day period.

"Apply ~~sewage sludge biosolids~~" or ~~sewage sludge biosolids~~ applied to the land" means land application of ~~sewage sludge biosolids~~.

"Aquifer" means a geologic formation, group of geologic formations, or a portion of a geologic formation capable of yielding ~~groundwater~~ ground water to wells or springs.

"Base flood" means a flood that has a one percent chance of occurring in any given year (i.e., a flood with a magnitude equaled once in 100 years).

"Biosolids" means a sewage sludge that has received an established treatment and is managed in a manner to meet the required pathogen control and vector attraction reduction, and contains concentrations of regulated pollutants below the ceiling limits established in 40 CFR Part 503 and 9VAC25-31-540, such that it meets the standards established for use of biosolids for land application, marketing, or distribution in accordance with this regulation.

~~"Bulk sewage sludge"~~ "Bulk biosolids" means ~~sewage sludge biosolids~~ that ~~is~~ are not sold or given away in a bag or other container for application to the land.

"Class I sludge management facility" means any publicly owned treatment works (POTW) required to have an approved pretreatment program under this chapter and any treatment works treating domestic sewage classified as a Class I sludge management facility by the board because of the potential for its ~~biosolids use or sewage sludge use or~~ disposal practice to affect public health and the environment adversely.

"Contaminate an aquifer" means to introduce a substance that causes the maximum contaminant level for nitrate in the Virginia Water Quality Standards or in 40 CFR 141.62(b) (2000) to be exceeded in ~~groundwater~~ ground water or that causes the existing concentration of nitrate in ~~groundwater~~ ground water to increase when the existing concentration of nitrate in the ~~groundwater~~ ground water exceeds the maximum contaminant level for nitrate in the Virginia Water Quality Standards or 40 CFR 141.62(b) (2000).

"Cover" means soil or other material used to cover sewage sludge placed on an active sewage sludge unit.

"Cover crop" means a ~~small grain~~ crop, such as oats, wheat, or barley, not grown for harvest.

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"Cumulative pollutant loading rate" means the maximum amount of an inorganic pollutant that can be applied to an area of land.

"Density of microorganisms" means the number of microorganisms per unit mass of total solids (dry weight) in the biosolids or sewage sludge.

"Displacement" means the relative movement of any two sides of a fault measured in any direction.

"Domestic septage" means either liquid or solid material removed from a septic tank, cesspool, portable toilet, Type III marine sanitation device, or similar treatment works that receives only domestic sewage. Domestic septage does not include liquid or solid material removed from a septic tank, cesspool, or similar treatment works that receives either commercial wastewater or industrial wastewater and does not include grease removed from a grease trap at a restaurant.

"Domestic sewage" means waste and wastewater from humans or household operations that is discharged to or otherwise enters a treatment works.

"Dry tons" means dry weight established as representative of land applied biosolids and expressed in units of English tons.

"Dry weight" means the measured weight of a sample of sewage sludge or biosolids after all moisture has been removed in accordance with the standard methods of testing and often represented as percent solids.

"Dry weight basis" means calculated on the basis of having been dried at 105°C until reaching a constant mass (i.e., essentially 100% solids content).

"Exceptional quality biosolids" means biosolids that have received an established level of treatment for pathogen control and vector attraction reduction and contain known levels of pollutants, such that they may be marketed or distributed for public use in accordance with this regulation.

"Fault" means a fracture or zone of fractures in any materials along which strata on one side are displaced with respect to strata on the other side.

"Feed crops" means crops produced primarily for consumption by animals.

"Fiber crops" means crops such as flax and cotton.

"Field" means an area of land within a site where land application is proposed or permitted.

"Final cover" means the last layer of soil or other material placed on a sewage sludge unit at closure.

"Food crops" means crops consumed by humans. These include, but are not limited to, fruits, vegetables, and tobacco.

"Forest" means a tract of land thick with trees and underbrush.

~~"Groundwater"~~ "Ground water" means water below the land surface in the saturated zone.

"Holocene time" means the most recent epoch of the Quaternary period, extending from the end of the Pleistocene epoch to the present.

"Industrial wastewater" means wastewater generated in a commercial or industrial process.

~~"Land application" means the spraying or spreading of sewage-sludge biosolids onto the land surface; the injection of sewage-sludge biosolids below the land surface; or the incorporation of sewage-sludge biosolids into the soil so that the sewage-sludge biosolids can either condition the soil or fertilize crops or vegetation grown in the soil.~~

"Land with a high potential for public exposure" means land that the public uses frequently. This includes, but is not limited to, a public contact site and a reclamation site located in a populated area (e.g., a construction site located in a city).

"Land with a low potential for public exposure" means land that the public uses infrequently. This includes, but is not limited to, agricultural land, forest, and a reclamation site located in an unpopulated area (e.g., a strip mine located in a rural area).

"Leachate collection system" means a system or device installed immediately above a liner that is designed, constructed, maintained, and operated to collect and remove leachate from a sewage sludge unit.

"Liner" means soil or synthetic material that has a hydraulic conductivity of ~~1×10^{-6}~~ 1×10^{-7} centimeters per second or less.

"Local monitor" means a person or persons employed by a local government to perform the duties of monitoring the operations of land appliers pursuant to a local ordinance.

"Local ordinance" means an ordinance adopted by counties, cities, or towns in accordance with § 62.1-44.19:3 of the Code of Virginia.

"Lower explosive limit for methane gas" means the lowest percentage of methane gas in air, by volume, that propagates a flame at 25°C and atmospheric pressure.

"Malodor" means an unusually strong or offensive odor associated with biosolids or sewage sludge as distinguished from odors normally associated with biosolids or sewage sludge.

"Monthly average" means the arithmetic mean of all measurements taken during the month.

"Municipality" means a city, town, county, district, association, or other public body (including an intermunicipal Agency of two or more of the foregoing entities) created by or under state law; an Indian tribe or an authorized Indian tribal organization having jurisdiction over sewage sludge

management; or a designated and approved management agency under § 208 of the CWA, as amended. The definition includes a special district created under state law, such as a water district, sewer district, sanitary district, utility district, drainage district, or similar entity, or an integrated waste management facility as defined in § 201(e) of the CWA, as amended, that has as one of its principal responsibilities the treatment, transport, use, or disposal of biosolids or sewage sludge.

"Odor sensitive receptor" means, in the context of land application of biosolids, a building or outdoor facility regularly used to host or serve large groups of people such as schools, dormitories, athletic and other recreational facilities, hospitals, and convalescent homes.

"Other container" means either an open or closed receptacle. This includes, but is not limited to, a bucket, a box, a carton, and a vehicle or trailer with a load capacity of one metric ton or less.

"Pasture" means land on which animals feed directly on feed crops such as legumes, grasses, grain stubble, or stover.

"Pathogenic organisms" means disease-causing organisms. These include, but are not limited to, certain bacteria, protozoa, viruses, and viable helminth ova.

"Person who prepares sewage sludge" means either the person who generates sewage sludge during the treatment of domestic sewage in a treatment works or the person who derives a material from sewage sludge.

"pH" means the logarithm of the reciprocal of the hydrogen ion concentration measured at 25° Celsius or measured at another temperature and then converted to an equivalent value at 25° Celsius.

"Place sewage sludge or sewage sludge placed" means disposal of sewage sludge on a surface disposal site.

"Pollutant" means an organic substance, an inorganic substance, a combination of organic and inorganic substances, or a pathogenic organism that, after discharge and upon exposure, ingestion, inhalation, or assimilation into an organism either directly from the environment or indirectly by ingestion through the food chain, could, on the basis of information available to the board, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunction in reproduction), or physical deformations in either organisms or offspring of the organisms.

"Pollutant limit" means a numerical value that describes the amount of a pollutant allowed per unit amount of ~~sewage sludge~~ biosolids (e.g., milligrams per kilogram of total solids); the amount of a pollutant that can be applied to a unit area of land (e.g., kilograms per hectare); or the volume of a material that can be applied to a unit area of land (e.g., gallons per acre).

"Public contact site" means land with a high potential for contact by the public. This includes, but is not limited to, public parks, ball fields, cemeteries, ~~plant nurseries, turf farms,~~ and golf courses.

"Qualified ~~groundwater~~ ground water scientist" means an individual with a baccalaureate or post-graduate degree in the natural sciences or engineering who has sufficient training and experience in ~~groundwater~~ ground water hydrology and related fields, as may be demonstrated by state registration, professional certification, or completion of accredited university programs, to make sound professional judgments regarding ~~groundwater~~ ground water monitoring, pollutant fate and transport, and corrective action.

"Range land" means open land with indigenous vegetation.

"Reclamation site" means drastically disturbed land that is reclaimed using ~~sewage sludge~~ biosolids. This includes, but is not limited to, strip mines and construction sites.

"Run-off" means rainwater, leachate, or other liquid that drains overland on any part of a land surface and runs off of the land surface.

"Seismic impact zone" means an area that has a 10% or greater probability that the horizontal ground level acceleration of the rock in the area exceeds 0.10 gravity once in 250 years.

"Sewage sludge" means solid, semi-solid, or liquid residue generated during the treatment of domestic sewage in a treatment works. Sewage sludge includes, but is not limited to, domestic septage; scum or solids removed in primary, secondary, or advanced wastewater treatment processes; and a material derived from sewage sludge. Sewage sludge does not include ash generated during the firing of sewage sludge in a sewage sludge incinerator or grit and screenings generated during preliminary treatment of domestic sewage in a treatment works.

"Sewage sludge unit" means land on which only sewage sludge is placed for final disposal. This does not include land on which sewage sludge is either stored or treated. Land does not include surface waters.

"Sewage sludge unit boundary" means the outermost perimeter of an active sewage sludge unit.

"Site" means the area of land within a defined boundary where an activity is proposed or permitted.

"Specific oxygen uptake rate (SOUR)" means the mass of oxygen consumed per unit time per unit mass of total solids (dry weight basis) in the sewage sludge.

"Store or storage of sewage sludge" means the placement of sewage sludge on land on which the sewage sludge remains for two years or less. This does not include the placement of sewage sludge on land for treatment.

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"Surface disposal site" means an area of land that contains one or more active sewage sludge units.

"Total solids" means the materials in sewage sludge that remain as residue when the sewage sludge is dried at 103°C to 105°C.

"Treat or treatment of sewage sludge" means the preparation of sewage sludge for final use or disposal. This includes, but is not limited to, thickening, stabilization, and dewatering of sewage sludge. This does not include storage of sewage sludge.

"Treatment works" means either a federally owned, publicly owned, or privately owned device or system used to treat (including recycle and reclaim) either domestic sewage or a combination of domestic sewage and industrial waste of a liquid nature.

"Unstable area" means land subject to natural or human-induced forces that may damage the structural components of an active sewage sludge unit. This includes, but is not limited to, land on which the soils are subject to mass movement.

"Unstabilized solids" means organic materials in sewage sludge that have not been treated in either an aerobic or anaerobic treatment process.

"Vector attraction" means the characteristic of biosolids or sewage sludge that attracts rodents, flies, mosquitoes, or other organisms capable of transporting infectious agents.

"Volatile solids" means the amount of the total solids in sewage sludge lost when the sewage sludge is combusted at 550°C in the presence of excess air.

Article 2

Sewage Sludge Biosolids Applied to the Land

9VAC25-31-505. Universal requirements for land application operations.

A. A nutrient management plan prepared by a person who is certified as a nutrient management planner by the Department of Conservation and Recreation shall be developed for all application sites prior to sewage sludge biosolids land application. A nutrient management plan approved by the Department of Conservation and Recreation shall be required for application sites prior to board authorization under specific conditions, including but not limited to sites operated by an owner or lessee of a confined animal feeding operation, as defined in subsection A of § 62.1-44.17:1 of the Code of Virginia, or confined poultry feeding operation, as defined in subsection A of § 62.1-44.17:1.1 of the Code of Virginia; sites where land application more frequently than once every three years at greater than 50% of the annual agronomic rate is proposed; and other sites based on site-specific conditions that increase the risk that land application may adversely impact state waters.

B. Sewage sludge shall be treated to meet standards for land application of biosolids as required by Part VI (9VAC25-31-420 et seq.) of this chapter prior to delivery at the land application site. No person shall alter the composition of ~~sewage sludge biosolids~~ biosolids at a site approved for land application of ~~sewage sludge biosolids~~ biosolids under a Virginia Pollution Abatement Permit. Any person who engages in the alteration of such ~~sewage sludge biosolids~~ biosolids shall be subject to the penalties provided in Article 6 (§ 62.1-44.31 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia. The addition of lime or deodorants to ~~sewage sludge biosolids~~ biosolids that have been treated to meet standards for land application as required by Part VI (9VAC25-31-420 et seq.) of this chapter, shall not constitute alteration of the composition of ~~sewage sludge biosolids~~ biosolids. The board may authorize public institutions of higher education to conduct scientific research on the composition of ~~sewage sludge biosolids~~ biosolids that may be applied to land.

C. Bulk biosolids shall be land applied in accordance with the Virginia Pollution Abatement Permit Regulation, Article 3, Biosolids Use Standards and Practices, set forth in 9VAC25-32-490 through 9VAC25-32-660.

~~C. D.~~ Surface incorporation may be required on cropland by the department, or the local monitor with approval of the department, to mitigate excessive odors, when incorporation is practicable and compatible with a soil conservation plan meeting the standards and specifications of the U.S. Department of Agriculture Natural Resources Conservation Service.

~~D. E.~~ For applications where surface applied ~~sewage sludge biosolids~~ biosolids are not incorporated, the department (or the local monitor with approval of the department) may require as a site-specific permit condition, extended buffer zone setback distances when necessary to protect odor sensitive receptors. ~~When necessary, buffer zone setback distances from odor sensitive receptors may be extended to 400 feet or more and no sewage sludge shall be applied within such extended buffer zones. The board, in accordance with 9VAC25-31-460, may impose standards and requirements that are more stringent when required to protect public health and the environment, or prevent nuisance conditions from developing, either prior to or during sewage sludge use operations.~~

~~E. F.~~ No person shall apply to the Department of Environmental Quality for a permit, a variance, or a permit modification authorizing storage of sewage sludge or biosolids without first complying with all requirements adopted pursuant to § 62.1-44.19:3 R of the Code of Virginia.

9VAC25-31-510. Applicability; bulk ~~sewage-sludge~~ sewage-sludge biosolids sold or given away in a bag or other container for application to the land.

A. This subpart applies to any person who prepares ~~sewage-sludge biosolids~~ sewage-sludge biosolids that is applied to the land, to any person who applies ~~sewage-sludge biosolids~~ sewage-sludge biosolids to the land, to ~~sewage-sludge biosolids~~ sewage-sludge biosolids applied to the land, and to the land on which ~~sewage-sludge biosolids~~ sewage-sludge biosolids is applied.

B. General requirements for bulk biosolids.

~~B.~~ 1. The general requirements in 9VAC25-31-530 and the management practices in 9VAC25-31-550 do not apply when bulk ~~sewage-sludge biosolids~~ sewage-sludge biosolids is applied to the land if the bulk ~~sewage-sludge biosolids~~ sewage-sludge biosolids meets the ceiling concentrations in 9VAC25-31-540 B 1, the pollutant concentrations in 9VAC25-31-540 B 3, the Class A pathogen requirements in 9VAC25-31-710 A, and one of the vector attraction reduction requirements in 9VAC25-31-720 B 1 through B 8.

2. The board may apply any or all of the general requirements in 9VAC25-31-530 and the management practices in 9VAC25-31-550 to the bulk ~~sewage-sludge biosolids~~ sewage-sludge biosolids in subdivision 1 of this subsection on a case-by-case basis after determining that the general requirements or management practices are needed to protect public health and the environment from any reasonably anticipated adverse effect that may occur from any pollutant in the bulk ~~sewage-sludge biosolids~~ sewage-sludge biosolids.

C. General requirements for bulk material derived from biosolids.

~~C.~~ 1. The general requirements in 9VAC25-31-530 and the management practices in 9VAC25-31-550 do not apply when a bulk material derived from ~~sewage-sludge biosolids~~ sewage-sludge biosolids is applied to the land if the derived bulk material meets the ceiling concentrations in 9VAC25-31-540 B 1, the pollutant concentrations in 9VAC25-31-540 B 3, the Class A pathogen requirements in 9VAC25-31-710 A, and one of the vector attraction reduction requirements in 9VAC25-31-720 B 1 through B 8.

2. The board may apply any or all of the general requirements in 9VAC25-31-530 or the management practices in 9VAC25-31-550 to the bulk material in subdivision 1 of this subsection on a case-by-case basis after determining that the general requirements or management practices are needed to protect public health and the environment from any reasonably anticipated adverse effect that may occur from any pollutant in the bulk ~~sewage-sludge biosolids~~ sewage-sludge biosolids.

D. The requirements in this article do not apply when a bulk material derived from ~~sewage-sludge biosolids~~ sewage-sludge biosolids is applied to the land if the ~~sewage-sludge biosolids~~ sewage-sludge biosolids from which the bulk material is derived meets the ceiling concentrations in

9VAC25-31-540 B 1, the pollutant concentrations in 9VAC25-31-540 B 3, the Class A pathogen requirements in 9VAC25-31-710 A, and one of the vector attraction reduction requirements in 9VAC25-31-720 B 1 through B 8.

E. The general requirements in 9VAC25-31-530 and the management practices in 9VAC25-31-550 do not apply when ~~sewage-sludge biosolids~~ sewage-sludge biosolids is sold or given away in a bag or other container for application to the land if the ~~sewage-sludge biosolids~~ sewage-sludge biosolids sold or given away in a bag or other container for application to the land meets the ceiling concentrations in 9VAC25-31-540 B 1, the pollutant concentrations in 9VAC25-31-540 B 3, the Class A pathogen requirements in 9VAC25-31-710 A, and one of the vector attraction reduction requirements in 9VAC25-31-720 B 1 through B 8.

F. The general requirements in 9VAC25-31-530 and the management practices in 9VAC25-31-550 do not apply when a material derived from ~~sewage-sludge biosolids~~ sewage-sludge biosolids is sold or given away in a bag or other container for application to the land if the derived material meets the ceiling concentrations in 9VAC25-31-540 B 1, the pollutant concentrations in 9VAC25-31-540 B 3, the Class A pathogen requirements in 9VAC25-31-710 A, and one of the vector attraction reduction requirements in 9VAC25-31-720 B 1 through B 8.

G. The requirements in this subpart do not apply when a material derived from ~~sewage-sludge biosolids~~ sewage-sludge biosolids is sold or given away in a bag or other container for application to the land if the ~~sewage-sludge biosolids~~ sewage-sludge biosolids from which the material is derived meets the ceiling concentrations in 9VAC25-31-540 B 1, the pollutant concentrations in 9VAC25-31-540 B 3, the Class A pathogen requirements in 9VAC25-31-710 A, and one of the vector attraction reduction requirements in 9VAC25-31-720 B 1 through B 8.

9VAC25-31-530. General requirements.

A. No person shall apply ~~sewage-sludge biosolids~~ sewage-sludge biosolids to the land except in accordance with the requirements in this article.

B. No person shall apply bulk ~~sewage-sludge biosolids~~ sewage-sludge biosolids subject to the cumulative pollutant loading rates in 9VAC25-31-540 B 2 to agricultural land, forest, a public contact site, or a reclamation site if any of the cumulative pollutant loading rates in 9VAC25-31-540 B 2 has been reached.

C. No person shall apply domestic septage to agricultural land, forest, or a reclamation site during a 365-day period if the annual application rate in 9VAC25-31-540 C has been reached during that period.

D. The person who prepares bulk ~~sewage-sludge biosolids~~ sewage-sludge biosolids that is applied to agricultural land, forest, a public contact site, or a reclamation site shall provide the person who applies the bulk ~~sewage-sludge biosolids~~ sewage-sludge biosolids written notification of the concentration of total nitrogen (as N on a dry weight basis) in the bulk ~~sewage-sludge biosolids~~ sewage-sludge biosolids.

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E. Application of biosolids to the land.

E- 1. The person who applies ~~sewage sludge~~ biosolids to the land shall obtain information needed to comply with the requirements in this subpart.

2. ~~a.~~ Before bulk ~~sewage sludge~~ biosolids subject to the cumulative pollutant loading rates in 9VAC25-31-540 B 2 is applied to the land;

~~the a.~~ The person who proposes to apply the bulk ~~sewage sludge~~ biosolids shall contact the department to determine whether bulk ~~sewage sludge~~ biosolids subject to the cumulative pollutant loading rates in 9VAC25-31-540 B 2 has been applied to the site since July 20, 1993.

b. If bulk ~~sewage sludge~~ biosolids subject to the cumulative pollutant loading rates in 9VAC25-31-540 B 2 has not been applied to the site since July 20, 1993, the cumulative amount for each pollutant listed in Table 2 of 9VAC25-31-540 may be applied to the site in accordance with 9VAC25-31-540 A 2 a.

c. If bulk ~~sewage sludge~~ biosolids subject to the cumulative pollutant loading rates in 9VAC25-31-540 B 2 has been applied to the site since July 20, 1993, and the cumulative amount of each pollutant applied to the site in the bulk ~~sewage sludge~~ biosolids since that date is known, the cumulative amount of each pollutant applied to the site shall be used to determine the additional amount of each pollutant that can be applied to the site in accordance with 9VAC25-31-540 A 2 a.

d. If bulk ~~sewage sludge~~ biosolids subject to the cumulative pollutant loading rates in 9VAC25-31-540 B 2 has been applied to the site since July 20, 1993, and the cumulative amount of each pollutant applied to the site in the bulk ~~sewage sludge~~ biosolids since that date is not known, an additional amount of each pollutant shall not be applied to the site in accordance with 9VAC25-31-540 A 2 a.

F. When a person who prepares bulk ~~sewage sludge~~ biosolids provides the bulk ~~sewage sludge~~ biosolids to a person who applies the bulk ~~sewage sludge~~ biosolids to the land, the person who prepares the bulk ~~sewage sludge~~ biosolids shall provide the person who applies the ~~sewage sludge~~ biosolids notice and necessary information to comply with the requirements in this article.

G. When a person who prepares ~~sewage sludge~~ biosolids provides the ~~sewage sludge~~ biosolids to another person who prepares the ~~sewage sludge~~ biosolids, the person who provides the ~~sewage sludge~~ biosolids shall provide the person who receives the ~~sewage sludge~~ biosolids notice and necessary information to comply with the requirements in this article.

H. The person who applies bulk ~~sewage sludge~~ biosolids to the land shall provide the owner or lease holder of the land on

which the bulk ~~sewage sludge~~ biosolids is applied notice and necessary information to comply with the requirements in this article.

I. Any person who prepares bulk ~~sewage sludge~~ biosolids in another state that is applied to land in Virginia shall provide written notice to the department prior to the initial application of bulk ~~sewage sludge~~ biosolids to the land application site by the applier. The notice shall include:

1. The location, by either street address or latitude and longitude, of each land application site;
2. The approximate time period bulk ~~sewage sludge~~ biosolids will be applied to the site;
3. The name, address, telephone number, and National Pollutant Discharge Elimination System permit number (if appropriate) for the person who prepares the bulk ~~sewage sludge~~ biosolids; and
4. The name, address, telephone number, and National (or Virginia) Pollutant Discharge Elimination System permit number (if appropriate) for the person who will apply the bulk ~~sewage sludge~~ biosolids.

J. Any person who applies bulk ~~sewage sludge~~ biosolids subject to the cumulative pollutant loading rates in 9VAC25-31-540 B 2 to the land shall provide written notice, prior to the initial application of bulk ~~sewage sludge~~ biosolids to a land application site by the applier, to the department and the department shall retain and provide access to the notice. The notice shall include:

1. The location, by either street address or latitude and longitude, of the land application site; and
2. The name, address, telephone number, and Virginia Pollutant Discharge Elimination System permit number (if appropriate) of the person who will apply the bulk ~~sewage sludge~~ biosolids.

9VAC25-31-540. Pollutant limits.

A. Sewage sludge Biosolids.

1. Bulk ~~sewage sludge~~ biosolids or ~~sewage sludge~~ biosolids sold or given away in a bag or other container shall not be applied to the land if the concentration of any pollutant in the ~~sewage sludge~~ biosolids exceeds the ceiling concentration for the pollutant in Table 1 of this section.
2. If bulk ~~sewage sludge~~ biosolids is applied to agricultural land, forest, a public contact site, or a reclamation site, either:
 - a. The cumulative loading rate for each pollutant shall not exceed the cumulative pollutant loading rate for the pollutant in Table 2 of this section; or

b. The concentration of each pollutant in the ~~sewage sludge biosolids~~ shall not exceed the concentration for the pollutant in Table 3 of ~~9VAC25-31-540~~ this section.

3. If bulk ~~sewage sludge biosolids~~ is applied to a lawn or a home garden, the concentration of each pollutant in the ~~sewage sludge biosolids~~ shall not exceed the concentration for the pollutant in Table 3 of this section.

4. If ~~sewage sludge biosolids~~ is sold or given away in a bag or other container for application to the land, either:

a. The concentration of each pollutant in the ~~sewage sludge biosolids~~ shall not exceed the concentration for the pollutant in Table 3 of this section; or

b. The product of the concentration of each pollutant in the ~~sewage sludge biosolids~~ and the annual whole sludge application rate for the ~~sewage sludge biosolids~~ shall not cause the annual pollutant loading rate for the pollutant in Table 4 of this section to be exceeded. The procedure used to determine the annual whole sludge application rate is presented in subsection D of this section.

B. Pollutant concentrations and loading rates - ~~sewage sludge biosolids~~.

TABLE 1
CEILING CONCENTRATIONS

| Pollutant | Ceiling Concentration (milligrams per kilogram)* |
|--|--|
| Arsenic | 75 |
| Cadmium | 85 |
| Copper | 4300 <u>4,300</u> |
| Lead | 840 |
| Mercury | 57 |
| Molybdenum ⁽¹⁾ | 75 |
| Nickel | 420 |
| Selenium | 100 |
| Zinc | 7500 <u>7,500</u> |
| *Dry weight basis | |
| ⁽¹⁾ Biosolids with a molybdenum concentration greater than <u>40 mg/kg</u> shall not be applied to land used for livestock grazing. | |

TABLE 2
CUMULATIVE POLLUTANT LOADING RATES ⁽¹⁾

| Pollutant | Cumulative Pollutant Loading Rate | |
|--|---|-------------------|
| | Cumulative Pollutant Loading Rate (kilograms per hectare) | (pounds per acre) |
| Arsenic ⁽²⁾ | 41 | <u>36</u> |
| Cadmium | 39 | <u>35</u> |
| Copper | 1500 <u>1,500</u> | <u>1,340</u> |
| Lead | 300 | <u>270</u> |
| Mercury | 17 | <u>16</u> |
| <u>Molybdenum ⁽²⁾</u> | | |
| Nickel | 420 | <u>375</u> |
| Selenium | 100 | <u>89</u> |
| Zinc | 2800 <u>2,800</u> | <u>2,500</u> |
| Notes: | | |
| ⁽¹⁾ Such total applications to be made on soils with the biosolids/soil mixture pH adjusted to 6.0 or greater if the biosolids cadmium content is greater than or equal to <u>21 mg/kg</u> . | | |
| The maximum cumulative application rate is limited for all ranges of cation exchange capacity due to soil background pH in Virginia of less than 6.5 and lack of regulatory controls of soil pH adjustment after biosolids application ceases. | | |
| ⁽²⁾ The maximum cumulative application rate is currently under study by the USEPA. | | |

TABLE 3
POLLUTANT CONCENTRATIONS

| Pollutant | Monthly Average Concentration (milligrams per kilogram)* |
|----------------------------------|--|
| Arsenic | 41 |
| Cadmium | 39 |
| Copper | 1500 <u>1,500</u> |
| Lead | 300 |
| Mercury | 17 |
| <u>Molybdenum ⁽¹⁾</u> | |
| Nickel | 420 |

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| | |
|---|------------------------------|
| Selenium | 100 |
| Zinc | 2800 <u>2,800</u> |
| *Dry weight basis | |
| <u>Note:</u> | |
| <u>(1) The monthly average concentration is currently under study by the USEPA.</u> | |

TABLE 4
ANNUAL POLLUTANT LOADING RATES

| Pollutant | Annual Pollutant Loading Rate ⁽¹⁾ (per 365-day period) | |
|---------------------------------|---|-------------------|
| | Annual Pollutant Loading Rate (kilograms per hectare per 365 day period) (kilograms per hectare) | (pounds per acre) |
| Arsenic | 2.0 | <u>1.8</u> |
| Cadmium | 1.9 | <u>1.7</u> |
| Copper | 75 | <u>67</u> |
| Lead | 15 | <u>13</u> |
| Mercury | 0.85 | <u>0.76</u> |
| <u>Molybdenum</u> <u>(2)</u> | | |
| Nickel | 21 | <u>19</u> |
| Selenium | 5.0 | <u>4.6</u> |
| Zinc | 140 | <u>125</u> |

Notes:

(1) Such total applications to be made on soils with the biosolids/soils mixture pH adjusted to 6.0 or greater if the biosolids cadmium content is greater than or equal to 21 mg/kg.

The maximum cumulative application rate is limited for all ranges of cation exchange capacity due to soil pH in Virginia of less than 6.5 and lack of regulatory controls of soil pH adjustment after biosolids application ceases.

(2) The maximum cumulative application rate is currently under study by the USEPA.

C. Domestic septage. The annual application rate for domestic septage applied to agricultural land, forest, or a reclamation site shall not exceed the annual application rate calculated using equation (1).

$$AAR = \frac{N}{0.0026} \quad (1)$$

Where:

~~AAR=Annual application rate in gallons per acre per 365 day period.~~

~~N=Amount of nitrogen in pounds per acre per 365 day period needed by the crop or vegetation grown on the land.~~

| EQUATION (1) |
|---|
| <u>AAR = N/0.0026</u> |
| <u>AAR = Annual application rate in gallons per acre per 365-day period.</u> |
| <u>N = Amount of nitrogen in pounds per acre per 365-day period needed by the crop or vegetation grown on the land.</u> |

D. Procedures to determine the annual whole sludge application rate for ~~sewage sludge biosolids~~. 9VAC25-31-540 A 4 b requires that the product of the concentration for each pollutant listed in Table 4 of this section in ~~sewage sludge biosolids~~ sold or given away in a bag or other container for application to the land and the AWSAR for the ~~sewage sludge biosolids~~ not cause the annual pollutant loading rate for the pollutant in Table 4 to be exceeded. This section contains the procedure used to determine the AWSAR for a ~~sewage sludge biosolids~~ that does not cause the annual pollutant loading rates in Table 4 of this section to be exceeded.

1. The relationship between the APLR for a pollutant and the AWSAR for a ~~sewage sludge biosolids~~ is shown in equation ~~(1)~~(2).

$$APLR = C \times AWSAR \times 0.001 \quad (1)$$

Where:

~~APLR=Annual pollutant loading rate in kilograms per hectare per 365 day period.~~

~~C=Pollutant concentration in milligrams per kilogram of total solids (dry weight basis).~~

~~AWSAR=Annual whole sludge application rate in metric tons per hectare per 365 day period (dry weight basis).~~

~~0.001=A conversion factor.~~

| EQUATION (2) |
|--|
| <u>APLR = C X AWSAR X 0.001</u> |
| <u>APLR = Annual pollutant loading rate in kilograms per hectare per 365-day period</u> |
| <u>C = Pollutant concentration in milligrams per kilogram of total solids (dry weight basis)</u> |

AWSAR = Annual whole sludge application rate in metric tons per hectare per 365-day period (dry weight basis)

0.001 = A conversion factor

2. To determine the AWSAR, equation (1) (2) is rearranged into equation (2) (3):

$$AWSAR = \frac{APLR}{C \times 0.001} \quad (2)$$

| EQUATION (3) |
|--|
| <u>AWSAR = APLR/(C X 0.001)</u> |
| <u>AWSAR = Annual whole sludge application rate in metric tons per hectare per 365-day period (dry weight basis)</u> |
| <u>APLR = Annual pollutant loading rate in kilograms per hectare per 365-day period</u> |
| <u>C = Pollutant concentration in milligrams per kilogram of total solids (dry weight basis)</u> |
| <u>0.001 = A conversion factor</u> |

3. The procedure used to determine the AWSAR for a sewage sludge biosolids is presented below.

1. a. Analyze a sample of the sewage sludge biosolids to determine the concentration for each of the pollutants listed in Table 4 of this section in the sewage sludge biosolids.

2. b. Using the pollutant concentrations from Step 1 and the APLRs from Table 4 of this section, calculate an AWSAR for each pollutant using equation (2) (3) above.

3. c. The AWSAR for the sewage sludge biosolids is the lowest AWSAR calculated in Step 2.

9VAC25-31-543. Soils monitoring.

A. Soil shall be sampled and analyzed prior to biosolids application to determine site suitability and to provide background data. Soil shall be sampled and analyzed in accordance with Table 1 of this section. Reduced monitoring may apply for typical agricultural utilization projects where biosolids are applied to farmland at or below agronomic rates or on an infrequent basis (Table 1 of this section). Reduced monitoring may also apply to one-time biosolids applications to forest or reclaimed lands. For background analysis, random composite soil samples from the zone of incorporation are required for infrequent applications and frequent applications at less than agronomic rates (total less than 15 dry tons per acre).

**TABLE 1
SOIL TEST PARAMETERS FOR LAND APPLICATION SITES¹**

| Parameter | Biosolids Application | | | Storage |
|---|-------------------------|---|--|--------------------------|
| | Infrequent ² | Frequent Below Agronomic Rates ² | Frequent at Agronomic Rates ² | Supernatant ⁴ |
| <u>Soil pH (std. Units)</u> | * | * | * | * |
| <u>Nitrate nitrogen (ppm)³</u> | * | * | * | * |
| <u>Available phosphorus (ppm)⁵</u> | * | * | * | * |
| <u>Extractable potassium (ppm)</u> | * | * | * | * |
| <u>Extractable sodium (mg/100g)</u> | 6 | 6 | 6 | 6 |
| <u>Extractable calcium (mg/100g)</u> | * | * | * | * |
| <u>Extractable magnesium</u> | * | * | * | * |

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| | | | | |
|--|---|---|---|---|
| (mg/100g) | | | | |
| <u>Zinc (ppm)</u> | * | * | * | * |
| <u>Manganese (ppm)</u> | * | * | * | * |
| <u>Hydraulic conductivity (cm/sec)</u> | | | | * |

¹Note: Unless otherwise stated, analyses shall be reported on a dry weight basis (*).

²See 9VAC25-32-560 B 3.

³Only used as a supplemental fertilizer for side-dressing corn.

⁴Liquid biosolids derived from biosolids use facilities.

⁵Available P shall be analyzed using one of the following methods: Mehlich I; Mehlich III; or Bray.

⁶Extractable sodium shall be analyzed only where biosolids known to be high in sodium will be land applied.

B. The department reserves the right to require the permit holder to conduct additional soil monitoring including, but not limited to, additional parameters, based on site-specific history or conditions.

C. Samples shall be collected in accordance with § 10.1-104.2 of the Code of Virginia.

9VAC25-31-545. Crop monitoring.

A. Vegetation monitoring may be required by the board upon recommendation of the department once every three years on sites with frequent applications of biosolids applied at or greater than agronomic rates and when 400 pounds per acre or more of available phosphorus had been applied to the soil. Analyses of plant tissue should be conducted at the proper growth stage as recommended by the Virginia Department of Agriculture and Consumer Services, the Virginia Department of Conservation and Recreation, or the Virginia Cooperative Extension Service.

B. Routine analyses include:

1. Nitrate-nitrogen;
2. Phosphorus;
3. Potassium;
4. Calcium;
5. Manganese;
6. Magnesium;
7. Iron;
8. Copper; and
9. Zinc.

C. Analysis for additional parameters may be necessary as determined on a case-by-case basis.

D. Results shall be reported annually to the department.

9VAC25-31-547. Ground water monitoring.

A. Monitoring wells may be required by the department for land treatment sites, sludge lagoons, biosolids land application sites, or biosolids storage facilities to monitor ground water quality.

B. If ground water monitoring is required, a ground water monitoring plan shall be submitted to the department for approval that includes at a minimum:

1. Geologic and hydrologic conditions at the site;
2. Monitoring well design, placement, and construction;
3. Sampling frequency;
4. Sampling procedures, including quality assurance and quality control; and
5. Collection of background samples.

9VAC25-31-550. Management practices.

A. All biosolids land application activities shall comply with the operational requirements of Part IX (9VAC25-32-303 et seq.) of 9VAC25-32 (Biosolids Program of the VPA Permit Regulation).

~~A. B.~~ Bulk ~~sewage-sludge~~ biosolids shall not be applied to the land if it is likely to adversely affect a threatened or endangered species listed in 9VAC25-260-320 or § 4 of the Endangered Species Act (16 USC § 1533) or if the land application is likely to adversely affect its designated critical habitat.

~~B. C.~~ Bulk ~~sewage-sludge~~ biosolids shall not be applied to agricultural land, forest, a public contact site, or a reclamation site that is flooded, frozen, or snow-covered so that the bulk

~~sewage sludge biosolids~~ enters a wetland or other surface waters except as provided in a VPDES permit or a permit issued pursuant to § 404 of the CWA.

~~C. D.~~ Bulk ~~sewage sludge biosolids~~ shall not be applied to agricultural land, forest, or a reclamation site that is 10 meters or less from surface waters, unless otherwise specified by the board.

~~D. E.~~ Bulk ~~sewage sludge biosolids~~ shall be applied to agricultural land, forest, a public contact site, or a reclamation site at a whole sludge application rate that is equal to or less than the agronomic rate for the bulk ~~sewage sludge biosolids~~, unless, in the case of a reclamation site, otherwise specified by the board.

~~E. F.~~ Either a label shall be affixed to the bag or other container in which ~~sewage sludge biosolids~~ that is sold or given away for application to the land, or an information sheet shall be provided to the person who receives ~~sewage sludge biosolids~~ sold or given away in an other container for application to the land. The label or information sheet shall contain the following information:

1. The name and address of the person who prepared the ~~sewage sludge biosolids~~ that is sold or given away in a bag or other container for application to the land;
2. A statement that application of the ~~sewage sludge biosolids~~ to the land is prohibited except in accordance with the instructions on the label or information sheet; and
3. The annual whole sludge application rate for the ~~sewage sludge biosolids~~ that does not cause any of the annual pollutant loading rates in Table 4 of 9VAC25-31-540 to be exceeded.

9VAC25-31-560. Operational standards, pathogens, and vector attraction reduction.

A. Pathogens - ~~sewage sludge biosolids~~.

1. The Class A pathogen requirements in 9VAC25-31-710 A or the Class B pathogen requirements and site restrictions in 9VAC25-31-720 B shall be met when bulk ~~sewage sludge biosolids~~ is applied to agricultural land, forest, a public contact site, or a reclamation site.
2. The Class A pathogen requirements in 9VAC25-31-710 A shall be met when bulk ~~sewage sludge biosolids~~ is applied to a lawn or a home garden.
3. The Class A pathogen requirements in 9VAC25-31-710 A shall be met when ~~sewage sludge biosolids~~ is sold or given away in a bag or other container for application to the land.

B. Pathogens - domestic septage. The requirements in either 9VAC25-31-710 C 1 or C 2 shall be met when domestic septage is applied to agricultural land, forest, or a reclamation site.

C. Vector attraction reduction - ~~sewage sludge biosolids~~.

1. One of the vector attraction reduction requirements in 9VAC25-31-720 B 1 through B 10 shall be met when bulk ~~sewage sludge biosolids~~ is applied to agricultural land, forest, a public contact site, or a reclamation site.
2. One of the vector attraction reduction requirements in 9VAC25-31-720 B 1 through B 8 shall be met when bulk ~~sewage sludge biosolids~~ is applied to a lawn or a home garden.
3. One of the vector attraction reduction requirements in 9VAC25-31-720 B 1 through B 8 shall be met when ~~sewage sludge biosolids~~ is sold or given away in a bag or other container for application to the land.

D. Vector attraction reduction - domestic septage. The vector attraction reduction requirements in 9VAC25-31-720 B 9, B 10, or B 12 shall be met when domestic septage is applied to agricultural land, forest, or a reclamation site.

9VAC25-31-570. Frequency of monitoring.

A. ~~Sewage sludge Biosolids~~.

1. The frequency of monitoring for the pollutants listed in Tables 1 through 4 of 9VAC25-31-540; the pathogen density requirements in 9VAC25-31-710 A and B 2 through B 4; and the vector attraction reduction requirements in 9VAC25-31-720 B 1 through B 4, B 7 and B 8 shall be the frequency in Table 1 of this section.

TABLE 1
FREQUENCY OF MONITORING--LAND APPLICATION

| Amount of sewage sludge biosolids * (metric tons per 365-day period) | Frequency |
|--|---------------------------------------|
| Greater than zero but less than 290 | once per year |
| Equal to or greater than 290 but less than 1,500 | once per quarter (four times a year) |
| Equal to or greater than 1,500 but less than 15,000 | once per 60 days (six times per year) |
| Equal to or greater than 15,000 | once per month (12 times per year) |

*Either the amount of bulk ~~sewage sludge biosolids~~ applied to the land or the amount of ~~sewage sludge biosolids~~ prepared for sale or give-away in a bag or other container for application to the land (dry weight basis).

2. After the ~~sewage sludge biosolids~~ has been monitored for two years at the frequency in Table 1 of this section, the board may reduce the frequency of monitoring for

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pollutant concentrations and for the pathogen density requirements in 9VAC25-31-710 A 5 b and c.

B. Domestic septage. If either the pathogen requirements in 9VAC25-31-710 C 2 or the vector attraction reduction requirements in 9VAC25-31-720 B 12 are met when domestic septage is applied to agricultural land, forest, or a reclamation site, each container of domestic septage applied to the land shall be monitored for compliance with those requirements.

9VAC25-31-580. Recordkeeping.

A. Sewage sludge Biosolids.

1. The person who prepares the ~~sewage sludge~~ biosolids in 9VAC25-31-510 B 1 or E shall develop the following information and shall retain the information for five years:

a. The concentration of each pollutant listed in Table 3 of 9VAC25-31-540 in the ~~sewage sludge~~ biosolids;

b. The following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the Class A pathogen requirements in 9VAC25-31-710 A and the vector attraction reduction requirement in (insert one of the vector attraction reduction requirements in 9VAC25-31-720 B 1 through B 8) was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.";

c. A description of how the Class A pathogen requirements in 9VAC25-31-710 A are met; and

d. A description of how one of the vector attraction reduction requirements in 9VAC25-31-720 B 1 through B 8 is met.

2. The person who derives the material in 9VAC25-31-510 C 1 or in 9VAC25-31-510 F shall develop the following information and shall retain the information for five years:

a. The concentration of each pollutant listed in Table 3 of 9VAC25-31-540 in the material;

b. The following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the Class A pathogen requirements in 9VAC25-31-710 A and the vector attraction reduction requirement in (insert one of the vector attraction reduction requirements in 9VAC25-31-720 B 1 through B 8) was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that

there are significant penalties for false certification including the possibility of fine and imprisonment.";

c. A description of how the Class A pathogen requirements in 9VAC25-31-710 A are met; and

d. A description of how one of the vector attraction reduction requirements in 9VAC25-31-720 B 1 through B 8 is met.

3. If the pollutant concentrations in 9VAC25-31-540 B 3, the Class A pathogen requirements in 9VAC25-31-710 A, and the vector attraction reduction requirements in either 9VAC25-31-720 B 9 or B 10 are met when bulk ~~sewage sludge~~ biosolids is applied to agricultural land, forest, a public contact site, or a reclamation site:

a. The person who prepares the bulk ~~sewage sludge~~ biosolids shall develop the following information and shall retain the information for five years:

(1) The concentration of each pollutant listed in Table 3 of 9VAC25-31-540 in the bulk ~~sewage sludge~~ biosolids;

(2) The following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the pathogen requirements in 9VAC25-31-710 A was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."; and

(3) A description of how the pathogen requirements in 9VAC25-31-710 A are met.

b. The person who applies the bulk ~~sewage sludge~~ biosolids shall develop the following information and shall retain the information for five years:

(1) The following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the management practices in 9VAC25-31-550 and the vector attraction reduction requirement in (insert either 9VAC25-31-720 B 9 or B 10) was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including fine and imprisonment.";

(2) A description of how the management practices in 9VAC25-31-550 are met for each site on which bulk ~~sewage sludge~~ biosolids is applied; and

(3) A description of how the vector attraction reduction requirements in either 9VAC25-31-720 B 9 or B 10 are

met for each site on which bulk ~~sewage sludge~~ biosolids is applied.

4. If the pollutant concentrations in 9VAC25-31-540 B 3 and the Class B pathogen requirements in 9VAC25-31-710 B are met when bulk ~~sewage sludge~~ biosolids is applied to agricultural land, forest, a public contact site, or a reclamation site:

a. The person who prepares the bulk ~~sewage sludge~~ biosolids shall develop the following information and shall retain the information for five years:

(1) The concentration of each pollutant listed in Table 3 of 9VAC25-31-540 in the bulk ~~sewage sludge~~ biosolids;

(2) The following certification statement:

"I certify under, penalty of law, that the information that will be used to determine compliance with the Class B pathogen requirements in 9VAC25-31-710 B and the vector attraction reduction requirement in (insert one of the vector attraction reduction requirements in 9VAC25-31-720 B 1 through B 8, if one of those requirements is met) was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.";

(3) A description of how the Class B pathogen requirements in 9VAC25-31-710 B are met; and

(4) When one of the vector attraction reduction requirements in 9VAC25-31-720 B 1 through B 8 is met, a description of how the vector attraction reduction requirement is met.

b. The person who applies the bulk ~~sewage sludge~~ biosolids shall develop the following information and shall retain the information for five years:

(1) The following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the management practices in 9VAC25-31-550, the site restrictions in 9VAC25-31-710 B 5, and the vector attraction reduction requirements in (insert either 9VAC25-31-720 B 9 or B 10, if one of those requirements is met) was prepared for each site on which bulk ~~sewage sludge~~ biosolids is applied under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.";

(2) A description of how the management practices in 9VAC25-31-550 are met for each site on which bulk ~~sewage sludge~~ biosolids is applied;

(3) A description of how the site restrictions in 9VAC25-31-710 B 5 are met for each site on which bulk ~~sewage sludge~~ biosolids is applied;

(4) When the vector attraction reduction requirement in either 9VAC25-31-720 B 9 or B 10 is met, a description of how the vector attraction reduction requirement is met; and

(5) The date bulk ~~sewage sludge~~ biosolids is applied to each site.

5. If the requirements in 9VAC25-31-540 A 2 a are met when bulk ~~sewage sludge~~ biosolids is applied to agricultural land, forest, a public contact site, or a reclamation site:

a. The person who prepares the bulk ~~sewage sludge~~ biosolids shall develop the following information and shall retain the information for five years:

(1) The concentration of each pollutant listed in Table 1 of 9VAC25-31-540 in the bulk ~~sewage sludge~~ biosolids;

(2) The following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the pathogen requirements in (insert either 9VAC25-31-710 A or B and the vector attraction reduction requirement in insert one of the vector attraction reduction requirements in 9VAC25-31-720 B 1 through B 8, if one of those requirements is met) was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.";

(3) A description of how the pathogen requirements in either 9VAC25-31-710 A or B are met; and

(4) When one of the vector attraction requirements in 9VAC25-31-720 B 1 through B 8 is met, a description of how the vector attraction requirement is met.

b. The person who applies the bulk ~~sewage sludge~~ biosolids shall develop the following information, retain the information in 9VAC25-31-580 A 5 b (1) through b (7) indefinitely, and retain the information in 9VAC25-31-580 A 5 b (8) through b (13) for five years:

(1) The location, by either street address or latitude and longitude, of each site on which bulk ~~sewage sludge~~ biosolids is applied;

(2) The number of hectares in each site on which bulk ~~sewage sludge~~ biosolids is applied;

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(3) The date bulk ~~sewage sludge~~ biosolids is applied to each site;

(4) The cumulative amount of each pollutant (i.e., kilograms) listed in Table 2 of 9VAC25-31-540 in the bulk ~~sewage sludge~~ biosolids applied to each site, including the amount in 9VAC25-31-530 E 2 c;

(5) The amount of ~~sewage sludge~~ biosolids (i.e., metric tons) applied to each site;

(6) The following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the requirements to obtain information in 9VAC25-31-530 E 2 was prepared for each site on which bulk ~~sewage sludge~~ biosolids is applied under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including fine and imprisonment.";

(7) A description of how the requirements to obtain information in 9VAC25-31-530 E 2 are met;

(8) The following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the management practices in 9VAC25-31-550 was prepared for each site on which bulk ~~sewage sludge~~ biosolids is applied under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including fine and imprisonment.";

(9) A description of how the management practices in 9VAC25-31-550 are met for each site on which bulk ~~sewage sludge~~ biosolids is applied;

(10) The following certification statement when the bulk ~~sewage sludge~~ biosolids meets the Class B pathogen requirements in 9VAC25-31-710 B:

"I certify, under penalty of law, that the information that will be used to determine compliance with the site restrictions in 9VAC25-31-710 B 5 was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including fine and imprisonment.";

(11) A description of how the site restrictions in 9VAC25-31-710 B 5 are met for each site on which Class B bulk ~~sewage sludge~~ biosolids is applied;

(12) The following certification statement when the vector attraction reduction requirement in either 9VAC25-31-720 B 9 or B 10 is met:

"I certify, under penalty of law, that the information that will be used to determine compliance with the vector attraction reduction requirement in (insert either 9VAC25-31-720 B 9 or B 10) was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."; and

(13) If the vector attraction reduction requirements in either 9VAC25-31-720 B 9 or B 10 are met, a description of how the requirements are met.

6. If the requirements in 9VAC25-31-540 A 4 b are met when ~~sewage sludge~~ biosolids is sold or given away in a bag or other container for application to the land, the person who prepares the ~~sewage sludge~~ biosolids that is sold or given away in a bag or other container shall develop the following information and shall retain the information for five years:

a. The annual whole sludge application rate for the ~~sewage sludge~~ biosolids that does not cause the annual pollutant loading rates in Table 4 of 9VAC25-31-540 to be exceeded;

b. The concentration of each pollutant listed in Table 4 of 9VAC25-31-540 in the ~~sewage sludge~~ biosolids;

c. The following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the management practice in 9VAC25-31-550 E, the Class A pathogen requirement in 9VAC25-31-710 A, and the vector attraction reduction requirement in (insert one of the vector attraction reduction requirements in 9VAC25-31-720 B 1 through B 8) was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.";

d. A description of how the Class A pathogen requirements in 9VAC25-31-710 A are met; and

e. A description of how one of the vector attraction requirements in 9VAC25-31-720 B 1 through B 8 is met.

B. Domestic septage. When domestic septage is applied to agricultural land, forest, or a reclamation site, the person who applies the domestic septage shall develop the following information and shall retain the information for five years:

1. The location, by either street address or latitude and longitude, of each site on which domestic septage is applied;
2. The number of acres in each site on which domestic septage is applied;
3. The date domestic septage is applied to each site;
4. The nitrogen requirement for the crop or vegetation grown on each site during a 365-day period;
5. The rate, in gallons per acre per 365-day period, at which domestic septage is applied to each site;
6. The following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the pathogen requirements in (insert either 9VAC25-31-710 C 1 or 2) and the vector attraction reduction requirements in (insert 9VAC25-31-720 B 9, 10, or 12) was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.";

7. A description of how the pathogen requirements in either 9VAC25-31-710 C 1 or 2 are met; and
8. A description of how the vector attraction reduction requirements in 9VAC25-31-720 B 9, 10, or 12 are met.

9VAC25-31-590. Reporting.

A. Class I sludge management facilities, POTWs with a design flow rate equal to or greater than one million gallons per day, and POTWs that serve 10,000 people or more shall submit the following information to the department:

1. The information in 9VAC25-31-580 A, except the information in 9VAC25-31-580 A 3 b, 4 b and 5 b, for the appropriate requirements on February 19 of each year for the previous calendar year's activity; and
2. The information in 9VAC25-31-580 A 5 b (1) through (7) on February 19 of each year for the previous calendar year's activity when 90% or more of any of the cumulative pollutant loading rates in Table 2 of 9VAC25-31-540 is reached at a land application site.

B. An activity report shall be submitted (electronically or postmarked) to the department by the 15th of the month unless another date is specified in the permit in accordance with 9VAC25-32-80 I 4, following any month in which land application occurs. The report shall indicate those sites where land application activities took place during the previous month.

C. Biosolids application rates shall be calculated using results from sampling and analysis completed during the most

recent 12 months of monitoring. For proposed treatment works, rates may be initially based on the biosolids characteristic produced by similar generating facilities.

D. Records shall be maintained documenting the required treatment and quality characteristics and the maximum allowable land application loading rates established for biosolids use. In addition, operational monitoring results shall verify that required sludge treatment has achieved the specified levels of pathogen control and vector attraction reductions (9VAC25-31-710 and 9VAC25-31-720). Adequate records of biosolids composition, treatment classification, and biosolids application rates and methods of application for each site shall be maintained by the generator and owner.

E. The generator and owner shall maintain the records for a minimum period of five years. Sites receiving frequent applications of biosolids that meet or exceed maximum cumulative constituent loadings and dedicated disposal sites should be properly referenced for future land transactions (Sludge Disposal Site Dedication Form).

Article 4

Pathogens and Vector Attraction Reduction

9VAC25-31-690. Scope.

A. This article contains the requirements for ~~a sewage sludge~~ biosolids to be classified either Class A or Class B with respect to pathogens.

B. This article contains the site restrictions for land on which a Class B ~~sewage sludge~~ biosolids is applied.

C. This article contains the pathogen requirements for domestic septage applied to agricultural land, forest, or a reclamation site.

D. This article contains alternative vector attraction reduction requirements for ~~sewage sludge~~ biosolids that is applied to the land or sewage sludge that is placed on a surface disposal site.

9VAC25-31-710. Pathogens.

A. ~~Sewage sludge~~ Biosolids - Class A.

1. The requirement in subdivision 2 of this subsection and the requirements in either subdivisions 3, 4, 5, 6, 7, or 8 of this subsection shall be met for a ~~sewage sludge~~ biosolids to be classified Class A with respect to pathogens.

2. The Class A pathogen requirements in subdivisions 3 through 8 of this subsection shall be met either prior to meeting or at the same time the vector attraction reduction requirements in 9VAC25-31-720, except the vector attraction reduction requirements in 9VAC25-31-720 B 6 through B 8, are met.

3. Class A - Alternative 1.

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a. Either the density of fecal coliform in the ~~sewage sludge biosolids~~ shall be less than 1,000 Most Probable Number per gram of total solids (dry weight basis), or the density of Salmonella sp. bacteria in the ~~sewage sludge biosolids~~ shall be less than three Most Probable Number per four grams of total solids (dry weight basis) at the time the ~~sewage sludge biosolids~~ is used or disposed; at the time the ~~sewage sludge biosolids~~ is prepared for sale or give away in a bag or other container for application to the land; or at the time the ~~sewage sludge biosolids~~ or material derived from ~~sewage sludge biosolids~~ is prepared to meet the requirements in 9VAC25-31-510 B, C, E, or F.

b. The temperature of the sewage sludge that is used or disposed shall be maintained at a specific value for a period of time.

(1) When the percent solids of the sewage sludge is 7.0% or higher, the temperature of the sewage sludge shall be 50°C or higher; the time period shall be 20 minutes or longer; and the temperature and time period shall be determined using ~~equation (3)~~ equation (1), except when small particles of sewage sludge are heated by either warmed gases or an immiscible liquid.

$$D = \frac{131,700,000}{10^{0.1400t}} \quad (3)$$

Where,

~~D = time in days.~~

~~t = temperature in degrees Celsius.~~

| |
|---|
| <u>EQUATION (1)</u> |
| $D = 131,700,000/10^{0.1400t}$ |
| <u>D = time in days</u> |
| <u>t = temperature in degrees Celsius</u> |

(2) When the percent solids of the sewage sludge is 7.0% or higher and small particles of sewage sludge are heated by either warmed gases or an immiscible liquid, the temperature of the sewage sludge shall be 50°C or higher; the time period shall be 15 seconds or longer; and the temperature and time period shall be determined using ~~equation (3)~~ equation (1).

(3) When the percent solids of the sewage sludge is less than 7.0% and the time period is at least 15 seconds, but less than 30 minutes, the temperature and time period shall be determined using ~~equation (3)~~ equation (1).

(4) When the percent solids of the sewage sludge is less than 7.0%; the temperature of the sewage sludge is 50°C or higher; and the time period is 30 minutes or longer, the temperature and time period shall be determined using ~~equation (4)~~ equation (2).

$$D = \frac{50,070,000}{10^{0.1400t}} \quad (4)$$

Where,

~~D = time in days.~~

~~t = temperature in degrees Celsius.~~

| |
|---|
| <u>EQUATION (2)</u> |
| $D = 50,070,000/10^{0.1400t}$ |
| <u>D = time in days</u> |
| <u>t = temperature in degrees Celsius</u> |

4. Class A - Alternative 2.

a. Either the density of fecal coliform in the ~~sewage sludge biosolids~~ shall be less than 1,000 Most Probable Number per gram of total solids (dry weight basis), or the density of Salmonella sp. bacteria in the ~~sewage sludge biosolids~~ shall be less than three Most Probable Number per four grams of total solids (dry weight basis) at the time the ~~sewage sludge biosolids~~ is used or disposed; at the time the ~~sewage sludge biosolids~~ is prepared for sale or give away in a bag or other container for application to the land; or at the time the ~~sewage sludge biosolids~~ or material derived from ~~sewage sludge biosolids~~ is prepared to meet the requirements in 9VAC25-31-510 B, C, E, or F.

b. (1) The pH of the sewage sludge that is used or disposed shall be raised to above 12 and shall remain above 12 for 72 hours.

(2) The temperature of the sewage sludge shall be above 52°C for 12 hours or longer during the period that the pH of the sewage sludge is above 12.

(3) At the end of the 72-hour period during which the pH of the sewage sludge is above 12, the sewage sludge shall be air dried to achieve a percent solids in the sewage sludge greater than 50%.

5. Class A - Alternative 3.

a. Either the density of fecal coliform in the ~~sewage sludge biosolids~~ shall be less than 1,000 Most Probable Number per gram of total solids (dry weight basis), or the density of Salmonella sp. bacteria in ~~sewage sludge biosolids~~ shall be less than three Most Probable Number per four grams of total solids (dry weight basis) at the time the ~~sewage sludge biosolids~~ is used or disposed; at the time the ~~sewage sludge biosolids~~ is prepared for sale or give away in a bag or other container for application to the land; or at the time the ~~sewage sludge biosolids~~ or material derived from ~~sewage sludge biosolids~~ is prepared to meet the requirements in 9VAC25-31-510 B, C, E, or F.

b. (1) The sewage sludge shall be analyzed prior to pathogen treatment to determine whether the sewage sludge contains enteric viruses.

(2) When the density of enteric viruses in the sewage sludge prior to pathogen treatment is less than one Plaque-forming Unit per four grams of total solids (dry weight basis), the sewage sludge is Class A with respect to enteric viruses until the next monitoring episode for the sewage sludge.

(3) When the density of enteric viruses in the sewage sludge prior to pathogen treatment is equal to or greater than one Plaque-forming Unit per four grams of total solids (dry weight basis), the sewage sludge is Class A with respect to enteric viruses when the density of enteric viruses in the sewage sludge after pathogen treatment is less than one Plaque-forming Unit per four grams of total solids (dry weight basis) and when the values or ranges of values for the operating parameters for the pathogen treatment process that produces the ~~sewage sludge~~ biosolids that meets the enteric virus density requirement are documented.

(4) After the enteric virus reduction in subdivision 5 b (3) of this subsection is demonstrated for the pathogen treatment process, the ~~sewage sludge~~ biosolids continues to be Class A with respect to enteric viruses when the values for the pathogen treatment process operating parameters are consistent with the values or ranges of values documented in subdivision 5 b (3) of this subsection.

c. (1) The sewage sludge shall be analyzed prior to pathogen treatment to determine whether the sewage sludge contains viable helminth ova.

(2) When the density of viable helminth ova in the sewage sludge prior to pathogen treatment is less than one per four grams of total solids (dry weight basis), the sewage sludge is Class A with respect to viable helminth ova until the next monitoring episode for the sewage sludge.

(3) When the density of viable helminth ova in the sewage sludge prior to pathogen treatment is equal to or greater than one per four grams of total solids (dry weight basis), the sewage sludge is Class A with respect to viable helminth ova when the density of viable helminth ova in the sewage sludge after pathogen treatment is less than one per four grams of total solids (dry weight basis) and when the values or ranges of values for the operating parameters for the pathogen treatment process that produces the sewage sludge that meets the viable helminth ova density requirement are documented.

(4) After the viable helminth ova reduction in subdivision 5 c (3) of this subsection is demonstrated for the

pathogen treatment process, the sewage sludge continues to be Class A with respect to viable helminth ova when the values for the pathogen treatment process operating parameters are consistent with the values or ranges of values documented in subdivision 5 c (3) of this subsection.

6. Class A - Alternative 4.

a. Either the density of fecal coliform in the ~~sewage sludge~~ biosolids shall be less than 1,000 Most Probable Number per gram of total solids (dry weight basis), or the density of Salmonella sp. bacteria in the ~~sewage sludge~~ biosolids shall be less than three Most Probable Number per four grams of total solids (dry weight basis) at the time the ~~sewage sludge~~ biosolids is used ~~or disposed~~; at the time the ~~sewage sludge~~ biosolids is prepared for sale or give away in a bag or other container for application to the land; or at the time the ~~sewage sludge~~ biosolids or material derived from ~~sewage sludge~~ biosolids is prepared to meet the requirements in 9VAC25-31-510 B, C, E, or F.

b. The density of enteric viruses in the ~~sewage sludge~~ biosolids shall be less than one Plaque-forming Unit per four grams of total solids (dry weight basis) at the time the ~~sewage sludge~~ biosolids is used ~~or disposed~~; at the time the ~~sewage sludge~~ biosolids is prepared for sale or give away in a bag or other container for application to the land; or at the time the ~~sewage sludge~~ biosolids or material derived from ~~sewage sludge~~ biosolids is prepared to meet the requirements in 9VAC25-31-510 B, C, E, or F, unless otherwise specified by the board.

c. The density of viable helminth ova in the ~~sewage sludge~~ biosolids shall be less than one per four grams of total solids (dry weight basis) at the time the ~~sewage sludge~~ biosolids is used ~~or disposed~~; at the time the ~~sewage sludge~~ biosolids is prepared for sale or give away in a bag or other container for application to the land; or at the time the ~~sewage sludge~~ biosolids or material derived from ~~sewage sludge~~ biosolids is prepared to meet the requirements in 9VAC25-31-510 B, C, E, or F unless otherwise specified by the board.

7. Class A - Alternative 5.

a. Either the density of fecal coliform in the ~~sewage sludge~~ biosolids shall be less than 1,000 Most Probable Number per gram of total solids (dry weight basis), or the density of Salmonella, sp. bacteria in the ~~sewage sludge~~ biosolids shall be less than three Most Probable Number per four grams of total solids (dry weight basis) at the time the ~~sewage sludge~~ biosolids is used ~~or disposed~~; at the time the ~~sewage sludge~~ biosolids is prepared for sale or give away in a bag or other container for application to the land; or at the time the ~~sewage sludge~~ biosolids or material derived from ~~sewage sludge~~ biosolids is

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prepared to meet the requirements in 9VAC25-31-510 B, C, E, or F.

b. ~~Sewage sludge~~ Biosolids that is used or disposed shall be treated in one of the processes to further reduce pathogens described in ~~9VAC25-31-710 E subsection E of this section.~~

8. Class A - Alternative 6.

a. Either the density of fecal coliform in the ~~sewage sludge~~ biosolids shall be less than 1,000 Most Probable Number per gram of total solids (dry weight basis), or the density of Salmonella, sp. bacteria in the ~~sewage sludge~~ biosolids shall be less than three Most Probable Number per four grams of total solids (dry weight basis) at the time the ~~sewage sludge~~ biosolids is used or disposed; at the time the ~~sewage sludge~~ biosolids is prepared for sale or give away in a bag or other container for application to the land; or at the time the ~~sewage sludge~~ biosolids or material derived from ~~sewage sludge~~ biosolids is prepared to meet the requirements in 9VAC25-31-510 B, C, E, or F.

b. ~~Sewage sludge~~ Biosolids that is used or disposed shall be treated in a process that is equivalent to a process to further reduce pathogens, as determined by the board.

B. ~~Sewage sludge~~ Biosolids - Class B.

1. ~~a.~~ The requirements in either ~~9VAC25-31-710 B 2, B 3, or B 4~~ subdivision 3, 4, or 5 of this subsection shall be met for a ~~sewage sludge~~ biosolids to be classified Class B with respect to pathogens.

~~b.~~ 2. The site restrictions in ~~9VAC25-31-710 B 5~~ subdivision 6 of this subsection shall be met when ~~sewage sludge~~ biosolids that meets the Class B pathogen requirements in ~~9VAC25-31-710 B 2, B 3, or B 4~~ subdivision 3, 4, or 5 of this subsection is applied to the land.

~~2.~~ 3. Class B - Alternative 1.

a. Seven representative samples of the ~~sewage sludge~~ biosolids that is used or disposed shall be collected.

b. The geometric mean of the density of fecal coliform in the samples collected in subdivision ~~2~~ 3 a of this subsection shall be less than either 2,000,000 Most Probable Number per gram of total solids (dry weight basis) or 2,000,000 Colony Forming Units per gram of total solids (dry weight basis).

~~3.~~ 4. Class B - Alternative 2. ~~Sewage sludge~~ Biosolids that is used or disposed shall be treated in one of the processes to significantly reduce pathogens described in ~~9VAC25-31-710 D~~ subsection D of this section.

4. 5. Class B - Alternative 3. ~~Sewage sludge~~ Biosolids that is used or disposed shall be treated in a process that is

equivalent to a process to significantly reduce pathogens, as determined by the board.

~~5.~~ 6. Site restrictions.

a. Food crops with harvested parts that touch the ~~sewage sludge/soil mixture~~ biosolids/soil mixture and are totally above the land surface shall not be harvested for 14 months after application of ~~sewage sludge~~ biosolids.

b. Food crops with harvested parts below the surface of the land shall not be harvested for 20 months after application of ~~sewage sludge~~ biosolids when the ~~sewage sludge~~ biosolids remains on the land surface for four months or longer prior to incorporation into the soil.

c. Food crops with harvested parts below the surface of the land shall not be harvested for 38 months after application of ~~sewage sludge~~ biosolids when the ~~sewage sludge~~ biosolids remains on the land surface for less than four months prior to incorporation into the soil.

d. Food crops, feed crops, and fiber crops shall not be harvested for 30 days after application of ~~sewage sludge~~ biosolids.

e. Animals shall not be grazed on the land for 30 days after application of ~~sewage sludge~~ biosolids.

f. Turf grown on land where ~~sewage sludge~~ biosolids is applied shall not be harvested for one year after application of the ~~sewage sludge~~ biosolids when the harvested turf is placed on either land with a high potential for public exposure or a lawn, unless otherwise specified by the board.

g. Public access to land with a high potential for public exposure shall be restricted for one year after application of ~~sewage sludge~~ biosolids.

h. Public access to land with a low potential for public exposure shall be restricted for 30 days after application of ~~sewage sludge~~ biosolids.

C. Domestic septage.

1. The site restrictions in subdivision B ~~5~~ 6 of this section shall be met when domestic septage is applied to agricultural land, forest, or a reclamation site; or

2. The pH of domestic septage applied to agricultural land, forest, or a reclamation site shall be raised to 12 or higher by alkaline addition and, without the addition of more alkaline material, shall remain at 12 or higher for 30 minutes and the site restrictions in subdivisions B ~~5~~ 6 a through B ~~5~~ 6 d of this section shall be met.

D. Processes to significantly reduce pathogens (PSRP).

1. Aerobic digestion. Sewage sludge is agitated with air or oxygen to maintain aerobic conditions for a specific mean cell residence time at a specific temperature. Values for the

mean cell residence time and temperature shall be between 40 days at 20°C and 60 days at 15°C.

2. Air drying. Sewage sludge is dried on sand beds or on paved or unpaved basins. The sewage sludge dries for a minimum of three months. During two of the three months, the ambient average daily temperature is above 0°C.

3. Anaerobic digestion. Sewage sludge is treated in the absence of air for a specific mean cell residence time at a specific temperature. Values for the mean cell residence time and temperature shall be between 15 days at 35°C to 55°C and 60 days at 20°C.

4. Composting. Using either the within-vessel, static aerated pile, or windrow composting methods, the temperature of the sewage sludge is raised to 40°C or higher and remains at 40°C or higher for five days. For four hours during the five days, the temperature in the compost pile exceeds 55°C.

5. Lime stabilization. Sufficient lime is added to the sewage sludge to raise the pH of the sewage sludge to 12 after two hours of contact.

E. Processes to further reduce pathogens (PFRP).

1. Composting. Using either the within-vessel composting method or the static aerated pile composting method, the temperature of the sewage sludge is maintained at 55°C or higher for three days. Using the windrow composting method, the temperature of the sewage sludge is maintained at 55°C or higher for 15 days or longer. During the period when the compost is maintained at 55°C or higher, there shall be a minimum of five turnings of the windrow.

2. Heat drying. Sewage sludge is dried by direct or indirect contact with hot gases to reduce the moisture content of the sewage sludge to 10.0% or lower. Either the temperature of the sewage sludge particles exceeds 80°C or the wet bulb temperature of the gas in contact with the sewage sludge as the sewage sludge leaves the dryer exceeds 80°C.

3. Heat treatment. Liquid sewage sludge is heated to a temperature of 180°C or higher for 30 minutes.

4. Thermophilic aerobic digestion. Liquid sewage sludge is agitated with air or oxygen to maintain aerobic conditions and the mean cell residence time of the sewage sludge is 10 days at 55°C to 60°C.

5. Beta ray irradiation. Sewage sludge is irradiated with beta rays from an accelerator at dosages of at least 1.0 megarad at room temperature (ca. 20°C).

6. Gamma ray irradiation. Sewage sludge is irradiated with gamma rays from certain isotopes, such as Cobalt 60 and Cesium 137, at dosages of at least 1.0 megarad at room temperature (ca. 20°C).

7. Pasteurization. The temperature of the sewage sludge is maintained at 70°C or higher for 30 minutes or longer.

9VAC25-31-720. Vector attraction reduction.

A. Vector attraction reduction requirements:

~~A.~~ 1. One of the vector attraction reduction requirements in subdivisions B 1 through B 10 of this section shall be met when bulk ~~sewage sludge~~ biosolids is applied to agricultural land, forest, a public contact site, or a reclamation site.

2. One of the vector attraction reduction requirements in subdivisions B 1 through B 8 of this section shall be met when bulk ~~sewage sludge~~ biosolids is applied to a lawn or a home garden.

3. One of the vector attraction reduction requirements in subdivisions B 1 through B 8 of this section shall be met when ~~sewage sludge~~ biosolids is sold or given away in a bag or other container for application to the land.

4. One of the vector attraction reduction requirements in subdivisions B 1 through B 11 of this section shall be met when sewage sludge (other than domestic septage) is placed on an active sewage sludge unit.

5. One of the vector attraction reduction requirements in subdivision B 9, B 10, or B 12 of this section shall be met when domestic septage is applied to agricultural land, forest, or a reclamation site and one of the vector attraction reduction requirements in subdivisions B 9 through B 12 of this section shall be met when domestic septage is placed on an active sewage sludge unit.

B. Vector attraction reduction options:

~~B.~~ 1. The mass of volatile solids in the sewage sludge shall be reduced by a minimum of 38%, calculated according to the method in 9VAC25-31-490 B 8.

2. When the 38% volatile solids reduction requirement in subdivision 1 of this subsection cannot be met for an anaerobically digested sewage sludge, vector attraction reduction can be demonstrated by digesting a portion of the previously digested sewage sludge anaerobically in the laboratory in a bench-scale unit for 40 additional days at a temperature between 30°C and 37°C. When at the end of the 40 days, the volatile solids in the sewage sludge at the beginning of that period is reduced by less than 17%, vector attraction reduction is achieved.

3. When the 38% volatile solids reduction requirement in subdivision 1 of this section cannot be met for an aerobically digested sewage sludge, vector attraction reduction can be demonstrated by digesting a portion of the previously digested sewage sludge that has a percent solids of 2.0% or less aerobically in the laboratory in a bench-scale unit for 30 additional days at 20°C. When at the end of the 30 days, the volatile solids in the sewage sludge at

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the beginning of that period is reduced by less than 15%, vector attraction reduction is achieved.

4. The specific oxygen uptake rate (SOUR) for sewage sludge treated in an aerobic process shall be equal to or less than 1.5 milligrams of oxygen per hour per gram of total solids (dry weight basis) at a temperature of 20°C.

5. Sewage sludge shall be treated in an aerobic process for 14 days or longer. During that time, the temperature of the sewage sludge shall be higher than 40°C and the average temperature of the sewage sludge shall be higher than 45°C.

6. The pH of sewage sludge shall be raised to 12 or higher by alkaline addition and, without the addition of more alkaline material, shall remain at 12 or higher for two hours and then at 11.5 or higher for an additional 22 hours.

7. The percent solids of sewage sludge that does not contain unstabilized solids generated in a primary wastewater treatment process shall be equal to or greater than 75% based on the moisture content and total solids prior to mixing with other materials.

8. The percent solids of sewage sludge that contains unstabilized solids generated in a primary wastewater treatment process shall be equal to or greater than 90% based on the moisture content and total solids prior to mixing with other materials.

9. Sewage sludge injection requirements:

~~9-~~ a. Sewage sludge shall be injected below the surface of the land.

b. No significant amount of the sewage sludge shall be present on the land surface within one hour after the sewage sludge is injected.

c. When the sewage sludge that is injected below the surface of the land is Class A with respect to pathogens, the sewage sludge shall be injected below the land surface within eight hours after being discharged from the pathogen treatment process.

10. Sewage sludge incorporation requirements:

~~10-~~ a. Sewage sludge applied to the land surface or placed on an active sewage sludge unit shall be incorporated into the soil within six hours after application to or placement on the land, unless otherwise specified by the board.

b. When sewage sludge that is incorporated into the soil is Class A with respect to pathogens, the sewage sludge shall be applied to or placed on the land within eight hours after being discharged from the pathogen treatment process.

11. Sewage sludge placed on an active sewage sludge unit shall be covered with soil or other material at the end of each operating day.

12. The pH of domestic septage shall be raised to 12 or higher by alkaline addition and, without the addition of more alkaline material, shall remain at 12 or higher for 30 minutes.

DOCUMENTS INCORPORATED BY REFERENCE
(9VAC25-31)

[Method 1668B Chlorinated Biphenyl Congeners in Water, Soil, Sediment, Biosolids, and Tissue by HRGC/HRMS, EPA-821-R-08-020, November 2008, U.S. Environmental Protection Agency, Office of Water and Office of Science and Technology Engineering and Analysis Division \(4303T\), 1200 Pennsylvania Avenue, NW, Washington, DC 20460.](#)

Part I General

9VAC25-32-10. Definitions.

A. The following words and terms, when used in this chapter and in VPA permits issued under this chapter shall have the meanings defined in the State Water Control Law, unless the context clearly indicates otherwise and as follows:

"Active sewage sludge unit" means a sewage sludge unit that has not closed.

"Aerobic digestion" means the biochemical decomposition of organic matter in sewage sludge into carbon dioxide and water by microorganisms in the presence of air.

"Agricultural land" means land on which a food crop, a feed crop, or a fiber crop is grown. This includes range land and land used as pasture.

"Agronomic rate" means the whole sludge application rate (dry weight basis) designed: (i) to provide the amount of nitrogen needed by the food crop, feed crop, fiber crop, cover crop, or vegetation grown on the land and (ii) to minimize the amount of nitrogen in the biosolids that passes below the root zone of the crop or vegetation grown on the land to the ground water.

"Anaerobic digestion" means the biochemical decomposition of organic matter in sewage sludge or biosolids into methane gas and carbon dioxide by microorganisms in the absence of air.

"Annual pollutant loading rate" or "APLR" means the maximum amount of a pollutant that can be applied to a unit area of land during a 365-day period.

"Annual whole sludge application rate" or "AWSAR" means the maximum amount of biosolids (dry weight basis) that can be applied to a unit area of land during a 365-day period.

"Apply biosolids" or "biosolids applied to the land" means land application of biosolids.

"Best Management Practices (BMP)" means a schedule of activities, prohibition of practices, maintenance procedures and other management practices to prevent or reduce the pollution of state waters. BMP's include treatment requirements, operating and maintenance procedures, schedule of activities, prohibition of activities, and other management practices to control plant site runoff, spillage, leaks, sludge or waste disposal, or drainage from raw material storage.

"Biosolids" means a sewage sludge that has received an established treatment and is managed in a manner to meet the required pathogen control and vector attraction reduction, and contains concentrations of regulated pollutants below the ceiling limits established in 40 CFR Part 503 and 9VAC25-32-660, such that it meets the standards established for use of biosolids for land application, marketing, or distribution in accordance with this regulation.

"Board" means the Virginia State Water Control Board or State Water Control Board.

"Bulk biosolids" means biosolids that are not sold or given away in a bag or other container for application to the land.

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

"Concentrated confined animal feeding operation" means an animal feeding operation at which:

1. At least the following number and types of animals are confined:
 - a. 300 slaughter and feeder cattle;
 - b. 200 mature dairy cattle (whether milked or dry cows);
 - c. 750 swine each weighing over 25 kilograms (approximately 55 pounds);
 - d. 150 horses;
 - e. 3,000 sheep or lambs;
 - f. 16,500 turkeys;
 - g. 30,000 laying hens or broilers; or
 - h. 300 animal units; and

2. Treatment works are required to store wastewater, or otherwise prevent a point source discharge of wastewater pollutants to state waters from the animal feeding operation except in the case of a storm event greater than the 25-year, 24-hour storm.

"Confined animal feeding operation" means a lot or facility together with any associated treatment works where the following conditions are met:

1. 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 over any portion of the operation of the lot or facility.

"Cover crop" means a crop, such as oats, wheat, or barley, not grown for harvest.

"Critical areas" and "critical waters" means areas and waters in proximity to shellfish waters, a public water supply, or recreation or other waters where health or water quality concerns are identified by the Department of Health.

"Cumulative pollutant loading rate" means the maximum amount of an inorganic pollutant that can be applied to an area of land.

"Density of microorganisms" means the number of microorganisms per unit mass of total solids (dry weight) in the sewage sludge.

"Department" means the Department of Environmental Quality.

"Director" means the Director of the Department of Environmental Quality, or an authorized representative.

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

"Discharge of a pollutant" means any addition of any pollutant or combination of pollutants to state waters or waters of the contiguous zone or ocean other than discharge from a vessel or other floating craft when being used as a means of transportation.

"Domestic septage" means either liquid or solid material removed from a septic tank, cesspool, portable toilet, Type III marine sanitation device, or similar treatment works that receives only domestic sewage. Domestic septage does not include liquid or solid material removed from a septic tank, cesspool, or similar treatment works that receives either commercial wastewater or industrial wastewater and does not include grease removed from a grease trap at a restaurant.

"Domestic sewage" means waste and wastewater from humans or household operations that is discharged to or otherwise enters a treatment works.

"Draft VPA permit" means a document indicating the board's tentative decision to issue, deny, modify, revoke and reissue, terminate or reissue a VPA permit. A notice of intent to terminate a VPA permit and a notice of intent to deny a VPA permit are types of draft VPA permits. A denial of a

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request for modification, revocation and reissuance or termination is not a draft VPA permit.

"Dry tons" means dry weight established as representative of land applied biosolids and expressed in units of English tons.

"Dry weight" means the measured weight of a sample of sewage sludge or biosolids after all moisture has been removed in accordance with the standard methods of testing and often represented as percent solids.

"Dry weight basis" means calculated on the basis of having been dried at 105°C until reaching a constant mass (i.e., essentially 100% solids content).

"Exceptional quality biosolids" means biosolids that have received an established level of treatment for pathogen control and vector attraction reduction and contain known levels of pollutants, such that they may be marketed or distributed for public use in accordance with this regulation.

"Facilities" means processes, equipment, storage devices and dedicated sites, located or operated separately from a treatment works, utilized for sewage sludge management including, but not limited to, handling, treatment, transport, and storage of biosolids.

"Feed crops" means crops produced primarily for consumption by animals.

"Fiber crops" means crops produced primarily for the manufacture of textiles, such as flax and cotton.

"Field" means an area of land within a site where land application is proposed or permitted.

"Food crops" means crops produced primarily for consumption by humans. These include, but are not limited to, fruits, vegetables, and tobacco.

"Forest" means a tract of land thick with trees and underbrush.

"General VPA permit" means a VPA permit issued by the board authorizing a category of pollutant management activities.

"Generator" means the owner of a sewage treatment works that produces sewage sludge and biosolids.

"Ground water" means water below the land surface in the saturated zone.

"Industrial wastes" means liquid or other wastes resulting from any process of industry, manufacture, trade, or business, or from the development of any natural resources.

"Land application" means the introduction of wastewaters or sludge into or onto the ground for treatment or reuse distribution of either treated wastewater, referred to as "effluent," or stabilized sewage sludge, referred to as "biosolids," by spreading or spraying on the surface of the land, injecting below the surface of the land, or incorporating

into the soil with a uniform application rate for the purpose of fertilizing the crops and vegetation or conditioning the soil. Sites approved for land application of biosolids in accordance with this regulation are not to be considered to be treatment works. Bulk disposal of stabilized sludge in a confined area, such as in landfills, is not land application. For the purpose of this regulation, the use of biosolids in agricultural research is not land application.

"Land applier" means someone who land applies biosolids pursuant to a valid permit from the department as set forth in this regulation.

"Land with a high potential for public exposure" means land that the public uses frequently. This includes, but is not limited to, a public contact site and a reclamation site located in a populated area (e.g., a construction site located in a city).

"Land with a low potential for public exposure" means land that the public uses infrequently. This includes, but is not limited to, agricultural land, forest, and a reclamation site located in an unpopulated area (e.g., a strip mine located in a rural area).

"Limitation" means any restriction imposed on quantities, rates or concentration of pollutants which are managed by pollutant management activities.

"Liner" means soil or synthetic material that has a hydraulic conductivity of 1×10^{-7} centimeters per second or less.

"Local monitor" means a person or persons employed by a local government to perform the duties of monitoring the operations of land appliers pursuant to a local ordinance.

"Local ordinance" means an ordinance adopted by counties, cities, or towns in accordance with § 62.1-44.19:3 of the Code of Virginia.

"Malodor" means an unusually strong or offensive odor associated with biosolids or sewage sludge as distinguished from odors commonly associated with biosolids or sewage sludge.

"Monitoring report" means forms supplied by the department for use in reporting of self-monitoring results of the permittee.

"Monthly average" means the arithmetic mean of all measurements taken during the month.

"Municipality" means a city, county, town, district association, authority or other public body created under the law and having jurisdiction over disposal of sewage, industrial, or other wastes; or other public body (including an intermunicipal agency of two or more of the foregoing entities) created by or under state law; an Indian tribe or an authorized Indian tribal organization having jurisdiction over sewage sludge or biosolids management; or a designated and approved management agency under § 208 of the federal Clean Water Act, as amended. The definition includes a

special district created under state law, such as a water district, sewer district, sanitary district, utility district, drainage district, or similar entity; or an integrated waste management facility as defined in § 201(e) of the federal Clean Water Act, as amended, that has as one of its principal responsibilities the treatment, transport, use, or disposal of sewage sludge or biosolids.

"Nonpoint source" means a source of pollution, such as a farm or forest land runoff, urban storm water runoff or mine runoff that is not collected or discharged as a point source.

"Odor sensitive receptor" means, in the context of land application of biosolids, a building or outdoor facility regularly used to host or serve large groups of people such as schools, dormitories, athletic and other recreational facilities, and hospitals and convalescent homes.

"Operate" means the act of any person who may have an impact on either the finished water quality at a waterworks or the final effluent at a sewage treatment works, such as to (i) place into or take out of service a unit process or unit processes, (ii) make or cause adjustments in the operation of a unit process or unit processes at a treatment works, or (iii) manage sewage sludge or biosolids.

"Operator" means any individual employed or appointed by any owner, and who is designated by such owner to be the person in responsible charge, such as a supervisor, a shift operator, or a substitute in charge, and whose duties include testing or evaluation to control waterworks or wastewater works operations. Not included in this definition are superintendents or directors of public works, city engineers, or other municipal or industrial officials whose duties do not include the actual operation or direct supervision of waterworks or wastewater works.

"Other container" means either an open or closed receptacle. This includes, but is not limited to, a bucket, a box, a carton, and a vehicle or trailer with a load capacity of one metric ton or less.

"Overflow" means the unintentional discharge of wastes from any portion of a treatment works.

"Owner" means the Commonwealth or any of its political subdivisions including sanitary districts, sanitation district commissions and authorities; federal agencies; any individual; any group of individuals acting individually or as a group; or any public or private institution, corporation, company, partnership, firm, or association that owns or proposes to own a sewerage system or treatment works as defined in § 62.1-44.3 of the Code of Virginia.

"Pasture" means land on which animals feed directly on feed crops such as legumes, grasses, grain stubble, or stover.

"Pathogenic organisms" means disease-causing organisms. These include, but are not limited to, certain bacteria, protozoa, viruses, and viable helminth ova.

"Permittee" means an owner or operator who has a currently effective VPA permit issued by the board or the department.

"Person who prepares sewage sludge" means either the person who generates sewage sludge during the treatment of domestic sewage in a treatment works or the person who derives the material from sewage sludge.

"pH" means the logarithm of the reciprocal of the hydrogen ion concentration measured at 25°C or measured at another temperature and then converted to an equivalent value at 25°C.

"Place sewage sludge" or "sewage sludge placed" means disposal of sewage sludge on a surface disposal site.

"Point source" means any discernible, defined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agricultural land.

"Pollutant" means, in regard to wastewater, any substance, radioactive material, or heat which causes or contributes to, or may cause or contribute to, pollution. It does not mean (i) sewage from vessels; or (ii) water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well is used either to facilitate production or for disposal purposes if approved by Department of Mines Minerals and Energy unless the board determines that such injection or disposal will result in the degradation of ground or surface water resources.

"Pollutant" means, in regard to sewage sludge or biosolids, an organic substance, an inorganic substance, a combination of organic and inorganic substances, or a pathogenic organism that, after discharge and upon exposure, ingestion, inhalation, or assimilation into an organism either directly from the environment or indirectly by ingestion through the food chain, could, on the basis of information available to the board, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunction in reproduction), or physical deformations in either organisms or offspring of the organisms.

"Pollutant limit" means a numerical value that describes the amount of a pollutant allowed per unit amount of biosolids (e.g., milligrams per kilogram of total solids), the amount of a pollutant that can be applied to a unit area of land (e.g., kilograms per hectare), or the volume of a material that can be applied to a unit area of land (e.g., gallons per acre).

"Pollutant management activity" means a treatment works with a potential or actual discharge to state waters, but which does not have a point source discharge to surface waters.

"Pollution" means such alteration of the physical, chemical, or biological properties of any state waters or soil as will, or

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is likely to, create a nuisance or render such waters or soil: (i) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (ii) unsuitable despite reasonable treatment for use as present or possible future sources of public water supply; or (iii) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses. Such alteration is also deemed to be pollution, if there occurs: (a) an alteration of the physical, chemical, or biological property of state waters or soil, or a discharge or a deposit of sewage, industrial wastes, or other wastes to state waters or soil by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of, or discharge, or deposit, to state waters or soil by other owners, is sufficient to cause pollution; (b) the discharge of untreated sewage by any owner into state waters or soil; or (c) the contravention of standards of air or water quality duly established by the board.

"Primary sludge" means sewage sludge removed from primary settling tanks that is readily thickened by gravity thickeners.

"Privately owned treatment works (PVOTW)" means any sewage treatment works not publicly owned.

"Process" means a system, or an arrangement of equipment or other devices that remove from waste materials pollutants including, but not limited to, a treatment works or portions thereof.

"Public contact site" means land with a high potential for contact by the public. This includes, but is not limited to, public parks, ball fields, cemeteries, and golf courses.

"Publicly owned treatment works (POTW)" means any sewage treatment works that is owned by a state or municipality. Sewers, pipes, or other conveyances are included in this definition only if they convey wastewater to a POTW providing treatment.

"Public hearing" means a fact-finding proceeding held to afford interested persons an opportunity to submit factual data, views, and arguments to the board.

"Reclamation site" means drastically disturbed land that is reclaimed using biosolids. This includes, but is not limited to, strip mines and construction sites.

"Reimbursement application" means forms approved by the department to be used to apply for reimbursement of local monitoring costs for land application of biosolids in accordance with a local ordinance.

"Run-off" means rainwater, leachate, or other liquid that drains overland on any part of a land surface and runs off of the land surface.

"Schedule of compliance" means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with the federal Clean

Water Act (33 USC § 1251 et seq.), the law, and board regulations, standards and policies.

"Sewage" means the water-carried and nonwater-carried human excrement, kitchen, laundry, shower, bath, or lavatory wastes, separately or together with such underground, surface, storm, and other water and liquid industrial wastes as may be present from residences, buildings, vehicles, industrial establishments, or other places.

"Sewage sludge" or "sludge" means any solid, semisolid, or liquid residues generated during the treatment of domestic sewage in a treatment works. Sewage sludge includes, but it is not limited to, domestic septage; scum or solids removed in primary, secondary, or advanced wastewater treatment processes; and a material derived from sewage sludge. Sewage sludge does not include ash generated during the firing of sewage sludge in a sewage sludge incinerator or grit and screenings generated during preliminary treatment of domestic sewage in a treatment works. Liquid sludge contains less than 15% dry residue by weight. Dewatered sludge contains 15% or more dry residue by weight.

"Sewage sludge unit" means land on which only sewage sludge is placed for final disposal. This does not include land on which sewage sludge is either stored or treated. Land does not include surface waters.

"Sewage sludge use or disposal" means the collection, storage, treatment, transportation, processing, monitoring, use, or disposal of sewage sludge.

"Site" means the area of land within a defined boundary where an activity is proposed or permitted.

"Sludge" means solids, residues, and precipitates separated from or created by the unit processes of a treatment works.

"Sludge management" means the treatment, handling, transportation, storage, use, distribution, or disposal of sewage sludge.

"Specific oxygen uptake rate" or "SOUR" means the mass of oxygen consumed per unit time per mass of total solids (dry weight basis) in the sewage sludge.

"State waters" means all water on the surface or under the ground wholly or partially within or bordering the state or within its jurisdiction.

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

"Store sewage sludge" or "storage of sewage sludge" means the placement of sewage sludge on land on which the sewage sludge remains for two years or less. This does not include the placement of sewage sludge on land for treatment.

"Substantial compliance" means designs and practices that do not exactly conform to the standards set forth in this chapter as contained in documents submitted pursuant to

9VAC25-32-340, but whose construction or implementation will not substantially affect health considerations or performance.

"Supernatant" is a liquid obtained from separation of suspended matter during sludge treatment or storage.

"Surface disposal site" means an area of land that contains one or more active sewage sludge units.

"Surface water" means:

1. All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
2. All interstate waters, including interstate "wetlands";
3. All other waters such as inter/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. Which 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. Which are used or could be used for industrial purposes by industries in interstate commerce;
4. All impoundments of waters otherwise defined as surface waters of the United States 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.

"Total solids" means the materials in sewage sludge that remain as residue when the sewage sludge is dried to 103°C to 105°C.

"Toxic pollutant" means any agent or material including, but not limited to, those listed under § 307(a) of the Clean Water Act (33 USC § 1317(a)) which after discharge will, on the basis of available information, cause toxicity.

"Toxicity" means the inherent potential or capacity of a material to cause adverse effects in a living organism, including acute or chronic effects to aquatic life, detrimental effects on human health, or other adverse environmental effects.

"Treatment facility" means only those mechanical power driven devices necessary for the transmission and treatment of pollutants (e.g., pump stations, unit treatment processes).

"Treat sewage sludge" or "treatment of sewage sludge" means the preparation of sewage sludge for final use or disposal. This includes, but is not limited to, thickening, stabilization, and dewatering of sewage sludge. This does not include storage of sewage sludge.

~~"Treatment works" means any devices and systems used for the storage, treatment, recycling or reclamation of sewage or liquid industrial waste, or other waste or necessary to recycle or reuse water, including intercepting sewers, outfall sewers, sewage collection systems, individual systems, pumping, power and other equipment and their appurtenances; extensions, improvements, remodeling, additions, or alterations; and any works, including land that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from such treatment; or any other method or system used for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste or industrial waste, including waste in combined sewer water and sanitary sewer systems. either a federally owned, publicly owned, or privately owned device or system used to treat (including recycle and reclaim) either domestic sewage or a combination of domestic sewage and industrial waste of a liquid nature. Treatment works may include but are not limited to pumping, power, and other equipment and their appurtenances; septic tanks; and any works, including land, that are or will be (i) an integral part of the treatment process or (ii) used for ultimate disposal of residues or effluents resulting from such treatment.~~
"Treatment works" does not include biosolids use on privately owned agricultural land.

"Twenty-five-year, 24-hour storm event" means the maximum 24-hour precipitation event with a probable recurrence interval of once in 25 years as established by the National Weather Service or appropriate regional or state rainfall probability information.

"Unstabilized solids" means organic materials in sewage sludge that have not been treated in either an aerobic or anaerobic treatment process.

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

"Use" means to manage or recycle a processed waste product in a manner so as to derive a measurable benefit as a result of such management.

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"Variance" means a conditional approval based on a waiver of specific regulations to a specific owner relative to a specific situation under documented conditions for a specified period of time.

"Vector attraction" means the characteristic of sewage sludge that attracts rodents, flies, mosquitoes, or other organisms capable of transporting infectious agents.

"Virginia Pollution Abatement (VPA) permit" means a document issued by the board, pursuant to this chapter, authorizing pollutant management activities under prescribed conditions.

"Virginia Pollutant Discharge Elimination System (VPDES) permit" means a document issued by the board pursuant to 9VAC25-31-10 et seq., authorizing, under prescribed conditions, the potential or actual discharge of pollutants from a point source to surface waters.

"Volatile solids" means the amount of the total solids in sewage sludge lost when the sewage sludge is combusted at 550°C in the presence of excess air.

"VPA application" means the standard form or forms approved by the board for applying for a VPA permit.

"Water quality standards" means the narrative statements for general requirements and numeric limits for specific requirements that describe the water quality necessary to meet and maintain reasonable and beneficial uses. Such standards are established by the board under § 62.1-44.15 (3a) of the Code of Virginia.

B. Generally used technical terms not defined in subsection A of this section or the department's latest definitions of technical terms as used to implement § 62.1-44.15 of the Code of Virginia shall be defined in accordance with "Glossary-Water and Wastewater Control Engineering" published by the American Public Health Association (APHA), American Society of Civil Engineers (ASCE), American Water Works Association (AWWA), and the Water Environment Federation (WEF).

9VAC25-32-30. Requirements and prohibitions.

A. All pollutant management activities covered under a VPA permit shall maintain no point source discharge of pollutants to surface waters except in the case of a storm event greater than the 25-year, 24-hour storm.

B. ~~4.~~ Except in compliance with a VPA permit, or another permit issued by the board, it shall be unlawful for any person to:

- ~~a.~~ 1. Discharge into, or adjacent to, state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or
- ~~b.~~ 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.

~~2.~~ C. Any person required to obtain a permit pursuant to this chapter 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 ~~subdivision subsection B 4~~ of this section; or who discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of ~~subdivision subsection B 4~~ of this section shall notify the department of the discharge immediately upon discovery of the discharge and, in any event, no later than 24 hours after the discovery. A written report of the unauthorized discharge shall be submitted by the owner, to the department, within five days of discovery of the discharge.

~~a.~~ 1. The written report shall contain:

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

~~b.~~ 2. Discharges reportable to the department under the immediate reporting requirements of other regulations are exempted from this requirement.

~~c.~~ D. VPA permits may be utilized to authorize pollutant management activities including, but not limited to, animal feeding operations, storage or land application of sewage, sludge, biosolids, industrial waste or other waste; or the complete reuse or recycle of wastewater. Point source discharges of pollutants to surface waters may be authorized by a VPDES permit (See ~~9VAC25-31-10 et seq.~~ 9VAC25-31, VPDES Permit Regulation).

~~d.~~ E. No VPA permit shall be issued in the following circumstances:

1. Where the terms or conditions of the VPA permit do not comply with the applicable regulations or requirements of the law;
2. For the discharge of any radiological, chemical or biological warfare agent or high level radioactive material into state waters; or

3. For any pollutant management activity that is in conflict with any area-wide or basin-wide water quality control and waste management plan or policy established by the board pursuant to the law.

9VAC25-32-40. Exclusions.

The following do not require a VPA permit:

1. The introduction of sewage, industrial waste or other pollutants into publicly owned treatment works by indirect dischargers. Plans or agreements to switch to this method of disposal in the future do not relieve dischargers of the obligation to have and comply with VPA permits until all discharges of pollutants to state waters are eliminated;
2. Any introduction of pollutants from nonpoint source agricultural or silvicultural activities, including runoff from orchards, cultivated crops, pastures, range lands, and forest lands, except that this exclusion shall not apply to concentrated confined animal feeding operations;
3. Return flows from irrigated agricultural land;
4. Land disposal activity, including biosolids use or sewage sludge ~~use or~~ disposal or onsite waste treatment, when this activity is otherwise authorized by the ~~Department of Environmental Quality department~~; and
5. Discharges authorized by EPA under the Safe Drinking Water Act Underground Injection Control Program (UIC), 40 CFR Part 144, and approved, in writing, by the board.

Part II
Permit Application and Issuance

9VAC25-32-60. Application for a VPA permit.

A. Duty to apply. Any owner of a pollutant management activity who does not have an effective VPA permit, except persons covered by general VPA permits or excluded under 9VAC25-32-40, shall submit a complete application to the department in accordance with this section.

~~1. a. A complete VPA permit application shall be submitted by the owner of the pollutant management activity before a VPA permit can be issued. This item does not apply where general VPA permits are applicable.~~

~~b. The board may require the submission of additional information after an application has been filed, and may suspend processing of any application until such time as the owner has supplied missing or deficient information and the board considers the application complete. Further, when the owner becomes aware that he omitted one or more relevant facts from a VPA permit application, or submitted incorrect information in a VPA permit application or in any report to the department, he shall promptly submit such facts or the correct information.~~

~~e. In accordance with § 62.1-44.19:3 A of the Code of Virginia, no application for a permit or variance to authorize the storage of sewage sludge shall be complete unless it contains certification from the governing body of the locality in which the sewage sludge is to be stored that the storage site is consistent with all applicable ordinances. The governing body shall confirm or deny consistency within 30 days of receiving a request for certification. If the governing body does not so respond, the site shall be deemed consistent.~~

~~d. No application for a permit to land apply biosolids in accordance with Part IX (9VAC25-32-310 et seq.) of this chapter shall be complete unless it includes the written consent of the landowner to apply biosolids on his property.~~

B. Time to apply.

~~2. a. 1.~~ Any owner proposing a new pollutant management activity shall submit an application for a VPA permit 180 days prior to the date planned for commencing erection, construction or expansion or employment of new processes at any site. There shall be no operation of said facilities prior to the issuance of a VPA permit.

~~b. 2.~~ Any owner with an existing pollutant management activity that has not been permitted shall submit an application within 60 days upon being requested to by the board. The board, after determining there is pollution occurring, may allow the construction of treatment works prior to permit issuance. There shall be no operation of said treatment works prior to permit issuance.

~~e. 3.~~ Owners currently managing pollutants who have effective VPA permits shall submit a new application 180 days prior to proposed facility expansions, production increases, or process modification which will:

~~(1) a.~~ Result in significantly new or substantially increased amounts of pollutants being managed or a significant change in the nature of the pollutant management activity that was not anticipated and accounted for on the application for the effective VPA permit; or

~~(2) b.~~ Violate or lead to violation of the terms and conditions of the effective VPA permit.

~~3. Pursuant to § 62.1-44.15:3 of the Code of Virginia, no application for a VPA permit from a privately owned treatment works serving, or designed to serve, 50 or more residences shall be considered complete unless the applicant has provided the department with notification from the State Corporation Commission that the applicant is incorporated in the Commonwealth and is in compliance with all regulations and relevant orders of the State Corporation Commission.~~

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~~B. C.~~ Duty to reapply. Any permittee with an effective VPA permit shall submit a new application at least 180 days before the expiration date of the effective VPA permit unless permission for a later date has been granted by the board. Permission shall not be granted to submit an application later than the expiration date of the existing VPA permit.

D. Completeness.

1. A complete VPA permit application shall be submitted by the owner of the pollutant management activity before a VPA permit can be issued. The permit application may be submitted as a hard copy or electronically with a hard copy signature page. This item does not apply where general VPA permits are applicable.

2. The board may require the submission of additional information after an application has been filed, and may suspend processing of any application until such time as the owner has supplied missing or deficient information and the board considers the application complete. Further, when the owner becomes aware that he omitted one or more relevant facts from a VPA permit application, or submitted incorrect information in a VPA permit application or in any report to the department, he shall promptly submit such facts or the correct information.

3. In accordance with § 62.1-44.19:3 A of the Code of Virginia, no application for a permit or variance to authorize the storage of biosolids shall be complete unless it contains certification from the governing body of the locality in the biosolids is to be stored that the storage site is consistent with all applicable ordinances. The governing body shall confirm or deny consistency within 30 days of receiving a request for certification. If the governing body does not so respond, the site shall be deemed consistent.

4. No application for a permit to land apply biosolids in accordance with Part IX (9VAC25-32-310 et seq.) of this chapter shall be complete unless it includes the written consent of the landowner to apply biosolids on his property.

5. Pursuant to § 62.1-44.15:3 of the Code of Virginia, no application for a VPA permit from a privately owned treatment works serving, or designed to serve, 50 or more residences shall be considered complete unless the applicant has provided the department with notification from the State Corporation Commission that the applicant is incorporated in the Commonwealth and is in compliance with all regulations and relevant orders of the State Corporation Commission.

~~C. E.~~ Information requirements. All applicants for VPA permits shall provide information ~~in accordance with~~ to the department using the application forms provided by the department.

F. Application for the authorization to land apply biosolids. All persons applying to land apply biosolids must provide the information in this subsection to the department using an application form approved by the department. New applicants must submit all information available at the time of permit application. The information may be provided by referencing information previously submitted to the department. The board may waive any requirement of this subsection if it has access to substantially identical information. The board may also waive any requirement of this subsection that is not of material concern for a specific permit.

1. General information.

a. Legal name and address.

b. Owner contact information.

c. A general description of the proposed plan including:

(1) Name and location of generators and owners involved;

(2) Biosolids quality, biosolids treatment and handling processes;

(3) Generator's odor control plan, that contains at minimum:

(a) Methods used to minimize odor in producing biosolids;

(b) Methods used to identify malodorous biosolids before land application (at the generating facility);

(c) Methods used to abate malodorous biosolids if delivered to the field, prior to land application; and

(d) Methods used to abate malodor from biosolids if land applied;

(4) Means of biosolids transport or conveyance;

(5) Location and volume of storage proposed;

(6) A description of field staging methods;

(7) General location of sites proposed for application, and

(8) Methods of biosolids application proposed.

d. Written permission of landowners and farmers on a form approved by the board and pertinent lease agreements as may be necessary for operation of the treatment works.

e. Methods for notification of local government and obtaining compliance with local government zoning and applicable ordinances.

f. A copy of a letter of approval of the nutrient management plan for the operation from the Department of Conservation and Recreation if required in subdivision 3 c of this subsection.

2. Design information.

a. Biosolids characterization. For each source of biosolids that the applicant proposes to land apply, the applicant must submit biosolids monitoring data for the pollutants for which limits in biosolids have been established in Part IX (9VAC25-32-303 et seq.) of this chapter, for the applicant's use or disposal practices on the date of permit application with the following conditions:

(1) When applying for authorization to land apply a biosolids source not previously included in a VPDES or Virginia Pollution Abatement Permit, the biosolids shall be sampled and analyzed for PCBs. The sample results shall be submitted with the permit application or request to add the source;

(2) The board may require sampling for additional pollutants, as appropriate, on a case-by-case basis;

(3) Applicants must provide:

(a) Biosolids analytical data from a minimum of three samples taken within four and one-half years prior to the date of the permit application. Samples must be representative of the biosolids and should be taken at least one month apart. Existing data may be used in lieu of sampling done solely for the purpose of this application;

(b) The total dry tons per 365-day period of biosolids subject to this subsection that is applied to the land; and

(c) A statement that the biosolids is nonhazardous; a documentation statement for treatment and quality; and a description of how treated biosolids meets other standards in accordance with this regulation;

(4) Samples shall be collected and analyzed in accordance with analytical methods specified in EPA-SW-846, Third Edition (1986) with Revision I unless an alternative has been specified in an existing biosolids permit. Samples for PCB analysis shall be collected and analyzed in accordance with EPA Method 1668B; and

(5) The monitoring data provided must include at least the following information for each parameter:

(a) Average monthly concentration for all samples (mg/kg dry weight), based upon actual sample values;

(b) Analytical method used; and

(c) Method detection level.

b. Storage facilities. Plans and specifications for storage facilities of all biosolids to be handled, including routine and on-site storage, shall be submitted for the issuance of a certificate to construct and a certificate to operate in accordance with the Sewage Collection and Treatment

Regulations (9VAC25-790) and shall depict the following information:

(1) Site layout on a recent 7.5 minute topographic quadrangle or other appropriate scaled map;

(2) Location of any required soil, geologic, and hydrologic test holes or borings;

(3) Location of the following field features within 0.25 miles of the site boundary (indicate on map) with the approximate distance from the site boundary:

(a) Water wells (operating or abandoned);

(b) Surface waters;

(c) Springs;

(d) Public water supplies;

(e) Sinkholes;

(f) Underground and surface mines;

(g) Mine pool (or other) surface water discharge points;

(h) Mining spoil piles and mine dumps;

(i) Quarries;

(j) Sand and gravel pits;

(k) Gas and oil wells;

(l) Diversion ditches;

(m) Occupied dwellings, including industrial and commercial establishments;

(n) Landfills and dumps;

(o) Other unlined impoundments;

(p) Septic tanks and drainfields; and

(q) Injection wells.

(4) Topographic map (10-foot contour preferred) of sufficient detail to clearly shown the following information:

(a) Maximum and minimum percent slopes;

(b) Depressions on the site that may collect water;

(c) Drainage ways that may attribute to rainfall run-on to or runoff from this site; and

(d) Portions of the site (if any) that are located within the 100-year floodplain;

(5) Data and specifications for the liner proposed for seepage control;

(6) Scaled plan view and cross-sectional view of the facilities showing inside and outside slopes of all embankments and details of all appurtenances;

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(7) Calculations justifying impoundment capacity; and

(8) Ground water monitoring plans for facilities proposing storage of liquid biosolids or supernatant, including pertinent geohydrological data to justify upgradient and downgradient well location and depth.

c. Staging. Generic plans for staging of biosolids.

d. Land application sites:

(1) DEQ control number, if previously assigned, identifying each land application field or site and the site's location;

(2) The site's latitude and longitude to the nearest second and the method of determination;

(3) A legible topographic map of proposed application areas to scale as needed to depict the following features:

(a) Property boundaries;

(b) Surface water courses;

(c) Water supply wells and springs;

(d) Roadways;

(e) Rock outcrops;

(f) Slopes;

(g) Frequently flooded areas (National Resources Conservation Service (NRCS) designation); and

(h) The gross acreage of the fields where biosolids will be applied;

(4) County map or other map of sufficient detail to show general location of the site and proposed transport vehicle haul routes to be utilized from the treatment plant;

(5) County tax maps for each farm to be included in the permit, which may include multiple fields;

(6) A USDA soil survey map, if available, of proposed sites for land application of biosolids;

(7) The name, mailing address, and telephone number of the site owner, if different from the applicant;

(8) The name, mailing address, and telephone number of the person who applies biosolids to the site, if different from the applicant;

(9) Whether the site is agricultural land, forest, a public contact site, or a reclamation site, as such site types are defined in 9VAC25-31-500;

(10) Description of agricultural practices including a list of proposed crops to be grown;

(11) Whether either of the vector attraction reduction options of 9VAC25-32-685 B 9 or B 10 is met at the site

and a description of any procedures employed at the time of use to reduce vector attraction properties in biosolids;

(12) For projects utilizing frequent application of biosolids at agronomic rates the following additional site information will be necessary:

(a) Information specified in subdivisions 2 a and 4 of this subsection;

(b) Representative soil borings and test pits to a depth of five feet or to bedrock if shallower, are to be coordinated for each major soil type and tests performed and data collected on soil type; soil texture for each horizon (USDA classification); soil color for each horizon; depth from surface to mottling and bedrock if less than two feet; depth from surface to subsoil restrictive layer; indicated infiltration rate (surface soil) and indicated permeability of subsoil restrictive layer;

(c) Additional soil testing in accordance with Table 1 of 9VAC25-32-460; and

(d) Ground water monitoring plans for land treatment area including pertinent geohydrologic data to justify upgradient and downgradient well location and depth;

(13) The following information for each land application site that has been identified at the time of permit application, if the applicant intends to apply bulk biosolids subject to the cumulative pollutant loading rates in 9VAC25-32-356 Table 2 to the site:

(a) Whether the applicant has contacted the permitting authority in the state where the bulk biosolids subject to 9VAC25-32-356 Table 2 will be applied, to ascertain whether bulk biosolids subject to 9VAC25-32-356 Table 2 has been applied to the site on or since July 20, 1993, and if so, the name of the permitting authority and the name and phone number of a contact person at the permitting authority; and

(b) Identification of facilities other than the applicant's facility that have sent, or are sending, biosolids subject to the cumulative pollutant loading rates in 9VAC25-32-356 Table 2 to the site since July 20, 1993, if, based on the inquiry in subdivision 8 d (1) of this subsection, bulk biosolids subject to cumulative pollutant loading rates in 9VAC25-32-356 Table 2 has been applied to the site since July 20, 1993; and

(14) If not all land application sites have been identified at the time of permit application, the applicant must submit a land application plan that, at a minimum:

(a) Describes the geographical area covered by the plan;

(b) Identifies the site selection criteria;

(c) Describes how the site or sites will be managed;

(d) Provides for advance notice to the department of specific land application sites in a manner prescribed by 9VAC25-32-515; and

(e) Provides for advance public notice of land application sites in a manner prescribed by 9VAC25-32-140.

3. A biosolids operations management plan shall be provided that includes the following minimum site specific information at the time of permit application.

a. Description of operation: A comprehensive, general description of the operation shall be provided, including biosolids source or sources; quantities; flow diagram illustrating treatment works biosolids flows and solids handling units; site description; methodology of biosolids handling for application periods, including storage and nonapplication period storage; and alternative management methods when storage is not provided.

b. A nutrient management plan approved by the Department of Conservation and Recreation shall be required for application sites prior to board authorization under the following conditions:

(1) Sites operated by an owner or lessee of a confined animal feeding operation, as defined in subsection A of § 62.1-44.17:1 of the Code of Virginia, or confined poultry feeding operation, as defined in subsection A of § 62.1-44.17:1.1 of the Code of Virginia;

(2) Sites where land application more frequently than once every three years at greater than 50% of the annual agronomic rate is proposed; and

(3) Mined land sites where land application is proposed at greater than agronomic rates.

4. Biosolids transport.

a. Description and specifications on the bed or the tank vehicle.

b. Haul routes to be used from the biosolids generator to the storage unit and land application sites.

c. Procedures for biosolids offloading at the biosolids facilities and the land application site together with spill prevention, cleanup (including vehicle cleaning); field reclamation and emergency spill notification and cleanup measures.

d. Voucher system used for documentation and recordkeeping.

5. Field operations.

a. Storage.

(1) Routine storage - supernatant handling and disposal, biosolids handling and loading of transport vehicles, equipment cleaning, freeboard maintenance, and inspections for structural integrity.

(2) On-site storage - procedures for department or board approval and implementation.

(3) Staging - procedures to be followed including either designated site locations provided in the "Design Information" or the specific site criteria for such locations including the liner or cover requirements and the time limit assigned for such use.

(4) Field reclamation of offloading (staging) areas.

b. Application methodology.

(1) Description and specifications on spreader vehicles.

(2) Procedures for calibrating equipment for various biosolids contents to ensure uniform distribution and appropriate loading rates on a day-to-day basis.

(3) Procedures used to ensure that operations address the following constraints: application of biosolids to frozen ground, pasture or hay fields, crops for direct human consumption and saturated or ice-covered or snow-covered ground; maintenance buffer zones; slopes; prohibited access for beef and dairy animals, and soil pH requirements; and proper site specific biosolids loading rates on a field-by-field basis.

c. Odor control plan for land applier. Include at a minimum:

(1) Methods used to identify and abate malodorous biosolids in the field prior to land application, and

(2) Methods used to abate malodorous biosolids if land applied.

6. An applicant for a permit authorizing the land application of biosolids shall provide to the department, and to each locality in which the applicant proposes to land apply biosolids, written evidence of financial responsibility. Evidence of financial responsibility shall be provided in accordance with the requirements specified under Article 6 (9VAC25-32-770 et seq.) of Part IX of this chapter.

9VAC25-32-80. Conditions applicable to all VPA permits.

A. Duty to comply. The permittee shall comply with all conditions of the VPA permit. Any permit noncompliance is a violation of the law, and is grounds for enforcement action, permit termination, revocation, modification, or denial of a permit renewal application.

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

C. Duty to mitigate. The permittee shall take all reasonable steps to minimize, correct or prevent any pollutant

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management activity in violation of the VPA permit which has a reasonable likelihood of adversely affecting human health or the environment.

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

E. Permit action.

1. A VPA permit may be modified, revoked and reissued, or terminated as set forth in this chapter.
2. 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.
3. VPA permits may be modified, revoked and reissued or terminated upon the request of the permittee or interested persons, or upon the board's initiative, to reflect the requirements of any changes in the statutes or regulations.
4. VPA permits continued under 9VAC25-32-130 remain effective and enforceable.

F. 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 the VPA permit;
2. Have access to, inspect and copy any records that must be kept as part of VPA permit conditions;
3. Inspect any facility's equipment (including monitoring and control equipment) practices or operations regulated or required under the VPA permit; and
4. Sample or monitor any substances or parameters at any locations for the purpose of assuring VPA permit compliance or as otherwise authorized by law.

G. Duty to provide information.

1. The permittee shall furnish to the department, within a reasonable time, any information which the board may request to determine whether cause exists for modifying, revoking and reissuing, terminating the VPA permit, or to determine compliance with the VPA permit. The permittee shall also furnish to the department, upon request, copies of records required to be kept by the permittee.

2. Plans, specifications, maps, conceptual reports and other relevant information shall be submitted as requested by the board prior to commencing construction.

H. Monitoring and records.

1. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
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 the VPA permit, and records of all data used to complete the application for the VPA permit, for a period of at least three years or in the case of activities regulated under Part IX (9VAC25-32-310 et seq.) of this chapter, at least five years from the date of the sample, measurement, report or application. This period may be extended by request of the board at any time.

~~Records related to biosolids data and information specified in agreements between generator, owner, agents, landowners and farmers shall be described and maintained for a minimum period of five years or the duration of the permit or subsequent revisions if longer than five years.~~

3. Records of monitoring information shall include:

- a. The date, exact place and time of sampling or measurements;
- b. The name of the individual or individuals who performed the sampling or measurements;
- c. The date or dates analyses were performed;
- d. The name of the individual or individuals who performed the analyses;
- e. The analytical techniques or methods supporting the information such as observations, readings, calculations and bench data used; and
- f. The results of such analyses.

4. Monitoring shall be conducted according to analytical methods promulgated pursuant to § 304(h) of the Clean Water Act (33 USC § 1251 et seq.) and listed in the Code of Federal Regulations at 40 CFR Part 136 (1995). Any other acceptable test procedure not listed in 40 CFR Part 136 (1995) shall be specified in the VPA permit.

5. Records related to biosolids data and information specified in agreements between generator, owner, agents, landowners, and farmers shall be described and maintained for a minimum period of five years or the duration of the permit or subsequent revisions if longer than five years.

I. Reporting requirements.

1. The permittee shall give prompt notice to the department of any planned changes to the design or operation of the pollutant management activity.
 2. 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 owner 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 subdivision 6 of this subsection. Unusual and extraordinary discharges include but are not limited to any discharge resulting from:
 - a. Unusual spillage of materials resulting directly or indirectly from processing operations;
 - b. Breakdown of processing or accessory equipment;
 - c. Failure or taking out of service of some or all of the treatment works; and
 - d. Flooding or other acts of nature.
 3. The permittee shall give at least 10 days advance notice to the department of any planned changes to the facility or activity which may result in noncompliance.
 4. Monitoring results shall be reported at the intervals specified in the applicable VPA permit.
 - a. Monitoring results shall be reported in a format acceptable to the board.
 - b. If a permittee monitors the pollutant management activity, at a sampling location specified in the VPA permit, for any pollutant more frequently than required by the VPA permit using approved analytical methods, the permittee shall report the results of this monitoring on the monitoring report.
 - c. If the permittee monitors the pollutant management activity, at a sampling location specified in the VPA permit, for any pollutant that is not required to be monitored by the VPA permit, and uses approved analytical methods the permittee shall report the results with the monitoring report.
 - d. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in the VPA permit.
 5. Reports of compliance or noncompliance with or any progress report on interim and final requirements contained in any compliance schedule in the VPA permit shall be submitted no later than 14 days following each scheduled date.
 6. 24-hour reporting.
 - a. The permittee shall report any noncompliance which may adversely affect state waters or may endanger public health. An oral report must be provided as soon as possible, but in no case later than 24 hours from the time the permittee becomes aware of the circumstances. A written report shall be submitted within five days and shall contain a description of the noncompliance and its cause; the period of noncompliance including exact dates and times, and, if the noncompliance has not been corrected, how long it is expected to continue, steps planned or taken to reduce, eliminate and prevent a recurrence of the noncompliance. The board may waive the written report requirements on a case-by-case basis if the oral report has been received within 24 hours and no adverse impact on state waters has been reported. All other noncompliance reports which may not adversely affect state waters shall be submitted with the monitoring report. Reports shall include overflows.
 - b. The following shall be included as information which must be reported within 24 hours under this subdivision:
 - (1) Any unanticipated bypass; and
 - (2) Any upset which causes a discharge to surface waters.
- J. Bypass.
1. A bypass of the treatment works is prohibited except as provided herein.
 2. 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. If an unplanned bypass occurs, the permittee shall notify the department as soon as possible, but in no case later than

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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 subdivision 2 of this subsection and in light of the information reasonably available to the owner at the time of the bypass.

K. 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 VPA permit.

L. Signature requirements. All applications, reports, or information submitted to the department shall be signed and certified as required in 9VAC25-32-70.

M. Transfers. A VPA permit is not transferable to any person except after notice to the department according to 9VAC24-32-230. The board may require modification or revocation and reissuance of the VPA permit to change the name of the permittee and incorporate such other requirements as may be necessary.

9VAC25-32-100. Establishing limitations and other VPA permit conditions.

A. In addition to the conditions established in 9VAC25-32-80 and 9VAC25-32-90, each VPA permit shall include conditions meeting the following requirements where applicable.

1. Determination of limitations. VPA permit limitations and conditions shall be established based on the nature of the pollutant management activity in order to ensure compliance with technology-based limitations, water quality standards, the law and all regulations promulgated thereunder. These limitations and conditions may include, but are not limited to, duration of VPA permits, monitoring requirements, limitations to control toxic pollutants, best management practices and schedules of compliance.
2. Duration of VPA permits. VPA permits issued under this regulation shall have an effective date and an expiration date which will determine the life of the VPA

permit. VPA permits shall be effective for a fixed term not to exceed 10 years as specified in the VPA permit. The term of the VPA permits shall not be extended by modification beyond the maximum duration. The VPA permit shall expire at the end of the term unless an application for a new VPA permit has been timely filed as required by this chapter and the board is unable, through no fault of the permittee, to issue a new VPA permit before the expiration date of the previous VPA permit.

~~3.~~ B. Monitoring requirements.

a. 1. All VPA permits may specify:

- ~~(1)~~ a. Requirements concerning the proper use, maintenance and installation, when appropriate, of monitoring equipment or methods;
- ~~(2)~~ b. Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity and including, when appropriate, continuous monitoring; and
- ~~(3)~~ c. Applicable reporting requirements based upon the impact of the regulated activity on water quality.

~~b.~~ 2. VPA permits may include requirements to report monitoring results with a frequency dependent on the nature and effect of the pollutant management activity.

e. 3. In addition, the following monitoring requirements may be included in the VPA permits:

- ~~(1)~~ a. Mass or other measurements specified in the VPA permit for each pollutant of concern;
- ~~(2)~~ b. The volume of waste, wastewater, biosolids, or sludge managed by the activity; and
- ~~(3)~~ c. Other measurements as appropriate.

~~4.~~ C. Best Management Practices (BMPs). The VPA permit shall require the use of BMPs to control or abate pollutants where numeric limits are infeasible, and the VPA permit may include BMPs in addition to numeric limits where BMPs are necessary to achieve limitations and standards or to carry out the purpose and intent of the law.

~~5.~~ D. Sludge disposal. The VPA permit shall include, where appropriate, specific requirements for disposal of all sludge.

~~6.~~ E. ~~Sewage sludge~~ Biosolids land application. Where, because of site-specific conditions, including soil type, identified during the permit application review process, the department determines that special requirements are necessary to protect the environment or the health, safety or welfare of persons residing in the vicinity of a proposed land application site, the department may incorporate in the permit at the time it is issued reasonable special conditions regarding buffering, transportation routes, slope, material source, methods of handling and application, and time of day restrictions exceeding those required by this regulation. The

permit applicant shall have at least 14 days in which to review and respond to the proposed conditions.

~~7. F.~~ Schedules of compliance. The VPA permit may specify a schedule, when appropriate, leading to compliance with the VPA permit as soon as possible. When schedules of compliance are applicable the following shall be incorporated:

- ~~a. 1.~~ Schedule or schedules of compliance shall require the permittee to take specific steps where necessary to achieve expeditious compliance with the VPA permit;
- ~~b. 2.~~ The schedule of compliance shall set forth interim time periods not more than one year apart for the submission of reports of progress toward completion of each requirement; and
- ~~c. 3.~~ Schedule or schedules of compliance may be modified by modification of the VPA permit for good cause beyond the control of the permittee (e.g., act of God, strike, flood, material shortage).

Part III
Public Involvement

9VAC25-32-140. Public notice of VPA permit action and public comment period.

A. Draft VPA permits.

~~A. 1.~~ Every draft VPA permit shall be given public notice, paid for by the owner, by publication once a week for two successive weeks in a newspaper of general circulation in the area affected by the pollutant management activity.

~~B. 2.~~ Interested persons shall have a period of at least 30 days following the date of the initial newspaper public notice to submit written comments on the tentative decision and to request a public hearing.

~~C. 3.~~ The contents of the public notice of an application for a VPA permit shall include:

- ~~1. a.~~ The name and address of the applicant. If the location of the pollutant management activity differs from the address of the applicant the notice shall also state the location of the pollutant management activity including storage and land application sites;
- ~~2. b.~~ A brief description of the business or activity conducted at the facility;
- ~~3. c.~~ A statement of the tentative determination to issue or deny a VPA permit;
- ~~4. d.~~ A brief description of the final determination procedure;
- ~~5. e.~~ The address and phone number of a specific person at the state office from whom further information may be obtained; and

~~6. f.~~ A brief description of how to submit comments and request a hearing.

~~D. Public notice shall not be required for submission or approval of plans and specifications or conceptual engineering reports not required to be submitted as part of the application.~~

B. VPA permit application.

~~E. 1.~~ Upon receipt of an application for ~~a~~ the issuance of a new or modified permit or for a modification of a permit, the ~~board~~ department shall notify in writing the locality wherein the pollutant management activity does or is proposed to take place. This notification shall, at a minimum, include:

~~1. Cause to be notified, in writing, the locality wherein the pollutant management activity does or is proposed to take place. This notification shall, at a minimum, include:~~

- a. The name of the applicant;
- b. The nature of the application and proposed pollutant management activity; ~~and~~

c. The availability and timing of any comment period; and

~~e. d.~~ Upon request, any other information known to, or in the possession of, the board or the department regarding the application except as restricted by 9VAC25-32-150.

2. Establish Whenever the department receives an application for a new permit for land application of biosolids or land disposal of treated sewage, stabilized sewage sludge, or stabilized septage, or an application to reissue with the addition of sites increasing acreage by 50% or more of that authorized in the initial permit, the department shall establish a date for a public meeting to discuss technical issues relating to proposals for land application of biosolids or land disposal of treated sewage, stabilized sewage sludge or stabilized septage. The department shall give notice of the date, time, and place of the public meeting and a description of the proposal by publication in a newspaper of general circulation in the city or county where the proposal is to take place. Public notice of the scheduled meeting shall occur no fewer than seven ~~or~~ nor more than 14 days prior to the meeting. The ~~board~~ department shall not issue the permit until the public meeting has been held and comment has been received from the local governing body or until 30 days have lapsed from the date of the public meeting.

3. Following the submission of an application for a new permit for land application of biosolids or land disposal of treated sewage, stabilized sewage sludge, or stabilized septage, DEQ shall notify or cause to be notified persons residing on property bordering the sites that contain the proposed land application fields. This notification shall be in a manner selected by the department. For the purposes

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of this subsection, "site" means all contiguous land under common ownership, but which may contain more than one tax parcel.

4. Public notice shall not be required for submission or approval of plans and specifications or conceptual engineering reports not required to be submitted as part of the application.

C. Following the submission of an application to add a site that is not contiguous to sites included in an existing permit authorizing the land application of biosolids:

1. The department shall notify persons residing on property bordering such site and shall receive written comments from those persons for a period of 30 days. Based upon written comments, the department shall determine whether additional site-specific requirements should be included in the authorization for land application at the site.

2. An application for any permit amendment to increase the acreage authorized by the initial permit by 50% or more shall be considered a major modification and shall be treated as a new application for purposes of public notice and public hearings. The increase in acreage for the purpose of determining the need for the public meeting is the sum of all acreage that has been added to the permit since the last public meeting, plus that proposed to be added.

F. D. Before issuing any permit, if the ~~board~~ department finds that there are localities particularly affected by the permit, the ~~board~~ department shall:

1. Publish, or require the applicant to publish, a notice in a local paper of general circulation in the localities affected at least 30 days prior to the close of any public comment period. Such notice shall contain a statement of the estimated local impact of the proposed permit, which at a minimum shall include information on the specific pollutants involved and the total quantity of each which may be discharged; and

2. Mail the notice to the chief elected official and chief administrative officer and planning district commission for those localities.

Written comments shall be accepted by the ~~board~~ department for at least 15 days after any public hearing on the permit, unless the ~~board votes~~ department decides to shorten the period. For the purposes of this section, the term "locality particularly affected" means any locality which bears any identified disproportionate material water quality impact which would not be experienced by other localities.

G. When a site is to be added to an existing permit authorizing land application of biosolids, the department shall notify persons residing on property bordering such site, and shall receive written comments from those persons for a

~~period not to exceed 30 days. Based upon the written comments, the department shall determine whether additional site specific requirements should be included in the authorization for land application at the site.~~

9VAC25-32-240. Minor modification.

A. Upon request of the permittee, or upon board initiative with the consent of the permittee, minor modifications may be made in the VPA permit without following the public involvement procedures.

B. Minor modification may only:

1. Correct typographical errors;

2. Require reporting by the permittee at a frequency other than that required in the VPA permit;

3. Change an interim compliance date in a schedule of compliance to no more than 120 days from the original compliance date and provided it will not interfere with the final compliance date;

4. Allow for a change in name, ownership or operational control when the board determines that no other change in the VPA permit is necessary, provided that a written agreement containing a specific date for transfer of VPA permit responsibility, coverage and liability from the current to the new permittee has been submitted to the department;

5. Delete the listing of a land application site when the pollutant management activity is terminated and does not result in an increase of pollutants which would exceed VPA permit limitations;

6. Reduce VPA permit limitations to reflect a reduction in the permitted activity when such reduction results from a shutdown of processes or pollutant generating activities or from connection of the permitted activity to a POTW;

7. Change plans and specifications where no other changes in the VPA permit are required;

8. Authorize treatment facility expansions, production increases or process modifications which will not cause a significant change in the quantity of pollutants being managed or a significant change in the nature of the pollutant management activity; or

9. Delete VPA permit limitation or monitoring requirements for specific pollutants when the activities generating these pollutants are terminated.

C. An application for any permit amendments to increase the acreage authorized by the initial permit by 50% or more shall be treated as a new application for purposes of public notice and public hearings shall not be considered a minor modification and shall require the public involvement procedures outlined in 9VAC25-32-140 C.

9VAC25-32-260. General VPA permits.

The board may issue a general VPA permit in accordance with the following:

1. Sources. A general VPA permit may be written to regulate a category of pollutant management activities that:
 - a. Involve the same or similar types of operations;
 - b. Manage the same or similar types of wastes;
 - c. Require the same VPA permit limitations or operating conditions;
 - d. Require the same or similar monitoring; and
 - e. In the opinion of the board, are more appropriately controlled under a general VPA permit than under individual VPA permits.
2. Administration.
 - a. General VPA permits will be issued, modified, revoked and reissued, or terminated pursuant to the law and the board's Public Participation Guidelines (9VAC25-10-10 et seq.) Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).
 - b. The board may require any person operating under a general VPA permit to apply for and obtain an individual VPA permit. Interested persons may petition the board to take action under this subdivision. Cases where an individual VPA permit may be required include the following:
 - (1) Where the pollutant management activity is a significant contributor of pollution;
 - (2) Where the owner is not in compliance with the conditions of the general VPA permit;
 - (3) When a water quality management plan containing requirements applicable to the pollutant management activity is approved; or
 - (4) When a permitted activity no longer meets the general VPA permit conditions.
 - c. Any owner operating under a general VPA permit may request to be excluded from the coverage of the general VPA permit by applying for an individual VPA permit.
 - d. When an individual VPA permit is issued to an owner the applicability of the general VPA permit to the individual permittee is automatically terminated on the effective date of the individual VPA permit.
 - e. When a general VPA permit is issued which applies to an owner already covered by an individual VPA permit, such owner may request exclusion from the provisions of the general VPA permit and subsequent coverage under an individual VPA permit.

f. A general VPA permit may be revoked as to an individual owner for any of the reasons set forth in 9VAC25-32-210 or subdivision 2 b of this section subject to appropriate opportunity for a hearing.

9VAC25-32-300. Transition.

~~A. Effective July 24, 1996, the following will occur:~~

- ~~1. All VPA applications received after that date will be processed in accordance with this regulation.~~
- ~~2. Any owner holding a No Discharge Certificate will be notified of the deadline for applying for a VPA permit, unless this notification has already been made. All such notifications shall be completed by July 1, 1998. Upon notification that a VPA permit is necessary for the pollutant management activity authorized by the No Discharge Certificate, the permittee shall have 180 days to apply for a VPA permit. If a VPA permit is required, the existing No Discharge Certificate will remain in effect until the VPA permit is issued. Concurrent with the issuance of the VPA permit, the No Discharge Certificate will be revoked subject to appropriate notice and opportunity for public hearing. Notwithstanding the foregoing, all No Discharge Certificates which do not bear an expiration date shall terminate no later than July 1, 1999.~~

~~B. A. Permits issued prior to January 1, 2008, by the Department of Health under the authority of the State Board of Health prior to January 1, 2008, shall continue in force until expired, reissued, amended, or terminated in accordance with the permit or this regulation. All owners holding biosolids use construction or operation permits as of January 1, 2008, shall submit an application for a Virginia Pollution Abatement Permit in accordance with this regulation within 180 days before the date of expiration of permits issued prior to January 1, 2008, or at the time of any modification request submitted after January 1, 2008, or by June 1, 2008, whichever is later. All owners of biosolids use facilities shall comply with the applicable requirements set forth in the operational regulations of Part IX (9VAC25-32-310 et seq.) of this chapter.~~

B. All owners holding active biosolids use permits as of January 1, 2008, shall submit an application for a Virginia Pollution Abatement Permit in accordance with this regulation at least 180 days before the expiration date of permits issued prior to January 1, 2008, or by June 30, 2012, whichever comes first.

C. All owners of biosolids use facilities shall comply with the applicable requirements set forth in the operational regulations of Part IX (9VAC25-32-303 et seq.) of this chapter.

D. Notwithstanding the foregoing, all VDH-BUR permits shall terminate no later than December 31, 2012, if an

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administratively complete VPA application for the activity authorized by the VDH-BUR permit has not been submitted to the department.

Part IX
Biosolids Program

Article 1
Procedures and Requirements

9VAC25-32-303. Purpose and applicability.

A. This part establishes standards, which consist of general requirements, pollutant limits, management practices, and operational standards, for the final use of biosolids or disposal of sewage sludge generated during the treatment of domestic sewage in a treatment works. Standards are included in this part for biosolids applied to the land. Also included in this part are pathogen and alternative vector attraction reduction requirements for biosolids applied to the land.

B. The standards in this part also include the frequency of monitoring and recordkeeping requirements when biosolids is applied to the land.

C. Applicability.

1. This part applies to any person who prepares biosolids or applies biosolids to the land.
2. This part applies to biosolids applied to the land.
3. This part applies to land where biosolids is applied.

9VAC25-32-305. Permits.

A. No owner shall cause or allow any land application, marketing, or distribution of biosolids except in compliance with a permit issued by the board that authorizes these activities.

B. A separate biosolids use permit shall be issued for each political jurisdiction (county or city) where land application is proposed.

9VAC25-32-307. Relationship to other regulations.

A. Disposal of sewage sludge in a municipal solid waste landfill unit that complies with the requirements in the Virginia Solid Waste Management Regulation (9VAC20-80) constitutes compliance with § 405 (d) of the federal Clean Water Act.

B. Any person who prepares sewage sludge that is disposed in a municipal solid waste landfill unit shall ensure that the sewage sludge meets the requirements in 9VAC20-80 concerning the quality of materials disposed in a municipal solid waste landfill.

Part IX
Biosolids Program

Article 1
Definitions and Procedures

9VAC25-32-310. Definitions. (Repealed.)

A. For the purposes of this part the following definitions shall apply:

"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 this regulation.

"Critical areas/waters" means areas/waters in proximity to shellfish waters, a public water supply, recreation or other waters where health or water quality concerns are identified by the board or the Department of Health.

"Dry tons" means dry weight established as representative of land applied biosolids and expressed in units of English tons.

"Dry weight" means the measured weight of a sample of sewage sludge or biosolids after all moisture has been removed in accordance with the standard methods of testing and often represented as a percent solids.

"Effluent limitations" means schedules of compliance, prohibitions, permit requirements, established under state or federal law for control of sewage discharges.

"Exceptional quality biosolids" means biosolids that have received an established level of treatment for pathogen control and vector attraction reduction and contain known levels of pollutants, such that they may be marketed or distributed for public use in accordance with this regulation.

"Facilities" means processes, equipment, storage devices and dedicated sites, located or operated separately from a treatment works, utilized for sewage sludge management, including but not limited to, handling, treatment, transport and storage of biosolids.

"Generator" means the owner of a sewage treatment works that produces sewage sludge and biosolids.

"Industrial wastes" means liquid or other wastes resulting from any process of industry, manufacture, trade or business, or from the development of any natural resources.

"Land application" means the distribution of either treated wastewater of acceptable quality, referred to as effluent, or stabilized sewage sludge of acceptable quality, referred to as biosolids, upon, or insertion into, the land with a uniform application rate for the purpose of utilization, or assimilation. Bulk disposal of stabilized sludge in a confined area, such as in landfills, is not land application. Sites approved for land

application of biosolids in accordance with this regulation are not to be considered to be treatment works.

"Land applier" means someone who land applies biosolids pursuant to a valid permit from the department as set forth in this regulation.

"Local monitor" means a person or persons employed by local government to perform the duties of monitoring the operations of land appliers pursuant to a local ordinance.

"Local ordinance" means an ordinance adopted by counties, cities or towns in accordance with § 62.1-44.19:3 of the Code of Virginia.

"Operate" means the act of any person who may have an impact on either the finished water quality at a waterworks or the final effluent at a sewage treatment works, such as to (i) place into or take out of service a unit process or unit processes, (ii) make or cause adjustments in the operation of a unit process or unit processes at a treatment works, or (iii) manage sewage sludge or biosolids.

"Owner" means the Commonwealth or any of its political subdivisions including sanitary districts, sanitation district commissions and authorities, federal agencies, any individual, any group of individuals acting individually or as a group, or any public or private institution, corporation, company, partnership, firm or association that owns or proposes to own a sewerage system or treatment works as defined in § 62.1-44.3 of the Code of Virginia.

"Permit" means an authorization granted by the board to construct, or operate, facilities and specific sites utilized for biosolids management, including land application, marketing and distribution of biosolids.

"Permittee" means a person, firm, corporation, political subdivision or other entity holding a permit approved by the board for the land application, storage or distribution of biosolids as provided for in this regulation.

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

"Pollution" means such alteration of the physical, chemical or biological properties of any state waters or soil as will, or is likely to, create a nuisance or render such waters or soil (i) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (ii) unsuitable despite reasonable treatment for use as present or possible future sources of public water supply; or (iii) unsuitable for recreational, commercial, industrial, agricultural or for other reasonable uses. Such alteration is also deemed to be pollution, if there occurs: (a) an alteration of the physical, chemical or biological property of state waters or soil, or a discharge or a deposit of sewage, industrial wastes or other wastes to state waters or soil by any owner which by itself is not sufficient to cause pollution, but

which, in combination with such alteration of, or discharge, or deposit, to state waters or soil by other owners, is sufficient to cause pollution; (b) the discharge of untreated sewage by any owner into state waters or soil; or (c) the contravention of standards of air or water quality duly established by the State Water Control Board.

9VAC25-32-313. General requirements.

A. No person shall apply biosolids to the land except in accordance with the requirements in this article.

B. No person shall apply bulk biosolids to the land if it is likely to adversely affect a threatened or endangered species listed in 9VAC25-260-320 or § 4 of the Endangered Species Act (16 USC § 1533) or if the land application is likely to adversely affect its designated critical habitat.

C. No person shall apply bulk biosolids subject to the cumulative pollutant loading rates in 9VAC25-32-356 Table 2 to agricultural land, forest, a public contact site, or a reclamation site if any of the cumulative pollutant loading rates in 9VAC25-32-356 Table 2 has been reached.

D. No person shall apply domestic septage to agricultural land, forest, or a reclamation site during a 365-day period if the annual application rate in 9VAC25-32-356 C has been reached during that period.

E. The person who prepares bulk biosolids that is applied to agricultural land, forest, a public contact site, or a reclamation site shall provide the person who applies the bulk biosolids written notification of the concentration of total nitrogen (as N on a dry weight basis) in the bulk biosolids.

F. Before bulk biosolids subject to the cumulative pollutant loading rates in 9VAC25-32-356 Table 2 is applied to the land, the person who proposes to apply the bulk biosolids shall contact the department to determine whether bulk biosolids subject to the cumulative pollutant loading rates in 9VAC25-32-356 Table 2 has been applied to the site since July 20, 1993.

1. If bulk biosolids subject to the cumulative pollutant loading rates in 9VAC25-32-356 Table 2 has not been applied to the site since July 20, 1993, the cumulative amount of each pollutant listed in 9VAC25-32-356 Table 2 may be applied to the site in accordance with 9VAC25-32-356 A 2 a.

2. If bulk biosolids subject to the cumulative pollutant loading rates in 9VAC25-32-356 Table 2 has been applied to the site since July 20, 1993, and the cumulative amount of each pollutant applied to the site in the bulk biosolids since that date is known, the cumulative amount of each pollutant applied to the site shall be used to determine the additional amount of each pollutant that can be applied to the site in accordance with 9VAC25-32-356 A 2 a.

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3. If bulk biosolids subject to the cumulative pollutant loading rates in 9VAC25-32-356 Table 2 has been applied to the site since July 20, 1993, and the cumulative amount of each pollutant applied to the site in the bulk biosolids since that date is not known, an additional amount of each pollutant shall not be applied to the site in accordance with 9VAC25-32-356 A 2 a.

G. When a person who prepares bulk biosolids provides the bulk biosolids to a person who applies the bulk biosolids to the land, the person who prepares the bulk biosolids shall provide the person who applies the biosolids notice and necessary information to comply with the requirements in this article.

H. When a person who prepares biosolids provides the biosolids to another person who prepares the biosolids, the person who provides the biosolids shall provide the person who receives the biosolids notice and necessary information to comply with the requirements in this article.

I. The person who applies bulk biosolids to the land shall provide the owner or lease holder of the land on which the bulk biosolids is applied notice and necessary information to comply with the requirements in this article.

J. Any person who prepares bulk biosolids in another state that is applied to land in Virginia shall provide written notice to the department prior to the initial application of bulk biosolids to the land application site by the applier. The notice shall include:

1. The location, by either street address or latitude and longitude, of each land application site;
2. The approximate time period bulk biosolids will be applied to the site;
3. The name, address, telephone number, and National Pollutant Discharge Elimination System permit number (if appropriate) for the person who prepares the bulk biosolids; and,
4. The name, address, telephone number, and National (or Virginia) Pollutant Discharge Elimination System permit number (if appropriate) for the person who will apply the bulk biosolids.

K. Any person who applies bulk biosolids subject to the cumulative pollutant loading rates in 9VAC25-32-356 Table 2 to the land shall provide written notice, prior to the initial application of bulk biosolids to the land application site by the applier, to the department and the department shall retain and provide access to the notice. The notice shall include:

1. The location, by either street address or latitude and longitude, of the land application site; and
2. The name, address, telephone number, and Virginia Pollution Abatement permit number (if appropriate) of the person who will apply the bulk biosolids.

9VAC25-32-315. Additional and more stringent requirements.

A. On a case-by-case basis, the board may impose requirements for the use of biosolids or the disposal of sewage sludge in addition to or more stringent than the requirements in this part when necessary to protect human health and the environment from any adverse effect of a pollutant in the biosolids or sewage sludge.

B. Nothing in this part precludes another state agency with responsibility for regulating biosolids or sewage sludge or any political subdivision of Virginia or an interstate agency from imposing requirements for the use of biosolids or disposal of sewage sludge more stringent than the requirements in this part or from imposing additional requirements for the use of biosolids or disposal of sewage sludge.

C. For biosolids land application where, because of site specific conditions, including soil type, identified during the permit application review process, the department determines that special requirements are necessary to protect the environment or the health, safety, or welfare of persons residing in the vicinity of a proposed land application site, the department may incorporate in the permit at the time it is issued reasonable special conditions regarding buffering, transportation routes, slope, material source, methods of handling and application, and time of day restrictions exceeding those required by this regulation. The permit applicant shall have at least 14 days in which to review and respond to the proposed conditions.

9VAC25-32-317. Exclusions.

A. Treatment processes. This part does not establish requirements for processes to treat domestic sewage or for processes used to treat sewage sludge prior to final use or disposal, except as provided in 9VAC25-32-675 and 9VAC25-32-685.

B. Selection of a use or a disposal practice. This part does not require the selection of a biosolids use or sewage sludge disposal practice. The determination of the manner in which biosolids is used or sewage sludge is disposed is a local determination.

C. Incineration of sewage sludge. This part does not establish requirements for sewage sludge fired in a sewage sludge incinerator or co-fired in an incinerator with other wastes or for the incinerator in which sewage sludge or other waste are co-fired.

D. Hazardous sewage sludge. This part does not establish requirements for the use or disposal of sewage sludge determined to be hazardous in accordance with 40 CFR Part 261 (2000) or the Code of Virginia.

E. Sewage sludge with high PCB concentration. This part does not establish requirements for the use or disposal of

sewage sludge with a concentration of polychlorinated biphenyls (PCBs) equal to or greater than 50 milligrams per kilogram of total solids (dry weight basis).

F. Incinerator ash. This part does not establish requirements for the use or disposal of ash generated during the firing of sewage sludge in a sewage sludge incinerator.

G. Grit and screenings. This part does not establish requirements for the use or disposal of grit (e.g., sand, gravel, cinders, or other materials with a high specific gravity) or screenings (e.g., relatively large materials such as rags) generated during preliminary treatment of domestic sewage in a treatment works.

9VAC25-32-320. Local enforcement of the regulation.

A. In the event of a dispute concerning the existence of a violation between a permittee and a locality that has adopted a local ordinance for testing and monitoring of the land application of sewage sludge and a permittee concerning the existence of a violation biosolids, the activity alleged to be in violation shall be halted pending a determination by the director. ~~The decision of the director shall be final and binding unless reversed on judicial appeal pursuant to § 2.2-4026 of the Code of Virginia. If the activity is not halted, the director may seek an injunction compelling the halting of the activity, from a court having jurisdiction.~~

B. Upon determination by the director that there has been a violation of § 62.1-44.19:3, 62.1-44.19:3.1 or 62.1-44.19:3.3 of the Code of Virginia, or of any regulation promulgated under those sections, and that such violation poses an imminent threat to public health, safety or welfare, the department shall commence appropriate action to abate the violation and immediately notify the chief administrative officer of any locality potentially affected by the violation.

C. Local governments shall promptly notify the department of all results from the testing and monitoring of the land application of ~~sewage sludge~~ biosolids performed by persons employed by local governments and any violation of § 62.1-44.19:3, 62.1-44.19:3.1 or 62.1-44.19:3.3 of the Code of Virginia.

D. Local governments receiving complaints concerning land application of biosolids shall notify the department and the permit holder within 24 hours of receiving the complaint.

9VAC25-32-330. Variances.

A. The board may grant a variance to a procedural, design, or operational regulation by following the appropriate procedures set forth in this section.

B. Requirements for a variance. The board may grant a variance if it finds that the hardship imposed ~~(may be economic)~~ outweighs the benefits that may be received by the public and that the granting of such variance does not subject

the public to unreasonable health risks or environmental pollution.

C. Application for a variance. Any owner may apply in writing for a variance. The application ~~should~~ shall be ~~sent~~ submitted to the appropriate regional office for evaluation. The application shall include:

1. A citation of the regulation from which a variance is requested.
2. The nature and duration of variance requested.
3. A statement of the hardship to the owner and the anticipated impacts to the public health and welfare if a variance were granted.
4. Suggested conditions that might be imposed on the granting of a variance that would limit its detrimental impact on public health and welfare.
5. Other information, if any, believed to be pertinent by the applicant.
6. Such other information as may be required to make the determination in accordance with subsection B of this section.

D. Consideration of a variance.

1. The board shall act on any variance request submitted pursuant to this subsection within 90 days of receipt of request.
2. In the board's consideration of whether a biosolids use variance should be granted, the board shall consider such factors as the following:
 - a. The effect that such a variance would have on the adequate operation of the biosolids use facility, including public nuisance concerns;
 - b. The cost and other economic considerations imposed by this requirement; and
 - c. The effect that such a variance would have on the protection of the public health or the environment.

E. Disposition of a variance request.

1. The board may grant the variance request and if the board proposes to deny the variance it shall provide the owner an opportunity to an informal hearing as provided in § 2.2-4019 of the Code of Virginia. Following this opportunity for an informal hearing the board may reject any application for a variance by sending a rejection notice to the applicant. The rejection notice shall be in writing and shall state the reasons for the rejection. A rejection notice constitutes a case decision.
2. If the board proposes to grant a variance request submitted pursuant to this regulation, the applicant shall be notified in writing of this decision. Such notice shall

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identify the variance, the biosolids use facility involved, and shall specify the period of time for which the variance will be effective. Such notice shall provide that the variance will be terminated when the biosolids use facility comes into compliance with the applicable regulation and may be terminated upon a finding by the board that the biosolids use facility has failed to comply with any requirements or schedules issued in conjunction with the variance. The effective date of the variance shall be 15 days following its issuance.

F. Posting of variances. All variances granted for the design or operation of biosolids use facility are nontransferable. Any requirements of the variance shall become part of the permit for biosolids use subsequently granted by the board.

9VAC25-32-340. Permits. (Repealed.)

~~No owner shall cause or allow any land application, marketing or distribution of biosolids except in compliance with a permit issued by the board that authorizes these activities. Application for a permit shall be in accordance with 9VAC25 32 60. Information for the permit application is to be provided by completion and submission of the appropriate application forms and applicable sections in Article 4 (9VAC25 32 670 et seq.) of this part to the appropriate regional office. Applications can be obtained from any regional office.~~

~~A separate biosolids use permit shall be issued for each political jurisdiction (county or city) where land application is to be undertaken.~~

9VAC25-32-355. Biosolids Use Regulation Advisory Committee. (Repealed.)

~~A. The department shall appoint a committee to advise the department on issues related to implementation and administration of this part. Advisory committee membership should include representatives of large size and small size communities and industries and their consultants. The advisory committee shall contain a maximum of 25 members.~~

~~B. The committee members shall be selected from organizations such as:~~

- ~~1. Virginia Association of Counties (VACO) and a representative, such as a local monitor, of a county with sites permitted for land application of biosolids in accordance with this regulation;~~
- ~~2. Virginia Municipal League (VML), the Association of Municipal Wastewater Agencies (VAMWA), and the owners of medium and small flow treatment works;~~
- ~~3. Virginia professional societies (i.e., engineers and soil scientists) and regional wastewater organizations such as the Virginia Water Environment Association;~~
- ~~4. Biosolids consultants and contractors;~~

~~5. State university and college faculties;~~

~~6. Agricultural industry, the Virginia Farm Bureau and farmers with land permitted in accordance with this regulation;~~

~~7. Medical professionals and "at large" citizens; and~~

~~8. State agencies such as the Department of Conservation and Recreation, the Department of Health, and the Department of Agriculture and Consumer Services.~~

~~C. Consideration shall also be given to appropriate citizens who are not members of these organizations and other interested parties and groups such as citizens' conservation organizations.~~

~~D. Each committee member may designate an alternate to serve when necessary.~~

~~E. The function of the committee will be to meet, discuss issues, and make recommendations to the department concerning the regulations and standards contained in this part and other policies, procedures and programs for regulating biosolids use and associated fees. The committee's meetings will be advertised and open to the public, and comments and recommendations from the public will be received.~~

Article 2

Operational and Monitoring Requirements

9VAC25-32-356. Pollutant limits.

A. Biosolids.

1. Bulk biosolids or biosolids sold or given away in a bag or other container shall not be applied to the land if the concentration of any pollutant in the biosolids exceeds the ceiling concentration for the pollutant in Table 1 of this section.

2. If bulk biosolids is applied to agricultural land, forest, a public contact site, or a reclamation site, either:

a. The cumulative loading rate for each pollutant shall not exceed the cumulative pollutant loading rate for the pollutant in Table 2 of this section; or

b. The concentration of each pollutant in the biosolids shall not exceed the concentration for the pollutant in Table 3 of this section.

3. If bulk biosolids is applied to a lawn or a home garden, the concentration of each pollutant in the biosolids shall not exceed the concentration for the pollutant in Table 3 of this section.

4. If biosolids is sold or given away in a bag or other container for application to the land, either:

a. The concentration of each pollutant in the biosolids shall not exceed the concentration for the pollutant in Table 3 of this section; or

b. The product of the concentration of each pollutant in the biosolids and the annual whole sludge application rate for the biosolids shall not cause the annual pollutant loading rate for the pollutant in Table 4 of this section to be exceeded. The procedure used to determine the annual whole sludge application rate is presented in subsection D of this section.

B. Pollutant concentrations and loading rates - biosolids.

| TABLE 1 CEILING CONCENTRATIONS | |
|-----------------------------------|---|
| Pollutant | Ceiling Concentration (milligrams per kilogram)* |
| Arsenic | 75 |
| Cadmium | 85 |
| Copper | 4,300 |
| Lead | 840 |
| Mercury | 57 |
| Molybdenum ⁽¹⁾ | 75 |
| Nickel | 420 |
| Selenium | 100 |
| Zinc | 7,500 |

*Dry weight basis

⁽¹⁾ Biosolids with a molybdenum concentration greater than 40 mg/kg shall not be applied to land used for livestock grazing.

| TABLE 2 CUMULATIVE POLLUTANT LOADING RATES ⁽¹⁾ | | |
|--|-----------------------------------|-------------------|
| Pollutant | Cumulative Pollutant Loading Rate | |
| | (kilograms per hectare) | (pounds per acre) |
| Arsenic ⁽²⁾ | 41 | 36 |
| Cadmium | 39 | 35 |
| Copper | 1,500 | 1,340 |
| Lead | 300 | 270 |
| Mercury | 17 | 16 |

| | | |
|---------------------------|-------|-------|
| Molybdenum ⁽²⁾ | | |
| Nickel | 420 | 375 |
| Selenium | 100 | 89 |
| Zinc | 2,800 | 2,500 |

Notes: ⁽¹⁾ Such total applications to be made on soils with the biosolids/soil mixture pH adjusted to 6.0 or greater if the biosolids cadmium content is greater than or equal to 21 mg/kg.

The maximum cumulative application rate is limited for all ranges of cation exchange capacity due to soil background pH in Virginia of less than 6.5 and lack of regulatory controls of soil pH adjustment after biosolids application ceases.

⁽²⁾ The maximum cumulative application is currently under study by USEPA.

| TABLE 3 POLLUTANT CONCENTRATIONS | |
|-------------------------------------|---|
| Pollutant | Monthly Average Concentration (milligrams per kilogram)* |
| Arsenic | 41 |
| Cadmium | 39 |
| Copper | 1,500 |
| Lead | 300 |
| Mercury | 17 |
| Molybdenum ⁽¹⁾ | |
| Nickel | 420 |
| Selenium | 100 |
| Zinc | 2,800 |

*Dry weight basis

Note: ⁽¹⁾ The monthly average concentration is currently under study by USEPA.

| TABLE 4 ANNUAL POLLUTANT LOADING RATES | | |
|---|---|-------------------|
| Pollutant | Annual Pollutant Loading Rate (per 365-day period) | |
| | (kilograms per hectare) | (pounds per acre) |
| Arsenic | 2.0 | 1.8 |

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| | | |
|---------------------------------|-------------|-------------|
| <u>Cadmium</u> | <u>1.9</u> | <u>1.7</u> |
| <u>Copper</u> | <u>75</u> | <u>67</u> |
| <u>Lead</u> | <u>15</u> | <u>13</u> |
| <u>Mercury</u> | <u>0.85</u> | <u>0.76</u> |
| <u>Molybdenum⁽²⁾</u> | | |
| <u>Nickel</u> | <u>21</u> | <u>19</u> |
| <u>Selenium</u> | <u>5.0</u> | <u>4.6</u> |
| <u>Zinc</u> | <u>140</u> | <u>125</u> |

Notes: ⁽¹⁾ Such total applications to be made on soils with the biosolids/soil mixture pH adjusted to 6.0 or greater if the biosolids cadmium content is greater than or equal to 21 mg/kg.

The maximum cumulative application rate is limited for all ranges of cation exchange capacity due to soil background pH in Virginia of less than 6.5 and lack of regulatory controls of soil pH adjustment after biosolids application ceases.

⁽²⁾ The maximum cumulative application is currently under study by USEPA.

C. Procedures to determine the annual whole sludge application rate (AWSAR) for biosolids. Subdivision A 4 b of this section requires that the product of the concentration for each pollutant listed in Table 4 of this section in biosolids sold or given away in a bag or other container for application to the land and the AWSAR for the biosolids not cause the annual pollutant loading rate for the pollutant in Table 4 to be exceeded. This subsection contains that procedure used to determine the AWSAR for a biosolids that does not cause the annual pollutant loading rates (APLR) in Table 4 of this section to be exceeded.

1. The relationship between the APLR for a pollutant and the AWSAR for a biosolids is shown in equation (1):

| |
|--|
| <u>EQUATION (1)</u> |
| <u>APLR = C X AWSAR X 0.001</u> |
| <u>APLR = Annual pollutant loading rate in kilograms per hectare per 365-day period</u> |
| <u>C = Pollutant concentration in milligrams per kilogram of total solids (dry weight basis)</u> |
| <u>AWSAR = Annual whole sludge application rate in metric tons per hectare per 365-day period (dry weight basis)</u> |
| <u>0.001 = A conversion factor</u> |

2. To determine the AWSAR, equation (1) is rearranged into equation (2):

| |
|--|
| <u>EQUATION (2)</u> |
| <u>AWSAR = APLR/(C X 0.001)</u> |
| <u>AWSAR = Annual whole sludge application rate in metric tons per hectare per 365-day period (dry weight basis)</u> |
| <u>APLR = Annual pollutant loading rate in kilograms per hectare per 365-day period</u> |
| <u>C = Pollutant concentration in milligrams per kilogram of total solids (dry weight basis)</u> |
| <u>0.001 = A conversion factor</u> |

3. The procedure used to determine the AWSAR for a biosolids is presented below:

- a. Analyze a sample of the biosolids to determine the concentration for each of the pollutants listed in Table 4 of this section in the biosolids.
- b. Using the pollutant concentrations from subdivision 3 a of this subsection and the APLRs from Table 4 of this section, calculate an AWSAR for each pollutant using Equation (2) above.
- c. The AWSAR for the biosolids is the lowest AWSAR calculated in subdivision 3 b of this subsection.

9VAC25-32-357. Operational standards, pathogens, and vector attraction reduction.

A. Biosolids shall be monitored to verify that the selected pathogen reduction treatment classification and vector attraction reduction method requirements have been met.

B. Pathogens – biosolids.

1. The Class A pathogen requirements in 9VAC25-32-675 A or the Class B pathogen requirements and site restrictions in 9VAC25-32-675 B shall be met when bulk biosolids is applied to agricultural land, forest, a public contact site, or a reclamation site.
2. The Class A pathogen requirements in 9VAC25-32-675 A shall be met when bulk biosolids is applied to a lawn or a home garden.
3. The Class A pathogen requirements in 9VAC25-32-675 A shall be met when biosolids is sold or given away in a bag or other container for application to the land.

C. Pathogens – domestic septage. The requirements in either 9VAC25-32-675 C 1 or C 2 shall be met when domestic septage is applied to agricultural land, forest, or a reclamation site.

D. Vector attraction reduction – biosolids.

1. One of the vector attraction reduction requirements in 9VAC25-32-685 B 1 through B 10 shall be met when bulk

biosolids is applied to agricultural land, forest, a public contact site, or a reclamation site.

2. One of the vector attraction reduction requirements in 9VAC25-32-685 B 1 through B 8 shall be met when bulk biosolids is applied to a lawn or a home garden.

3. One of the vector attraction reduction requirements in 9VAC25-32-685 B 1 through B 8 shall be met when biosolids is sold or given away in a bag or other container for application to the land.

E. Vector attraction reduction – domestic septage. The vector attraction reduction requirements in 9VAC25-32-685 B 9, B 10, or B 12 shall be met when domestic septage is applied to agricultural land, forest, or a reclamation site.

F. Additional operational control information may be required on an individual basis by the department.

9VAC25-32-358. Frequency of monitoring.

A. Biosolids.

1. The frequency of monitoring for the pollutants listed in Tables 1 through 4 of 9VAC25-32-356; the pathogen density requirements in 9VAC25-32-675 A and B 2 through B 4; and the vector attraction reduction requirements in 9VAC25-32-685 B 1 through B 4, B 7, and B 8 shall be the frequency in Table 1 of this section.

| <u>TABLE 1 FREQUENCY OF MONITORING – LAND APPLICATION</u> | |
|---|---|
| <u>Amount of biosolids⁽¹⁾ (metric tons per 365-day period)</u> | <u>Frequency⁽²⁾</u> |
| <u>Greater than zero but less than 290</u> | <u>Once per year</u> |
| <u>Equal to or greater than 290 but less than 1,500</u> | <u>Once per quarter (four times per year)</u> |
| <u>Equal to or greater than 1,500 but less than 15,000</u> | <u>Once per 60 days (six times per year)</u> |
| <u>Equal to or greater than 15,000</u> | <u>Once per month (12 times per year)</u> |
| <u>Note ⁽¹⁾: Either the amount of bulk biosolids applied to the land or the amount of biosolids received by a person who prepares biosolids that is sold or given away in a bag or other container for application to the land (dry weight basis).</u> | |
| <u>Note ⁽²⁾: Sampling shall be conducted at approximately equal intervals at the listed frequencies. Biosolids programs that store biosolids and land apply only during discrete events throughout</u> | |

the year shall schedule sampling events to coincide with application periods. The department may require increased monitoring frequencies, if necessary, to adequately define any significant variability in biosolids quality.

2. After the biosolids has been monitored for two years at the frequency in Table 1 of this section, the board may reduce the frequency of monitoring for pollutant concentrations and for the pathogen density requirements in 9VAC25-32-675 A 5 b and c. In no case shall the frequency be reduced to less than once per year in any year that biosolids are applied to land.

B. Domestic septage. If either the pathogen requirements in 9VAC25-32-675 C 2 or the vector attraction reduction requirements in 9VAC25-32-685 B 12 are met when domestic septage is applied to agricultural land, forest, or a reclamation site, each container of domestic septage applied to the land shall be monitored for compliance with those requirements.

9VAC25-32-359. Recordkeeping.

A. Biosolids.

1. If the pollutant concentrations in Table 3 of 9VAC25-32-356, the Class A pathogen requirements in 9VAC25-32-675 A, and the vector attraction reduction requirements in either 9VAC25-32-685 B 9 or B 10 are met when bulk biosolids is applied to agricultural land, forest, a public contact site, or a reclamation site:

a. The person who prepares the bulk biosolids shall develop the following information and shall retain the information for five years:

(1) The concentration of each pollutant listed in Table 3 of 9VAC25-32-356 in the bulk biosolids;

(2) The following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the pathogen requirements in 9VAC25-32-675 A was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."; and

(3) A description of how the pathogen requirements in 9VAC25-32-675 A are met.

b. The person who applies the bulk biosolids shall develop the following information and shall retain the information for five years:

(1) The following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the

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management practices in 9VAC25-32-560 and the vector attraction reduction requirement in (insert either 9VAC25-32-685 B 9 or B 10) was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including fine and imprisonment."; and

(2) A description of how the management practices in 9VAC25-32-560 are met for each site on which bulk biosolids is applied; and

(3) A description of how the vector attraction reduction requirements in either 9VAC25-32-685 B 9 or B 10 are met for each site on which bulk biosolids is applied.

2. If the pollutant concentrations in 9VAC25-32-356 Table 3 and the Class B pathogen requirements in 9VAC25-32-675 B are met when bulk biosolids is applied to agricultural land, forest, a public contact site, or a reclamation site:

a. The person who prepares the bulk biosolids shall develop the following information and shall retain the information for five years:

(1) The concentration of each pollutant listed in Table 3 of 9VAC25-32-356 in the bulk biosolids;

(2) The following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the Class B pathogen requirements in 9VAC25-32-675 B and the vector attraction reduction requirement in (insert one of the vector attraction reduction requirements in 9VAC25-32-685 B 1 through B 8, if one of those requirements is met) was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification, including the possibility of fine and imprisonment."; and

(3) A description of how the Class B pathogen requirements in 9VAC25-32-675 B are met; and

(4) When one of the vector attraction reduction requirements in 9VAC25-32-685 B 1 through B 8 is met, a description of how the vector attraction reduction requirement is met.

b. The person who applies the bulk biosolids shall develop the following information and shall retain the information for five years:

(1) The following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the

management practices in 9VAC25-32-560, the site restrictions in 9VAC25-32-675 B 5, and the vector attraction reduction requirements in (insert either 9VAC25-32-685 B 9 or B 10, if one of those requirements is met) was prepared for each site on which bulk biosolids is applied under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.";

(2) A description of how the management practices in 9VAC25-32-560 are met on each site on which bulk biosolids is applied;

(3) A description of how the site restrictions in 9VAC25-32-675 B 5 are met for each site on which bulk biosolids is applied;

(4) When the vector attraction reduction requirement in either 9VAC25-32-685 B 9 or B 10 is met, a description of how the vector attraction reduction requirement is met; and

(5) The date bulk biosolids is applied to each site.

3. If the requirements in 9VAC25-32-356 A 2 are met when bulk biosolids is applied to agricultural land, forest, a public contact site, or a reclamation site:

a. The person who prepares the bulk biosolids shall develop the following information and shall retain the information for five years:

(1) The concentration of each pollutant listed in Table 1 of 9VAC25-32-356 in the bulk biosolids;

(2) The following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the pathogen requirements in (insert either 9VAC25-32-675 A or B and the vector attraction reduction requirement in (insert one of the vector attraction reduction requirements in 9VAC25-32-685 B 1 through B 8, if one of those requirements is met)) was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fines and imprisonment.";

(3) A description of how the pathogen requirements in either 9VAC25-32-675 A or B are met; and,

(4) When one of the vector attraction requirements in 9VAC25-32-685 B 1 through B 8 is met, a description of how the vector attraction reduction requirement is met.

b. The person who applies the bulk biosolids shall develop the following information, retain the information in subdivisions A 3 b (1) through A 3 b (7) indefinitely, and retain the information in subdivisions A 3 b (8) through A 3 b (13) for five years:

(1) The location, by either street address or latitude and longitude, of each site on which bulk biosolids is applied;

(2) The number of hectares in each site on which bulk biosolids is applied;

(3) The date bulk biosolids is applied to each site;

(4) The cumulative amount of each pollutant (i.e., kilograms) listed in Table 2 of 9VAC25-32-356 in the bulk biosolids applied to each site, including the amount in 9VAC25-32-313 F 2 c;

(5) The amount of biosolids (i.e., metric tons) applied to each site;

(6) The following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the requirements to obtain information in 9VAC25-32-313 F 2 was prepared for each sites on which bulk biosolids is applied under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including fine and imprisonment.";

(7) A description of how the requirements to obtain information in 9VAC25-32-313 F 2 are met;

(8) The following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the management practices in 9VAC25-32-313 B and 9VAC25-32-560 was prepared for each site on which bulk biosolids is applied under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including fine and imprisonment.";

(9) A description of how the management practices in 9VAC25-32-560 are met for each site on which bulk biosolids is applied;

(10) The following certification statement when the bulk biosolids meet the Class B pathogen requirements in 9VAC25-32-675 B:

"I certify, under penalty of law, that the information that will be used to determine compliance with the site restrictions in 9VAC25-32-675 B 5 was prepared under

my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including fines and imprisonment.";

(11) A description of how the site restrictions in 9VAC25-32-675 B 5 are met for each site on which Class B bulk biosolids is applied;

(12) The following certification statement when the vector attraction reduction requirement in either 9VAC25-32-685 B 9 or B 10 is met:

"I certify, under penalty of law, that the information that will be used to determine compliance with the vector attraction reduction requirement in (insert either 9VAC25-32-685 B 9 or B 10) was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."; and

(13) If the vector attraction reduction requirements in either 9VAC25-32-685 B 9 or B 10 are met, a description of how the requirements are met.

B. Domestic septage. When domestic septage is applied to agricultural land, forest, or a reclamation site, the person who applies the domestic septage shall develop the following information and shall retain the information for five years:

1. The location, by either street address or latitude and longitude, of each site on which domestic septage is applied;

2. The number of acres in each site on which domestic septage is applied;

3. The date domestic septage is applied to each site;

4. The nitrogen requirement for the crop or vegetation grown on each site during the 365-day period;

5. The rate, in gallons per acre per 365-day period, at which domestic septage is applied to each site;

6. The following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the pathogen requirements in (insert either 9VAC25-32-675 C 1 or C 2) and the vector attraction reduction requirements in (insert 9VAC25-32-685 B 9, B 10, or B 12) was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.";

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7. A description of how the pathogen requirements in either 9VAC25-32-675 C 1 or C 2 are met; and

8. A description of how the vector attraction reduction requirements in 9VAC25-32-685 B 9; B 10 and B 12 are met.

Article 2

Operational and Monitoring Requirements

9VAC25-32-360. ~~Monitoring; records; reporting. Reporting.~~

~~The board may require the owner or operator of any facility to install, use, and maintain monitoring equipment for internal testing of biosolids quality, to identify and determine the causes of operational problems and to determine the necessary corrective actions to correct such problems. If required, test results shall be recorded, compiled, and reported to the department.~~

~~A. An activity report shall be submitted (electronically or postmarked) to the department by the 15th day of the month unless another date is specified in the permit in accordance with 9VAC25-32-80 I 4, following any month in which land application occurs. The report shall indicate those sites where land application activities took place during the previous month.~~

~~B. A report shall be submitted to the department annually on February 19 of each year for the previous calendar year's activity. The report shall include at a minimum:~~

~~1. The information in 9VAC25-32-359 A, except the information in 9VAC25-32-359 A 1 b, A 2 b and A 3 b, for the appropriate requirements; and~~

~~2. The information in 9VAC25-32-359 A 3 b (1) through (7) when 90% or more of any of the cumulative pollutant loading rates in Table 2 of 9VAC25-32-356 is reached at a land application site.~~

~~C. Biosolids application rates shall be calculated using the results from sampling and analysis completed during the most recent 12 months of monitoring. For proposed treatment works, rates may be initially based on the biosolids characteristic produced by similar generating facilities.~~

~~D. Reports shall be maintained documenting the required treatment and quality characteristics and the maximum allowable land application loading rates established for biosolids use; in addition, operational monitoring results shall verify that required sludge treatment has achieved the specified levels of pathogen control and vector attraction reductions (9VAC25-32-675 and 9VAC25-32-685). Adequate records on biosolids composition, treatment classification, biosolids application rates, and methods of application for each site shall be maintained by the generator and owner.~~

~~E. The generator and owner shall maintain the records for a minimum period of five years. Sites receiving frequent applications of biosolids that meet or exceed maximum cumulative constituent loadings and dedicated disposal sites should be properly referenced for future land transactions (Sludge Disposal Site Dedication Form).~~

9VAC25-32-370. ~~Minimum biosolids sampling and testing program. (Repealed.)~~

~~A. Sampling and testing methods shall conform to current United States Environmental Protection Agency (EPA) guidelines establishing test procedures for analysis of pollutants or other EPA approved methods.~~

~~B. Either the operation and maintenance manual, sludge management plan, or management practices plan shall contain a specific testing schedule. The testing schedule shall include minimum tests and their frequencies as required to monitor the facility in accordance with the appropriate certificate and the operating permit issued under this regulation.~~

~~C. The following sampling instructions shall be followed when collecting samples as required by this regulation:~~

~~1. Raw sewage or sludge samples are to be collected prior to the treatment process unit operations.~~

~~2. Final treated samples are to be taken at a point following appropriate unit operations in the treatment process. An evaluation of biosolids treatment may require monitoring of fecal coliform levels in the treated sludge.~~

~~3. Compositing of samples shall be in accordance with the treatment works operation and maintenance manual. Composite samples of sludge shall consist of grab samples taken in accordance with either the operation and maintenance manual or management practices plan, as appropriate. Composite samples shall be representative of the quality and quantity of the biosolids used. Greater frequency of grab sampling may be desirable where abnormal variation in waste strength occurs. Automatic proportional samplers are considered a valid sampling method.~~

9VAC25-32-380. ~~Minimum operational testing and control program. (Repealed.)~~

~~A. Sampling and testing methods shall conform to current United States Environmental Protection Agency (EPA) guidelines establishing test procedures for analysis of pollutants or other EPA approved methods.~~

~~B. The information furnished with either the operation and maintenance manual, sludge management plan, or management practices plan should recommend and describe the control tests and their frequency that should be routinely conducted by the holder of the permit in order to monitor operations and verify the treatment classification achieved (Table 3). All special sampling methods should be identified.~~

Biosolids use site sampling and testing frequencies should be in accordance with the requirements established by the instructions contained in the biosolids use operation and maintenance manual if provided.

~~C. Additional operational control information may be required on an individual basis by the department.~~

9VAC25-32-390. Additional monitoring, reporting and recording requirements for land application. (Repealed.)

~~A. Either the operation and maintenance manual, sludge management plan or management practices plan shall contain a schedule of the required minimum tests necessary to monitor land application operation. Such testing schedule information for land application of biosolids shall contain instructions for recording and reporting. Monitoring of any associated land treatment systems shall be in accordance with the biosolids use operation and maintenance manual if provided.~~

~~B. The permit holder shall provide to the department, and to each locality in which it is permitted to land apply biosolids, written evidence of financial responsibility, including both current liability and pollution insurance, or such other evidence of financial responsibility as the board may establish by regulation in an amount not less than \$1 million per occurrence, which shall be available to pay claims for cleanup costs, personal injury, bodily injury and property damage resulting from the transport, storage and land application of biosolids in Virginia. The aggregate amount of financial liability maintained by the permit holder shall be \$1 million for companies with less than \$5 million in annual gross revenue and shall be \$2 million for companies with \$5 million or more in annual gross revenue.~~

~~C. Evidence of financial responsibility, which may include liability insurance, meeting the requirements herein shall be maintained by the permit holder at all times that it is authorized to transport, store or land apply biosolids in Virginia. The permit holder shall immediately notify the Department of Health in the event of any lapse or cancellation of such financial resources, including insurance coverage, as required by this section.~~

9VAC25-32-400. Additional monitoring, reporting and recording requirements for sewage sludge and residual solids management.

~~Either the operation and maintenance manual, sludge management plan, or management practices plan shall contain a schedule of required minimum tests and their frequency to be conducted for the sewage sludge and biosolids management system and shall also contain necessary information to document sewage sludge and biosolids quality. Such test schedule information should include instructions for recording and reporting. Monitoring, reporting and recording requirements for sewage sludge and biosolids quality control shall be in accordance with the sludge management plan or~~

~~management practices plan in accordance with 9VAC25 32-500 B. The recordkeeping and reporting requirements for sewage sludge and biosolids management contained in the treatment works operation and maintenance manual shall apply to all application sites, regardless of size or frequency of application. However, the requirements relative to monitoring, reporting and recording of site specific soils and monitoring, reporting and recording of ground water and surface water are not applicable for any site that meets either of the following criteria:~~

~~1. Whenever exceptional quality biosolids are marketed and distributed with a label or identification information that specifies proper quality information and describes how agronomic rates are to be determined. Also, whenever Class I treated biosolids are land applied so that (i) the annual loading rate will not result in annual maximum loading rates in excess of those specified in Table 8; (ii) applied biosolids will meet vector attraction requirements; (iii) the amount of nutrients applied does not exceed the total crop needs or agronomic loading rate; (iv) no additional biosolids are applied for at least five years, or the biosolids are applied to land maintained only as pasture or hay land for five years following the last application of biosolids and the nutrient loading rate does not exceed 70% of the annual total crop needs of the grass or hay cover (Tables A 2 and 11).~~

~~2. Whenever the application site area for biosolids processed by Class I or II treatment is no larger than 10 acres and is isolated (2,000 feet or more separation distance) from other sites receiving applications of biosolids within three years of the time biosolids are applied to the identified site and the necessary vector attraction requirements are met.~~

~~A. The department may recommend require that specified additional site specific monitoring be performed by the holder of the permit for any biosolids land application practice regardless of frequency of application or size of the application area. Such recommendations will requirements may occur in situations in which groundwater ground water contamination, surface runoff, soil toxicity, health hazards or nuisance conditions are identified as an existing problem or documented as a potential problem as a result of biosolids use operations. Additional monitoring may include, but is not limited to, ground water, surface water, crop, and soil monitoring. Requirements of 9VAC 25 32 510 through 9VAC25-32-580 shall apply in full whether or not a monitoring waiver provision is applicable.~~

~~B. The board may require the owner or operator of any facility or operation to install, use, and maintain monitoring equipment for internal testing of biosolids quality, to identify and determine the causes of operational problems, and to determine the necessary corrective actions to correct such~~

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problems. If this testing is required, test results shall be recorded, compiled, and reported to the department.

C. Additional operational control information may be required on an individual basis by the department.

D. The department may require biosolids to be tested for certain toxic organic compounds prior to agricultural use (Table 1 of 9VAC25-32-570). If performed and validated, these test results shall be utilized to evaluate the maximum allowable annual loading rate for the tested biosolids. If analytical test results verify that biosolids contains levels of organic chemicals exceeding concentration limits incorporated in federal regulations or standards, appropriate restrictions shall be imposed for agricultural use of those biosolids.

E. Additional parameters may be required for screening purposes such as aluminum (mg/kg), water soluble boron (mg/kg), calcium (mg/kg), manganese (mg/kg), sulfates (mg/kg), and those pollutants for which removal credits are granted.

F. Microbiological testing may be necessary to document the sludge treatment classification (9VAC25-32-675). Microbiological standards shall be verified by the log mean of the analytical results from testing of nine or more samples of the sludge source. Sampling events shall be separated by an appropriate period of time so as to be representative of the random and cyclic variations in sewage characteristics.

9VAC25-32-410. Operation and maintenance manuals. Operations management plan.

~~A. General. The general purpose of an operation and maintenance manual is to facilitate operation and maintenance of the biosolids use facilities within permit requirements for both normal conditions and generally anticipated adverse conditions. The manual shall be tailored to the size and type of system being employed. The manual shall be directed toward the operating staff required for the facility. The manual shall be updated as necessary and be made available to the operating staff. The manual should be designed as a reference document, being as brief as possible while presenting the information in a readily accessible manner.~~

A. The permit holder shall maintain an operations management plan that shall consist of three components:

1. The materials, including site booklets, developed and submitted at the time of permit application or permit modification adding a farm to the permit in accordance with 9VAC25-32-60 F;

2. Nutrient management plan for each site, in accordance with 9VAC25-32-560; and

3. Operations and maintenance (O&M) manual, developed and submitted to the department within 90 days of the effective date of the permit.

~~B. Contents. The manual shall contain the testing and reporting elements required by this regulation. In addition, for information and guidance purposes, the manual should contain additional schedules that supplement these required schedules.~~

B. The O&M manual shall include at a minimum:

1. Equipment maintenance and calibration procedures and schedules;

2. Storage facility maintenance procedures and schedules;

3. Sampling schedules for:

a. Required monitoring; and

b. Operational control testing;

4. Sample collection, preservation, and analysis procedures, including laboratories and methods used; and

5. Instructions for recording and reporting of all monitoring activities.

9VAC25-32-420. Operability.

A. Independently operated essential equipment, or components, of biosolids use facilities and operations, including treatment works, shall be provided with sufficient capacity and routine maintenance resources so that the average quantity of biosolids used may be reliably transported, stored, treated or otherwise managed in accordance with permit requirements. Permit noncompliance shall be prevented in those situations in which the largest component is out of service.

B. The need for spare parts should shall be determined from operational experience, and evaluation of past maintenance requirements, etc. A spare parts inventory may be included in the operation and maintenance manual. The inventory should list the minimum and maximum quantities of the spare parts to be kept on hand, the equipment in which they are used, their storage location, replacement procedures and other pertinent information.

C. Sufficient spare parts determined as necessary to ensure continuous operability of essential unit operations and equipment should shall be either located at the treatment works or at readily accessible locations. The minimum quantities of spare parts actually provided shall be in accordance with the operation and maintenance manual.

9VAC25-32-440. Biosolids monitoring/reporting. (Repealed.)

~~A. Monitoring biosolids quality shall be performed as required for permit compliance. Monitoring frequency shall be sufficient to both reflect the degree of variability, if any,~~

expected in the biosolids quality and the frequency of application. The following guidelines should provide sufficient data for characterizing the quality of biosolids for biosolids programs that land apply continuously throughout the year:

TABLE 1

| Amount of biosolids ⁽¹⁾ (metric tons per 365-day period) | Frequency |
|--|--|
| Greater than zero but less than 290 | Once per year |
| Equal to or greater than 290 but less than 1,500 | Once per quarter (four times per year) |
| Equal to or greater than 1,500 but less than 15,000 | Once per 60 days (six times per year) |
| Equal to or greater than 15,000 | Per month (12 times per year) |

Note: ⁽¹⁾Either the amount of bulk sewage applied to the land or the amount of sewage sludge received by a person who prepares sewage sludge that is sold or given away in a bag or other container for application to the land (dry weight basis).

Note: Sampling shall be conducted at approximately equal intervals at the listed frequencies. Biosolids programs that store biosolids and land apply only during discrete events throughout the year shall schedule sampling events to coincide with application periods. The regulatory agency may require increased monitoring frequencies, if necessary, to adequately define any significant variability in biosolids quality. After two years of monitoring the permittee may request that the monitoring frequency be reduced, but in no case to less than once per year in any year that biosolids are applied to land.

B. An activity report shall be submitted (postmarked) to the department by the 15th day of the month unless another date is specified in the permit in accordance with 9VAC25-32-80-14, following any month in which land application occurs. The report shall indicate those sites where land application activities took place during the previous month.

C. Biosolids application rates should be based on the annual average sludge quality. The average sludge quality should be established from the results of approved analytical testing of composite samples obtained during the most recent 12 months of monitoring. For proposed treatment works, rates may be initially based on the biosolids characteristic produced by similar generating facilities.

D. The required treatment and quality characteristics and the maximum allowable land application loading rates shall be established for biosolids use. In addition, operational

monitoring results shall verify that required sludge treatment has achieved the specified levels of pathogen control and vector attraction reductions (Table 3). Adequate records on sludge composition, treatment classification, sludge application rates and methods of application for each site shall be maintained by the generator and owner. Table 4 shows a sample operating report for documenting the minimum required information. Reporting shall be yearly (postmarked by February 19 for the preceding calendar year) unless otherwise required. The generator and owner shall maintain the records as necessary for a minimum period of five years until further notification by the department. Sites receiving frequent applications of sludge that meet or exceed maximum cumulative constituent loadings and dedicated disposal sites should be properly referenced for future land transactions (see the sample Sludge Disposal Site Dedication Form Table A-1).

9VAC25-32-450. Sampling, analysis and preservation.

A. General. The sampling procedures and protocols used for the national sewage sludge survey (EPA Office of Water Regulations and Standards, March 1988) or validated equivalent methods will be approved by the board through issuance of a permit for biosolids use. Composite samples are better than single grab samples because they define representative "average" levels of sludge characteristics. A large open container such as a one to two gallon capacity bucket will normally be necessary to obtain complete grab samples of sludge flows. The volume or weight of grab samples should be adjusted so as to represent approximately equal volumes or weights of the sludge volume or mass being sampled. These adjusted grab samples can then be added to form a composite sample.

A. Representative samples of biosolids that is applied to the land or placed on a surface disposal site shall be collected and analyzed.

1. Raw sewage or sludge samples are to be collected prior to the treatment process unit operations.
2. Final treated samples are to be taken at a point following appropriate unit operations in the treatment process. An evaluation of biosolids treatment may require monitoring of fecal coliform levels in treated biosolids.
3. Composite samples shall be collected in accordance with the treatment works operation and maintenance manual.

B. Liquid sludge biosolids. In the case of digesters and liquid storage holding tanks, a representative sample shall be composed of at least four grab samples obtained during daily operations at the facility or land application site. Samples of liquid biosolids obtained under pressure or vacuum should be obtained shortly after the beginning, during and at the end of the time period that the biosolids are produced at the sampling point.

Regulations

C. Biosolids storage facilities. Equal volumes of biosolids ~~should~~ shall be withdrawn from random locations across the width and throughout the length of the storage facility at the surface, mid-depth and near the bottom of the lagoon at each grab sample location. These grab samples ~~should~~ shall be added to form a composite mix. A range of the ~~recommended~~ minimum number of grab samples that should be obtained from various sizes of ~~sludge lagoons~~ biosolids storage facilities in order to obtain a representative composite sample is presented in Table 1 of this section:

| Lagoon Surface Area (Acres) | Minimum Number of Grab Samples | |
|-----------------------------|--------------------------------|---------------------------|
| | Depth less than 4 feet | Depth greater than 4 feet |
| 1 to 9.99 | 4 to 5 | 6 to 8 |
| 10 or more | 6 to 8 | 9 to 11 |

D. Dewatered ~~sludge~~ biosolids. Small, equally sized grab samples of the dewatered sludge stream may be taken at equally spaced intervals over the period of operation of the dewatering unit. Centrifuged ~~sludge~~ biosolids samples may be taken from a belt conveyor or receiving hopper. Filter cake ~~sludge~~ biosolids samples may be taken from a belt conveyor or a portion of the cake may be removed as it leaves the unit. The smaller grab samples should be combined to form a representative composite sample. A composite sample can be obtained over the daily operational period at the land application site.

E. Compost sampling. ~~Composite~~ Collect composite samples ~~are preferred~~ composed of at least three grab samples of 1 kilogram or more so that a representative average level of compost characteristics can be obtained from analytical testing. ~~Although the compost material has been subjected to premixing, some variation in quality may exist and at least three grab samples of one kilogram or more should be taken of each mixture and combined to form a composite sample of that mixture.~~ This mixture should be used for analytical testing or for combination with other composites to obtain a total composite sample representing a fixed period of operation. Compost samples may be taken with a scoop or shovel and placed in flexible bags that can be thoroughly shaken to mix grab samples.

F. Analysis and preservation of samples. In general, sludge samples ~~should be refrigerated at approximately 4°C immediately after collection, which provides adequate preservation for most types of sludge physical and chemical analysis for a period up to seven days.~~ Exact sample analysis and preservation techniques should be submitted in the sludge management plan. Analytical procedures ~~should be updated as needed.~~ Biosolids samples shall be preserved and analyzed

in accordance with methods listed in 40 CFR Part 136 (2007) and methods identified in 9VAC25-31-490. Calculation procedures in the methods shall be used to calculate the percent volatile solids reduction for biosolids. Any other acceptable test procedure not listed in 40 CFR Part 136 (2007) shall be specified in the VPA permit.

9VAC25-32-460. Soils monitoring and reporting.

A. Soil ~~should~~ shall be sampled and analyzed prior to ~~sludge~~ biosolids application to determine site suitability and to provide background data. ~~After the land application program is underway, it may be necessary to continue monitoring possible changes in the soil characteristics of the application site.~~ Soil shall be sampled and analyzed in accordance with Table 1 of this section. Reduced monitoring ~~will usually~~ may apply for typical agricultural utilization projects where biosolids are applied to farmland at or below agronomic rates or on an infrequent basis (see Table 5) (Table 1). Reduced monitoring may also apply to one time ~~sludge~~ biosolids applications to forest or reclaimed lands. For background analysis, random composite soil samples from the zone of incorporation is required for infrequent applications and frequent applications at less than agronomic rates (total less than 15 dry tons per acre).

TABLE 1
SOIL TEST PARAMETERS FOR LAND APPLICATION SITES¹

| Parameter | Biosolids Application | | | Storage |
|---|-------------------------|---|--|---------------------------|
| | Infrequent ² | Frequent Below Agronomic Rates ² | Frequent at Agronomic Rates ² | Super-natant ⁴ |
| Soil pH (Std. Units) | * | * | * | * |
| Nitrate nitrogen (ppm) ³ | | | * | - |
| Available phosphorus (ppm) ⁵ | * | * | * | * |
| Extractable potassium (ppm) | * | * | * | * |
| Extractable sodium (mg/100g) | 6 | 6 | 6 | 6* |
| Extractable calcium (mg/100g) | | | * | * |
| Extractable magnesium (mg/100g) | * | | * | * |

| | | | | |
|---------------------------------|---|---|---|---|
| Zinc (ppm) | * | * | * | * |
| Manganese (ppm) | * | * | * | - |
| Hydraulic conductivity (cm/sec) | | | | * |

¹Note: Unless otherwise stated, analyses shall be reported on a dry weight basis (*).

²See 9VAC25-32-560 B 3.

³Only used as a supplemental fertilizer for side-dressing corn.

⁴Liquid biosolids derived from biosolids use facilities.

⁵Available P shall be analyzed using one of the following methods: Mehlich I, Mehlich III, or Bray.

⁶Extractable sodium shall be analyzed only where biosolids known to be high in sodium will be land applied.

Generally, one subsample per acre should be taken for application sites of 10 acres or more receiving frequent applications. For frequent land application sites greater than 50 acres, a controlled area of approximately 10 acres in size may be provided that is representative of site loading and soil characteristics. The control area should be sampled through random collection of approximately 20 subsamples taken according to standard agricultural practices. Records of soil analysis must be maintained by the owner and submitted as required.

B. The permit applicant or permit holder may be required to conduct soil testing and analysis of additional parameters, as determined by the department, based on site-specific history or conditions.

C. Samples shall be collected in accordance with § 10.1-104.2 of the Code of Virginia.

9VAC25-32-480. Groundwater Ground water monitoring and reporting.

A. Monitoring wells may be required by the board as recommended by the department for land treatment sites, sludge lagoons, or sludge holding biosolids land application sites, or biosolids storage facilities to monitor groundwater ground water quality. The wells should be designed and located to meet specific geologic and hydrologic conditions at each site. Existing wells or springs may be approved for use as monitoring wells if they can be shown to provide a representative sample of groundwater conditions. The monitoring well should be constructed so as to sample the shallowest occurrence of groundwater that can reliably be obtained. The wells must be deep enough to penetrate the water table, and the screened interval must be in the saturated zone. The well construction should include PVC casing and screen with a bottom end plug or cap. The casing joints should be of the threaded, split ring or some other type that

does not require adhesive. The screened interval should be backfilled with washed porous media (sand/gravel) and a bentonite or other impermeable seal placed at least two feet above the screen. The remainder of the well may be backfilled with clean native materials. A concrete surface seal should slope away from the well. Locking caps are recommended. Upon well completion, a driller's log shall be submitted to the department.

B. Sampling procedures must assure maintenance of sample integrity. Samples should be collected in clean sample containers and with an uncontaminated sampling device. In order to obtain a representative sample, standing water in the well must be evacuated prior to sampling. At a minimum, at least three times the volume of water standing in the borehole should be removed prior to taking a sample for analysis to assure movement of formation water into the well and eliminate false readings that would be obtained from water that has stratified in the well. Samples may be obtained by pumping, bailing or pressure methods (e.g., Bar Cad samplers). The state does not endorse any one particular method or manufacturer, but each method has advantages and disadvantages that must be considered prior to final selection. Sampling methodology should be submitted for initial review. To obtain sufficient background groundwater quality data, three to six monthly samples should be collected from each observation well prior to placing the land application site or other facility into operation. Sampling should account for seasonal groundwater table fluctuations. Groundwater samples shall be collected and analyzed on a quarterly basis during operation of the site or facility. Table 6 lists typical parameters for groundwater monitoring. Additional test parameters may be required on a case by case basis. If ground water monitoring is required, a ground water monitoring plan shall be submitted to the department for approval that includes at a minimum:

1. Geologic and hydrologic conditions at the site;
2. Monitoring well design, placement, and construction;
3. Sampling frequency;
4. Sampling procedures, including quality assurance and quality control; and
5. Collection of background samples.

C. Sample analysis and preservation techniques should be in accordance with the latest edition of Standard Methods for the Examination of Water and Wastewater.

TABLE 2
PARAMETERS FOR BIOSOLIDS ANALYSIS⁽⁴⁾

- A. Suggested minimum
Source of sludge
Type of sludge (lime stabilized, aerobically digested, etc.)

Regulations

- Percent solids (%)
- Volatile solids (%)
- pH (standard units)
- Total kjeldahl nitrogen (%)
- Ammonia nitrogen (%)
- Nitrates (mg/kg)
- Total phosphorus (%)
- Total potassium (%)
- Alkalinity as CaCO₃ (mg/kg)⁽²⁾
- Arsenic (mg/kg)
- Cadmium (mg/kg)
- Copper (mg/kg)
- Lead (mg/kg)
- Mercury (mg/kg)
- Molybdenum (mg/kg)
- Nickel (mg/kg)
- Selenium (mg/kg)
- Zinc (mg/kg)

⁽¹⁾Values reported on a dry weight basis unless indicated.

⁽²⁾Lime treated sludges (10% or more lime by dry weight) should be analyzed for percent CaCO₃.

B. Additional parameters such as the organic chemicals listed in Table 12 may be required for screening purposes as well as aluminum (mg/kg), water soluble boron (mg/kg), calcium (mg/kg), chlorides (mg/l), manganese (mg/kg), sulfates (mg/kg), and those pollutants for which removal credits are granted.

C. Microbiological testing may be necessary to document the sludge treatment classification (Table 3). Microbiological standards shall be verified by the log mean of the analytical results from testing of nine or more samples of the sludge source. Sampling events shall be separated by an appropriate period of time so as to be representative of the random and cyclic variations in sewage characteristics.

TABLE 3

STANDARDS FOR DOCUMENTATION OF PATHOGEN CONTROL AND VECTOR ATTRACTION REDUCTION LEVELS FOR BIOSOLIDS

A. Pathogen control standards (dry weight of sludge solids basis):

1. Class I treatment for Class A pathogen control.

a.⁽¹⁾—Composting or other acceptable time temperature treatment* shall result in a biosolids content equal to or less than either 1,000 fecal coliform per gram or three salmonella per four grams of total solids in treated sludge prior to removal for use or preparation for distribution.

b. Stabilization**⁽²⁾—Verify a biosolids content less than either 1,000 MPN fecal coliform per gram of total solids, or three salmonella, or one virus (PFU), or one helminth egg, per four grams of total sludge solids and provide that vector attraction reduction requirements will be met upon use.

2. Class II treatment for Class B pathogen control:

a.⁽¹⁾—When the influent sludge stream to the stabilization unit operation contains more than 6 log₁₀ fecal coliform per gram of total solids, a reduction of 1.5 log₁₀ of fecal coliform or more may be required for stabilization.

b. Stabilization⁽²⁾—Verify biosolids content maximum of 6.3 log₁₀ of fecal coliform per gram of total solids in sludges subjected to adequate treatment and provide that vector attraction reduction requirements will be met upon use.

B. Vector attraction reduction requirements (must satisfy one of the following for approval of land application of biosolids):

1. Thirty eight percent volatile solids (VS) reduction by digestion processes, or:

a. Less than 38% reduction by anaerobic digestion if additional treatment (additional 40 days or more at 32°C or more) results in less than 17% additional VS reduction:

$$\text{Additional VS Reduction} = \frac{\text{VSD1} - \text{VSD2}}{\text{VSD1} - (\text{VSD1})(\text{VSD2})}$$

D1 = Initial conventional digestion period

D2 = Additional 40-day digestion period

b. Less than 38% reduction by aerobic digestion if the specific oxygen uptake rate (SOUR) of sludge is 1.5 or less milligrams of oxygen per hour per gram of total sludge solids (dry weight basis) at a temperature of 20°C.

c. Less than 38% reduction by aerobic digestion if additional treatment (additional 30 days or more at 20°C or more) results in less than 15% additional VS reduction.

d. Less than 38% reduction if treated in an adequately aerated unit operation for 14 days or more at a temperature exceeding 40°C and the average sludge temperature exceeds 45°C.

2. Sludge pH is 12 or more (alkaline addition) for two consecutive hours and remains at 11.5 or higher for 22 additional hours (no further alkaline additions), or
3. Seventy five percent or more total solids in treated sludge if no untreated primary sludge is included, or 90% total solids if unstabilized primary sludge is included, prior to any mixing with other materials, or
4. Either incorporation of treated sludge into the soil within six hours of surface application, or direct injection below the surface of the land so that no evidence of any significant amounts of sludge is present on the land surface within one hour of injection.
5. For land application of biosolids receiving Class I treatment:
 - a. For surface application: apply to land within eight hours of final treatment and incorporate below the surface within six hours of application, or achieve one of the appropriate vector attraction reduction requirements by treatment.
 - b. For subsurface application: inject within eight hours of final treatment or achieve one of the appropriate vector attraction reduction requirements by treatment.

C. Documentation statement for submission of treatment, or quality, verification reports:

I have submitted the proper documentation to verify that the necessary levels of pathogen reduction and vector attraction reduction have been achieved for all sludge to be land applied in accordance with the permit requirements. These determinations have been made under my direction and supervision in accordance with approved procedures developed to ensure that qualified personnel obtain and evaluate the information necessary to ensure permit compliance. Also, the sludge quality characteristics are suitable for land application in accordance with permit requirements (if appropriate).

Signed by Responsible Person in Charge

(Title if appropriate) Date

⁽¹⁾Note: Refers to an acceptable method of treatment with established operational controls capable of treating sludge to produce the required microbiological standards (see Article 3 (9VAC25-32-490 et seq.) of this part.

⁽²⁾Refers to testing standards.

TABLE 4
EXAMPLE OF REPORT FOR SUBMISSION TO FIELD OFFICES

FIELD REPORT

| | |
|---|--|
| PROJECT/PERMITTEE: _____ | PERMIT NO./FIELD NO: _____ |
| (LAND OWNER/FARMER:) _____ | FIELD ACRES: _____ |
| APPLICATION MODE: _____ | DATE AS OF: _____ |
| GALLONS, WET TONS OR CUBIC YARDS APPLIED: _____ | Month to Date _____ Year to Date _____ |
| DRY TONS/ACRE APPLIED: _____ | Month to Date _____ Year to Date _____ |
| - | - Lifetime to Date _____ |
| CROP/YIELD _____ | SOIL pH _____ |

LBS. APPLIED/ACRE

| SLUDGE PARAMETER | MONTH TO DATE | YEAR TO DATE | LIFETIME TO DATE |
|-------------------|---------------|--------------|------------------|
| P.A.N. | - | - | N/A |
| CaCO ₃ | - | - | N/A |
| P | - | - | N/A |
| K | - | - | N/A |
| As | - | - | - |
| Cd | - | - | - |
| Cu | - | - | - |
| Mo | - | - | - |

Regulations

| | | | |
|--------|---|---|---|
| Ni | - | - | - |
| Pb | - | - | - |
| Se | - | - | - |
| Zn | - | - | - |
| Other: | - | - | - |

| DAILY LOADING FIELD SHEET | | | |
|---------------------------|--------|----------------------------------|----------|
| DATE | SOLIDS | GALLONS, WET TONS OR CUBIC YARDS | DRY TONS |
| - | - | - | - |
| - | - | - | - |
| - | - | - | - |
| - | - | - | - |
| TOTALS | - | - | - |

(If nuisance problems of odors or problems with uniform applications develop, the appropriate regional offices of the Virginia Department of Environmental Quality shall be notified.)

Upon such notification, were any operational changes made? Yes* ___ No ___

*Specify the methods utilized to comply with treatment/application requirements on a separate attachment.

TABLE 5
RECOMMENDED SOIL TEST PARAMETERS FOR LAND APPLICATION SITES⁽⁴⁾

| Parameter | BIOSOLIDS APPLICATION | | | STORAGE |
|------------------------------------|---------------------------|---|---|----------------------------|
| | Infrequent ⁽²⁾ | Frequent Below Agronomic Rates ⁽²⁾ | Frequent at Agronomic ⁽²⁾⁽³⁾ | Supernatant ⁽⁴⁾ |
| Soil organic matter (%) | - | - | * | * |
| Soil pH (Std. Units) | * | * | * | * |
| Cation exchange capacity (me/100g) | - | - | * | - |
| Total nitrogen (ppm) | - | - | * | * |
| Organic nitrogen (ppm) | - | - | * | * |
| Ammonia nitrogen (ppm) | - | - | * | - |
| Available phosphorus (ppm) | * | * | * | * |
| Exchangeable potassium (ppm) | * | * | * | - |
| Exchangeable sodium (mg/100g) | - | - | * | * |
| Exchangeable calcium (mg/100g) | - | - | * | * |

| | | | | |
|--|---|---|---|---|
| Exchangeable magnesium (mg/100g) | * | - | * | * |
| Copper (ppm) | - | - | * | * |
| Nickel (ppm) | - | - | * | * |
| Zinc (ppm) | - | - | * | * |
| Cadmium (ppm) | - | - | * | * |
| Lead (ppm) | - | - | * | * |
| Manganese (ppm) | - | - | * | - |
| Molybdenum (ppm) | - | - | * | - |
| Selenium (ppm) | - | - | * | - |
| Particle size analysis or USDA Textural estimate (%) | - | - | * | * |
| Hydraulic conductivity (in/hr) | - | - | - | * |

⁽¹⁾Note: Unless otherwise stated, analyses shall be reported on a dry weight basis(*).

⁽²⁾See 9VAC25-32-560 B 3.

⁽³⁾Testing requirements to be adjusted in accordance with prior analytical test results. Heavy metal analyses are not required but once every three years before application.

⁽⁴⁾Liquid biosolids derived from biosolids use facilities.

**TABLE 6
SUGGESTED GROUNDWATER MONITORING PARAMETERS AND MONITORING FREQUENCY**

| Annual Monitoring | Quarterly Monitoring |
|-------------------------|----------------------|
| Total Kjeldahl Nitrogen | Nitrate Nitrogen |
| Ammonia Nitrogen | pH |
| Phosphorus | Conductivity |
| Sodium | Chlorides |
| Boron | Static Water Level |
| Copper | |
| Lead | |
| Nickel | |
| Cadmium | |

Regulations

| | |
|-----------------------------|--|
| Zinc | |
| Hardness | |
| Alkalinity | |
| COD (TOC) | |
| Pathogen Indicator Organism | |

9VAC25-32-500. ~~Sludge Biosolids management.~~

~~A. Sludge Biosolids management activities shall be described in a sludge biosolids operations management plan or a management practices plan submitted by the owner or the owner's agent to the department for review and approval in accordance with this section at the time of permit application. Before sludge is utilized or disposed of, its potential effects on the land and state waters should be evaluated. Land application and facilities for biosolids use shall not result in flooding or pose a hazard to public health, wildlife, water quality, or other environmental resources as a result of biosolids transport due to flooding and subsequent runoff. Treatment works owners involved in biosolids use management practices may need to require pretreatment of industrial waste for control of contaminants of concern in order to comply with this regulation.~~

~~B. The scope and purpose, requirements, and submission and approval of sludge management plans or management practices plans are described in this subsection.~~

~~1. The general purpose of these plans is to facilitate a determination by the board that the sludge management plan or management practices plan developed by the owner presents the necessary technical guidance and regulatory requirements to facilitate the proper management of sewage sludge including use of biosolids for both normal conditions and generally anticipated adverse conditions. The plan should be developed as a reference document, being as brief as possible while presenting the information in a clear, concise and readily accessible manner. The plan should be directed toward the management option(s) for biosolids use selected for the treatment works. The plan shall address methods of controlling and monitoring the quality of sludge by the owner and the means of use of biosolids developed from that sludge by the owner or his agent (9VAC25-32-670 and 9VAC25-32-680).~~

~~2. Complete sludge management plans or management practices plans shall be submitted for all biosolids use activities, by the owner, or owner's agent. The plan shall contain the elements required by applicable sections of this regulation (9VAC25-32-670 and 9VAC25-32-680).~~

~~3. Submission and approval of sludge management plans or management practices plans involving the land~~

~~application of biosolids shall be at the time of permit application as follows:~~

~~a. Three copies of the final sludge management plan or management practices plan shall be submitted to the appropriate regional office. The technical evaluation of the plan will not commence until the applicant has submitted all necessary information.~~

~~b. Upon receipt of comments or no response by contacted agencies the department will complete the evaluation of the plan and the board will approve or disapprove the plan as technically adequate.~~

~~c. The board will approve the plan if it is determined that biosolids use will be in compliance with Article 2 (9VAC25-32-360 et seq.) of this part. If the board determines that substantial revision to the plan is required, the department shall send a letter to the owner and plan preparer, outlining the necessary revision and requesting submission of a revised plan within 60 days. A revised plan constitutes a resubmittal.~~

~~B. The biosolids operations management plan developed by the owner shall contain the necessary technical requirements to facilitate the proper management of sewage sludge and biosolids including use of biosolids for both normal conditions and generally anticipated adverse conditions. The plan shall be directed toward the management option or options for biosolids use selected for the treatment works. The plan shall address methods of controlling and monitoring the quality of sludge by the owner and the means of use of biosolids developed from that sludge by the owner or his agent (9VAC25-32-60 F).~~

~~C. A complete biosolids operations management plan shall be submitted for all biosolids use activities, by the owner or owner's agent. The plan shall contain the elements required by applicable sections of this regulation (9VAC25-32-60 F and 9VAC25-32-410).~~

~~9VAC25-32-510. General biosolids use standards. (Repealed.)~~

~~A. 9VAC25-32-510 and 9VAC25-32-550 provide minimum criteria that will be used for reviewing sludge management plans and management practices plans. Each plan shall address site specific management practices involving use of biosolids. Final disposition of sludge may involve use or~~

disposal. For the purpose of 9VAC25-32-510 and 9VAC25-32-550, "use" shall include resource recovery, recycling or deriving beneficial use from the material. "Disposal" shall involve the final disposition of a waste material without resource recovery, recycling or deriving beneficial use from the material.

~~B. All practical use options should be evaluated before disposal options are evaluated or selected. Biosolids use practices include land application for agricultural, nonagricultural and silvicultural use and the distribution and marketing of exceptional quality biosolids. Sludge disposal methods include incineration, landfill codisposal, surface disposal, and other dedicated disposal practices, such as burial on dedicated disposal sites.~~

~~C. Water quality protection and monitoring provisions shall be included in all sludge management plans and management practices plans, except for those land application practices designed for limited loadings (amounts per area per time period) within defined field areas in agricultural use. Groundwater monitoring requirements shall be evaluated by the board for annual application of biosolids to specific sites, reclamation of disturbed and marginal lands and application to forest land (silviculture). Submittal of site specific (soils and other) information for each identified separate field area shall be required for issuance of permits. For information regarding handling and disposal of septage, refer to the Sewage Handling and Disposal Regulations, 12VAC5-610. Septage treated and managed in accordance with standards contained in this regulation is defined as either sewage sludge or as biosolids as appropriate.~~

~~D. Conformance of biosolids use to local land use zoning and planning should be resolved between the local government and the permit applicant. The permit applicant shall attempt to notify land owners of property within 200 feet and 1,000 feet of the boundaries of sites proposed for frequent use and dedicated sites, respectively, and furnish the department and the chief executive officer or designee for the local government where the site is located with acceptable documentation of such notifications (i.e., intent to land apply biosolids on the proposed locations). Relevant concerns of adjacent landowners will be considered in the evaluation of site suitability.~~

~~E. The requirements for processing approvals of sludge management plans and management practices plans are included in 9VAC25-32-500 B as well as (i) requirements for notification of applications, hearings and meetings, and (ii) minimum information required for completion of a sludge management plan for land application (9VAC25-32-670 and 9VAC-25-32-680).~~

~~F. At least 100 days prior to commencing land application of biosolids at a permitted site, the permit holder shall deliver or cause to be delivered written notification that is substantially in compliance with this section to the chief executive officer~~

~~or designee for the local government where the site is located. This requirement may be satisfied by providing a list of available permitted sites in the locality at least 100 days prior to commencing the application at any site on the list. If the site is located in more than one county, the information shall be provided to all jurisdictions where the site is located. Sufficiency of such notices shall be determined by the department.~~

~~G. The notification required by this section shall include the following:~~

- ~~1. The name, address and telephone number of the permit holder, including the name of a representative knowledgeable of the permit;~~
- ~~2. Identification by tax map number and farm service agency (FSA) farm tract number of parcels on which land application is to take place;~~
- ~~3. A map indicating haul routes to each site where land application is to take place;~~
- ~~4. The name or title, and telephone number of at least one individual designated by the permit holder to respond to questions and complaints related to the land application project;~~
- ~~5. The approximate dates on which land application is to begin and end at the site;~~
- ~~6. The name and telephone number of the person or persons at the Virginia Department of Health to be contacted in connection with the permit; and~~
- ~~7. The name, address, and telephone number of the wastewater treatment facility, or facilities, from which the biosolids will originate, including the name or title of a representative of the treatment facility that is knowledgeable about the land application operation.~~

~~H. The permit holder shall deliver or cause to be delivered written notification to the department as least 14 days prior to commencing land application of sewage sludge at a permitted site. The notice shall identify the location of the permitted site and the expected sources of the sewage sludge to be applied to the site.~~

~~I. Within 24 hours of receiving notification of a complaint, the permit holder shall commence investigation of said complaint. The permit holder shall confirm receipt of a complaint by phone, email or facsimile to the department, the chief executive officer or designee for the local government of the jurisdiction in which the complaint originates, and the owner of the treatment facility from which the biosolids originated within 24 hours after receiving the complaint. Complaints and responses thereto shall be documented by the permit holder and submitted with monthly land application reports to department and copied to the chief executive officer~~

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~~or designee for the local government and the owner of the treatment facility from which the biosolids originated.~~

~~Localities receiving complaints concerning land application of sewage sludge shall notify the department and the permit holder.~~

9VAC25-32-515. Notification of land application activity.

A. Written notification.

1. At least 100 days prior to commencing land application of biosolids at a permitted site, the permit holder shall deliver or cause to be delivered written notification to the chief executive officer or designee for the local government where the site is located. This requirement may be satisfied by providing a list of available permitted sites in the locality at least 100 days prior to commencing the application at any site on the list. If the site is located in more than one county, the information shall be provided to all jurisdictions where the site is located.

2. At least 14 days prior to commencing land application of biosolids at a permitted site, the permit holder shall deliver or cause to be delivered written notification to the department and the chief executive officer or designee for the local government where the site is located. The notice shall include the following:

a. The name, address, and telephone number of the permit holder, including the name of a representative knowledgeable of the permit;

b. Identification by tax map number and the DEQ control number for sites on which land application is to take place;

c. A map indicating haul routes to each site where land application is to take place;

d. The name or title and telephone number of at least one individual designated by the permit holder to respond to questions and complaints related to the land application project;

e. The approximate dates on which land application is to begin and end at the site;

f. The name and telephone number of the person or persons at the department to be contacted in connection with the permit; and

g. The name, address, and telephone number of the wastewater treatment facility, or facilities, from which the biosolids will originate, including the name or title of a representative of the treatment facility that is knowledgeable about the land application operation.

If multiple sites are included in the notification, the permit holder shall make a good faith effort to identify the most probable order that land application will commence.

3. The permittee shall deliver or cause to be delivered daily notification to the department and the chief executive officer or designee for the local government where the site is located prior to commencing planned land application activities.

B. Posting signs.

1. At least five business days prior to delivery of biosolids for land application on any site permitted under this regulation, the permit holder shall post signs at the site that comply with this section, are visible and legible from the public right-of-way in both directions of travel, and conform to the specifications herein. The sign shall remain in place for at least five business days after land application has been completed at the site.

a. If the site is located adjacent to a public right-of-way, signs shall be posted along each road frontage beside the field to be land applied.

b. If the site is not located adjacent to a public right-of-way, the sign shall be posted at or near the intersection of the public right-of-way and the main site access road or driveway to the site.

c. The department may grant a waiver to the requirements in this section, or require alternative posting options due to extenuating circumstances or to be consistent with local government ordinances and other requirements regulating the use of signs.

2. The sign shall be made of weather-resistant materials and shall be sturdily mounted so as to be capable of remaining in place and legible throughout the period that the sign is required at the site. Signs required by this section shall be temporary, nonilluminated, and four square feet or more in area, and only contain the following information:

a. A statement that biosolids are being land-applied at the site;

b. The name and telephone number of the permit holder and the name or title and telephone number of an individual designated by the permit holder to respond to complaints and inquiries; and

c. Contact information for the department, including a telephone number for complaints and inquiries.

3. The permit holder shall make a good faith effort to replace or repair any sign that has been removed from a land application site or that has been damaged so as to render any of its required information illegible prior to five business days after completion of land application.

C. Handling of complaints.

1. Within 24 hours of receiving notification of a complaint, the permit holder shall commence investigation of said

complaint and shall determine whether the complaint is substantive. The permit holder shall confirm receipt of all substantive complaints by phone, email, or facsimile to the department, the chief executive officer or his designee for the local government of the jurisdiction in which the complaint originates, and the owner of the treatment facility from which the biosolids originated within 24 hours after receiving the complaint.

2. For the purposes of this section, a substantive complaint shall be deemed to be any complaint alleging a violation of these regulations, state law, or local ordinance; a release of biosolids to state waters or to a public right-of-way or to any location not authorized in the permit; or failure to comply with the nutrient management plan for the land application site.

3. Localities receiving complaints concerning land application of biosolids shall notify the department and the permit holder within 24 hours of receiving the complaint.

9VAC25-32-520. Sludge quality and composition. (Repealed.)

~~A. Sampling and testing sludge. Samples shall be collected so as to provide a representative composition of the sludge. Analytical testing shall be performed by a laboratory capable of testing in accordance with current EPA approved methods or other accepted methods. The operational section of this regulation establishes the minimum constituents that shall be analyzed and the sampling and preservation procedures that should be utilized. The sludge management plan or management practices plan shall detail both the sampling and testing methods used to characterize the sludge.~~

~~B. Nonhazardous declaration. Regulations under the Resource Conservation and Recovery Act (RCRA) and the Virginia Hazardous Waste Management Regulations (9VAC20-60) identify listed hazardous wastes and hazardous waste characteristics. Municipal wastewater or sewage sludge is neither excluded nor specifically listed as hazardous waste. Hazardous wastes as established through RCRA and appropriate state regulations are not managed under this regulation. The owner shall monitor sludge characteristics as required to determine if it is hazardous or nonhazardous and declare to the department that the sludge generated at his facility is nonhazardous.~~

~~C. Sludge treatment. Sludges shall be subjected to a treatment process sequence designed to reduce both the pathogen content and the solids content to the appropriate level for the selected method of management, such as land application. For such use options, the sludge treatment provided shall minimize the potential for vector attraction and prevent objectionable odor problems from developing during management. Acceptable levels of pathogen reduction may be achieved by various established conventional treatment methods including Class I treatment to accomplish Class A~~

~~pathogen control and Class II treatment to accomplish Class B pathogen control 9VAC25-32-610. The level of pathogen control achieved by nonconventional treatment must be verified by microbiological monitoring (Table 3).~~

~~For land application, Class B pathogen, or better, shall be achieved. Such Class I or II treatment may involve either: anaerobic or aerobic digestion, high or low temperature composting, heat treatment, air drying, or chemical treatment processes utilizing alkaline additives or chlorine. For use of treated sludge or sludge products involving a high potential for public contact, it may be necessary to achieve further pathogen reduction (Class A) beyond that attained by the above processes. Such Class I treatment may be accomplished by (i) heat treatment and drying, (ii) thermophilic composting, (iii) alkaline treatment. A three log reduction or more (a thousand fold reduction) in pathogenic bacteria and viral microorganisms to meet conventional treatment standards. Raw sludge levels of pathogenic bacteria and viral microorganisms can be effectively reduced to safe levels by conventional Class I treatment methods.~~

~~Properly treated sludges can be safely utilized and should not create any nuisance problems when managed in accordance with approved sludge management or management practices plans. A sludge that receives Class I or II treatment for adequate pathogen control and is treated or managed to properly reduce vector attraction and pollutants within acceptable levels (Table 7 A) is referred to as "biosolids." A Class I treated sludge with approved control of vector attraction and acceptable levels of pollutants (Table 7 A) is referred to as "exceptional quality biosolids."~~

~~D. Sludge composition. The characterization of sludge properties is a necessary first step in the design of a use/disposal system. Monitoring and testing for certain pollutants shall be achieved prior to specific use or disposal practices. For the purposes of this regulation, sludge management and testing methods shall account for moisture content including (i) liquid sludge defined as sludges with less than 15% total solids, (ii) dewatered sludge normally defined as sludges with 15% to 30% total solids; or (iii) dried sludge normally defined as sludges with more than 30% total solids.~~

9VAC25-32-530. Land acquisition and management control.

~~A. When an application to permit land application of sludge biosolids is proposed, submitted to the department, the permit applicant shall ensure the continued availability of the land and protection from improper concurrent use during the utilization period shall be assured. A written agreement shall be established between the landowner and owner to be submitted with the permit application, whereby the landowner, among other things, shall consent to apply sewage sludge on his property. The responsibility for obtaining and maintaining the agreements lies with the party who is the~~

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holder of the permit. Site management controls shall include access limitations relative to the level of pathogen control achieved during treatment. In addition, agricultural use of sludge in accordance with this regulation is not to result in harm to threatened or endangered species of plant, fish, or wildlife, nor result in the destruction or adverse modification of the critical habitat of a threatened or endangered species. Site specific information shall be provided as part of the sludge management or management practices plan.

B. Land acquisition requirements.

1. Permit holders shall use a unique control number assigned by the department as an identifier for fields permitted for land application.

2. A written agreement shall be established between the landowner and permit applicant or permit holder, whereby the landowner shall consent to apply biosolids on his property and certify that no concurrent agreements exist for the fields to be permitted. The landowner agreement shall include an acknowledgment by the landowner of any site restrictions identified in the permit. The responsibility for obtaining and maintaining the agreements lies with the permit holder. The written agreement shall be submitted to the department with the permit application.

3. New landowner agreements shall be submitted to the department with each application for issuance or reissuance of a permit or the modification to add land to an existing permit that authorizes the land application of biosolids.

~~B. At least 48 hours prior to delivery of biosolids for land application on any site permitted under this regulation, the permit holder shall post a sign at the site that substantially complies with this section, is visible and legible from the public right of way, and conforms to the specifications herein. If the site is not located adjacent to a public right of way, the sign shall be posted at or near the intersection of the public right of way and the main site access road or driveway to the site. The department may grant a waiver to this or any other requirement, or require alternative posting options due to extenuating circumstances. The sign shall remain in place for at least 48 hours after land application has been completed at the site.~~

~~C. The sign shall be made of weather resistant materials and shall be sturdily mounted so as to be capable of remaining in place and legible throughout the period that the sign is required at the site. Signs required by this section shall be temporary, nonilluminated, four square feet or more in area and shall only contain the following information:~~

- ~~1. A statement that biosolids are being land applied at the site;~~
- ~~2. The name and telephone number of the permit holder as well as the name or title, and telephone number of an~~

~~individual designated by the permit holder to respond to complaints and inquiries; and~~

~~3. Contact information for the Virginia Department of Health, including a telephone number for complaints and inquiries.~~

~~D. The permit holder shall promptly replace or repair any sign that has been removed from a land application site prior to 48 hours after completion of land application or that has been damaged so as to render any of its required information illegible.~~

9VAC25-32-540. Transport.

A. Transport routes should follow primary highways, ~~should~~ shall avoid residential areas when possible, and ~~should~~ shall comply with all Virginia Department of Transportation requirements and standards. Transport vehicles shall be sufficiently sealed to prevent leakage and spillage of ~~sludge biosolids~~ sludges biosolids. For ~~sludges biosolids~~ sludges biosolids with a solids content of less than 15%, totally closed watertight transport vehicles with rigid tops shall be provided to prevent spillage unless adequate justification is provided to demonstrate that such controls are unnecessary. The board may also require certain dewatered ~~sludges biosolids~~ sludges biosolids exceeding 15% solids content to be handled as liquid ~~sludges biosolids~~ sludges biosolids. The minimum information for ~~sludge biosolids~~ sludge biosolids transport that shall be supplied in the ~~sludge biosolids operations management plan~~ sludge biosolids operations management plan is listed in ~~9VAC25-32-670 and 9VAC25-32-680~~ 9VAC25-32-60 F.

B. The permit holder shall be responsible for the prompt cleanup and removal of biosolids spilled during transport ~~to the land application site or to or from a storage facility~~. The operations manual shall include a plan for the prevention of spills during transport and for the cleanup and removal of spills. The permit holder shall ensure that its personnel, subcontractors or the drivers of vehicles transporting biosolids for land application shall be properly trained in procedures for spill removal and cleanup.

C. The permit holder shall take appropriate steps to prevent drag-out and track-out of dirt and debris or biosolids from land application sites onto public roads. Where material is transported onto a paved or public road surface, the road surface shall be cleaned thoroughly as soon as practicable, but no later than the end of each day.

D. The permit holder shall promptly report offsite spills to the Virginia Department of ~~Health~~ Environmental Quality, the chief executive officer or designee for the local government and the owner of the facility generating the biosolids. The report shall be made verbally as soon as possible, but no later than 24 hours after the discovery of the spill. After business hours notification may be provided by voicemail, facsimile or email.

E. A written report, which shall include a description of measures taken in response to the spill, shall be submitted by the permit holder to the ~~Virginia Department of Health department~~, the chief executive officer or designee for the local government, and the owner of the facility generating the biosolids within five working days of the spill. The report may be sent by first class mail, facsimile or email, or it may be hand delivered.

9VAC25-32-545. Staging of biosolids for land application.

A. Staging of biosolids shall not commence unless the field meets the requirements for land application.

B. Staging requirements.

1. Biosolids that have been staged for greater than seven days shall be spread as soon as field conditions become favorable for land application or removed from the field;
2. No liner or cover is required under or over staged biosolids if spread within 14 days;
3. Staged biosolids that cannot be spread within 14 days shall be covered to prevent contact with precipitation;
4. The certified land applier shall notify the department within 24 hours when it is necessary to stage biosolids for land application. Notification shall include source or sources, location, amounts, and reason for staging;
5. Staging shall be limited to the amount of biosolids specified in the nutrient management plan to be applied at the intended field;
6. Biosolids will be staged within the land application area of the field in which the biosolids will be applied or in a permitted field adjacent to the subject field, in a location selected to prevent runoff to waterways and drainage ditches;
7. Biosolids shall not be staged in the buffer zones;
8. Management practices, as described in the operations manual, shall be utilized as appropriate to prevent pollution of state waters by staged biosolids;
9. Staged biosolids are to be inspected by the certified land applier at least every seven days and after precipitation events of 0.1 inches or greater to ensure that runoff controls are in good working order. Observed excessive slumping, erosion, or movement of biosolids is to be corrected within 24 hours. Any ponding or malodor at the site is to be corrected. The certified land applier shall maintain documentation of the inspections of staged biosolids;
10. Staging shall be prohibited in areas identified in the USDA soil survey as frequently flooded;
11. No staging shall take place in areas of karst topography;

12. Staged biosolids shall be managed so as to prevent adverse impacts to water quality or public health; and

13. Biosolids shall not be staged on sites that have on-site storage.

9VAC25-32-550. Storage facilities.

A. No person shall apply to the ~~Department of Environmental Quality department~~ for a permit, a variance, or a permit modification authorizing storage of ~~sewage sludge biosolids~~ without first complying with all requirements adopted pursuant to § 62.1-44.19:3 R of the Code of Virginia.

B. ~~Three~~ Two types of storage may be integrated into a complete ~~sludge biosolids operations~~ management plan including (i) "emergency storage" involving immediate implementation of storage for any sludge that becomes necessary due to unforeseen circumstances, (ii) "temporary storage" involving the provision of storage of stabilized sludges at the land application site that becomes necessary due to unforeseen climatic events that preclude land application of biosolids in the day that it is transported from the generator, or (iii) "routine storage" involving the storage of biosolids as necessary for all nonapplication periods of the year. Only routine storage facilities shall be considered a facility under this regulation.

1. On-site storage, or
2. Routine storage. Only routine storage facilities shall be considered a facility under this regulation.

C. ~~Emergency storage.~~ The owner shall notify the department upon implementation of any emergency storage. ~~Approval of such storage and subsequent processing of the sludge and supernatant will be considered as a contingency plan integrated into the sludge management plan. Only emergency storage shall be used for storage of unstabilized sludges. Further processing utilization and disposal shall be conducted in accordance with the approved sludge management plan. Design and implementation of facilities used for emergency storage shall not result in water quality, public health or nuisance problems.~~

D. ~~Temporary storage.~~ The owner shall notify the department whenever it is necessary to implement temporary storage. ~~Temporary storage may be utilized at the land application site due to unforeseen climatic factors that preclude application of sludge (either offloaded at the site or in transport to the site) to permitted sites within the same working day. Temporary storage is not to be used as a substitute for routine storage and is restricted as follows:~~

- ~~1. Sludge stored at the site shall be land applied prior to additional offloading of sludge at the same site;~~
- ~~2. The owner shall be restricted to storing a daily maximum amount of 100 wet tons per operational site;~~

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~~3. The stored sludge shall be land applied within 30 days from the initiation of storage or moved to a routine sludge facility;~~

~~4. Approval of plans for temporary storage will be considered as part of the overall sludge management plan;~~

~~5. Temporary storage shall not occur in areas prone to flooding at a 25 year or less frequency interval;~~

~~6. A synthetic liner shall be required for placement under and over sludge stored in this manner with one exception: where sludge is stockpiled for less than seven days, a liner placed under the stored sludge is not required. Surface water diversions and other best management provisions (BMP) should be utilized as appropriate; and~~

~~7. Temporary storage shall not result in water quality, public health or nuisance problems.~~

C. On-site storage. On-site storage is the short-term storage of biosolids within a site approved for land application on a constructed surface at a location preapproved by the department. These stored biosolids shall be applied only to sites under the operational control of the same owner or operator of the site where the on-site storage is located. Requirements for on-site storage include the following:

1. The certified land applier shall notify the department within the same working day whenever it is necessary to implement on-site storage. Notification shall include the source or sources, location, and amounts;

2. A surface shall be constructed with sufficient strength to support operational equipment and with a maximum permeability of 10^{-7} cm/sec;

3. Storage shall be limited to the amount of biosolids specified in the nutrient management plan to be applied at sites under the operational control of the same owner or operator of the site where the on-site storage is located;

4. If malodors related to the stored biosolids are verified by the department at any occupied dwelling on surrounding property, the problem must be corrected within 48 hours. If the problem is not corrected within 48 hours, the biosolids must be removed from the storage site;

5. All biosolids stored on the on-site storage pad shall be land applied by the 45th day from the first day of on-site storage;

6. Biosolids storage shall be located to provide minimum visibility;

7. Best management practices shall be utilized as appropriate to prevent contact with storm water run on or runoff;

8. Stored biosolids are to be inspected by the certified land applier at least every seven days and after precipitation events of 0.1 inches or greater to ensure that runoff

controls are in good working order. Observed excessive slumping, erosion, or movement of biosolids is to be corrected within 24 hours. Any ponding or malodor at the site is to be corrected. The certified land applier shall maintain documentation of inspections of stored biosolids;

9. The department may prohibit or require additional restrictions for on-site storage in areas of karst topography and environmentally sensitive sites;

10. Biosolids shall not be stockpiled on sites that have on-site storage; and

11. Biosolids shall not result in water quality, public health, or nuisance problems.

E. D. Routine storage. Routine storage is the long-term storage of biosolids at a facility preapproved by the department and constructed specifically for the storage of biosolids to be applied at any site included in permits held by the permit holder of the storage facility. Routine storage facilities shall be provided for all land application projects if no alternative means of management is available during nonapplication periods. No person shall apply to the department for a permit, a variance, or a permit modification authorizing storage of biosolids without first complying with all requirements adopted pursuant to § 62.1-44.19:3 A 5 of the Code of Virginia. Plans and specifications for any surface storage facilities (pits, ponds, lagoons) or aboveground facilities (tanks, pads) shall be submitted as part of the minimum information requirements. The minimum information requirements include:

1. Location.

a. The facility shall be located at an elevation that is not subject to, or is otherwise protected against, inundation produced by the 100-year flood/wave action as defined by U.S. Geological Survey or equivalent information.

b. Storage facilities should be located to provide minimum visibility.

c. All storage facilities with a capacity in excess of 100 wet tons and located offsite of property owned by the generator shall be provided with a minimum 750-foot buffer zone. The length of the buffer zone considered will be the distance measured from the perimeter of the storage facility. Residential uses, high-density human activities and activities involving food preparation are prohibited within the buffer zone. The board may consider a reduction of up to half of the above buffer requirements based on such facts as lagoon area, topography, prevailing wind direction, and the inclusion of an effective windbreak in the overall design.

2. Design capacity.

a. The design capacity for storage of liquid biosolids shall be sufficient to store a minimum volume equivalent

to 60 days or more average production of biosolids and the incidental wastewater generated by operation of the treatment works plus sufficient capacity necessary for: (i) the 25 year-24 hour design storm (incident rainfall and any runoff as may be present); (ii) net precipitation excess during the storage period; and (iii) an additional one foot freeboard from the maximum water level (attributed to the sum of the above factors) to the top berm elevation. Storage capacity of less than that specified above will be considered on a case-by-case basis only if sufficient justification warrants such a reduction.

b. If alternative methods of management cannot be adequately verified, contractors should provide for a minimum of 30 days of in-state routine storage capacity for the average quantity of sludge biosolids transported into Virginia from out-of-state treatment works generating at least a Class II level treated sludge biosolids.

3. Construction.

a. The biosolids shall be stored on an engineered surface with a maximum permeability of 10^{-7} cm/sec and of sufficient strength to support operational equipment.

b. Storage facilities designed to hold dewatered biosolids shall be constructed with a cover to prevent contact with precipitation.

c. Storage facilities shall be of uniform shape (round, square, rectangular) with no narrow or elongated portions. ~~The facilities shall be lined in accordance with the requirements contained in sewerage regulations or certificate.~~

d. The facilities shall also be designed to permit access of equipment necessary for loading and unloading biosolids, and ~~should shall~~ be designed with receiving facilities to allow for even distribution of sludge biosolids into the facility.

e. ~~Design should~~ The design shall also provide for truck cleaning facilities ~~as may be necessary. Storage facilities with a capacity of 100 wet tons or less shall comply with the provision for temporary storage as a minimum.~~

4. Monitoring. All sludge biosolids storage facilities in excess of 100-wet ton capacity shall be monitored in accordance with the requirements of this regulation. Plans and specifications shall be provided for such a monitoring program in accordance with the minimum information specified in ~~Article 4 (9VAC25-32-670 et seq.) of this part~~ 9VAC25-32-60 F and 9VAC25-32-410.

5. Operation.

a. Only biosolids suitable for land application (Class A or B biosolids) shall be placed into permitted routine storage facilities.

b. Storage of biosolids located offsite or remote from the wastewater treatment works during the summer months shall be avoided whenever possible so that the routine storage facility remains as empty as possible during the summer months.

c. Storage facilities ~~should shall~~ be operated in a manner such that sufficient freeboard is provided to ensure that the maximum anticipated high water elevation due to any and all design storm inputs is not less than one foot below the top berm elevation.

d. Complete plans for supernatant disposal shall be provided in accordance with ~~Article 4 (9VAC25-32-670 et seq.) of this part~~ 9VAC25-32-60 F. Plans for supernatant disposal may include transport to the sewage treatment works, mixing with the biosolids for land application or land application separately. However, separate land application of supernatant will be regulated as liquid sludge biosolids; additional testing, monitoring and treatment (disinfection) may be required.

e. The facility site shall be fenced to a minimum height of five feet; gates and locks shall be provided to control access. The fence ~~should shall~~ be posted with signs identifying the facility. The fence ~~should shall~~ not be constructed closer than 10 feet to the outside edge of the facility or appurtenances, to allow adequate accessibility.

f. If malodors related to the stored biosolids are verified by DEQ at any occupied dwelling on surrounding property, the malodor must be corrected within 48 hours.

6. Closure. An appropriate plan of closure or abandonment shall be developed by the permittee when the facility ceases to be utilized and approved by the board. Such plans may also be reviewed by the Department of Health.

7. Recordkeeping. A manifest system shall be developed, implemented and maintained and be available for inspection during operations as part of the overall daily recordkeeping for the project ~~Article 4 (9VAC25-32-670 et seq.) of this part~~ (9VAC25-32-60 F).

9VAC25-32-560. Biosolids utilization methods.

A. Requirements applicable to land application of biosolids.

1. All biosolids application rates, application times and other site management operations shall be restricted as specified in the approved operations management practices plan. The operations management practices plan shall include a nutrient management plan as required by ~~9VAC25-32-680~~ 9VAC25-32-410 and prepared by a certified nutrient management planner as stipulated in

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regulations promulgated pursuant to § 10.1-104.2 of the Code of Virginia.

a. A nutrient management plan shall be developed for all application sites prior to biosolids application.

b. All nutrient management plans shall account for all sources of nutrients to be applied to the site and include at a minimum the following information:

(1) A site map indicating the location of any waste storage facilities and the fields where biosolids or animal waste will be applied;

(2) Site evaluation and assessment of soil types and potential productivities;

(3) Nutrient management sampling including soil monitoring;

(4) Biosolids or animal waste application rates based on the overall nutrient requirements of the proposed crop and soil monitoring results; and

(5) Biosolids and other nutrient source application schedules and land area requirements.

c. The nutrient management plan shall be available for review by the department at the land application site during biosolids land application.

d. Within 30 days after land application at the site has commenced, the permit holder shall provide a copy of the nutrient management plan to the department, the farm operator of the site, the Department of Conservation and Recreation regional office, and the chief executive officer or designee for the local government, unless they request in writing not to receive the nutrient management plan.

e. The nutrient management plan must be approved by the Department of Conservation and Recreation prior to land application for application sites where the soil test phosphorus levels exceed the values in Table 1 of this section. For purposes of approval, permittees should submit the nutrient management plan to the Department of Conservation and Recreation at least 30 days prior to the anticipated date of land application to ensure adequate time for the approval process.

| TABLE 1 SOIL PHOSPHORUS LEVELS REQUIRING NMP APPROVAL | |
|---|--|
| Region | Soil Test P (ppm) VPI & SU Test (Mehlich D)* |
| Eastern Shore and Lower Coastal Plain | 135 |
| Middle and Upper | 136 |

| | |
|--|-----|
| Coastal Plain and Piedmont | |
| Ridge and Valley | 162 |
| *If results are from another laboratory, the Department of Conservation and Recreation approved conversion factors must be used. | |

2. Biosolids shall be treated to meet standards for land application as required by Part IX (~~9VAC25-32-310 et seq.~~) (9VAC25-32-303 et seq.) of this chapter prior to delivery at the land application site. No person shall alter the composition of biosolids at a site approved for land application of biosolids under a Virginia Pollution Abatement Permit. Any person who engages in the alteration of such biosolids shall be subject to the penalties provided in Article 6 (§ 62.1-44.31 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia. The addition of lime or deodorants to biosolids that have been treated to meet standards for land application as required by Part IX (~~9VAC25-32-310 et seq.~~) (9VAC25-32-303 et seq.) of this chapter shall not constitute alteration of the composition of biosolids. The board may authorize public institutions of higher education to conduct scientific research on the composition of biosolids that may be applied to land.

B. Agricultural use. Agricultural use of ~~sewage sludge biosolids~~ is the land application of biosolids (~~Table 7~~) to cropland or pasture land to obtain agronomic benefits as a plant nutrient source and soil conditioner. ~~This use shall require a system design that ensures that the land application procedures are performed in accordance with sound agronomic principles.~~

1. ~~Sludge Biosolids~~ treatment. As a minimum, biosolids that are applied to the land or incorporated into the soil shall be treated by a Class II pathogen treatment process and shall be treated or managed to provide an acceptable level of vector attraction reduction.

2. Site soils. ~~Soils best suited for agricultural use should possess good tilth and drainage capabilities, have moderate to high surface infiltration rates and moderate to slow subsoil permeability. Depth to bedrock or restrictive layers should be a minimum of 18 inches. Depth to the seasonal water table should exceed 18 inches as defined by the Soil Conservation Service soil survey. If such information is not available the water table depth may be determined by soil characteristics or water table observations. If the soil survey or such evidence indicates that the seasonal water table can be less than 18 inches below the average ground surface, soil borings shall be utilized within seven days prior to land application operations during periods of high water table for the soil series present, to verify that the 18-inch depth restriction is complied with during field operations. The use of soil borings and water table depth verification may be required for such sites from November~~

to May (during seasonal high water table elevations) of each year depending on soil type. Constructed channels (agricultural drainage ditch) may be utilized to remove surface water and lower the water table as necessary for crop productions and site management.

a. Depth to bedrock or restrictive layers shall be a minimum of 18 inches.

b. Biosolids application shall not be made during times when the seasonal high water table of the soil is within 18 inches of the ground surface. If Natural Resources Conservation Service soil survey information regarding depth of seasonal water table is not available, the water table depth shall be determined by soil characteristics or water table observations. If the soil survey or such evidence indicates that the seasonal water table can be less than 18 inches below the average ground surface, soil borings shall be conducted within seven days prior to land application operations during periods of high water table for the soil series present to verify the actual water table depth. The use of soil borings and water table depth verification may be required for such sites from November to May (during seasonal high water table elevations) of each year depending on soil type. Constructed channels (agricultural drainage ditches) may be utilized to remove surface water and lower the water table as necessary for crop production and site management.

c. The pH of the biosolids and soil mixture shall be 6.0 or greater at the time of each biosolids application if the biosolids cadmium concentration is greater than or equal to 21 mg/kg. The soil pH must be properly tested and recorded prior to land application operations during which a pH change of one-half unit or more may occur within the zone of incorporation (i.e., use of biosolids containing lime or other alkaline additives at 10% or more of dry solid weight).

d. Soil test pH must be greater then or equal to 5.5 at the time of each biosolids application if the biosolids to be land applied have not been alkaline stabilized.

e. Soil test potassium levels must be greater than or equal to 38 parts per million (Mehlich I analytical procedure or equivalent) at the time of each biosolids application.

3. Management practices.

a. ~~Application rates and requirements. Process design considerations shall include sludge composition, soil characteristics, climate, vegetation, cropping practices, and other pertinent factors in determining application rates. Site specific application rates should be proposed using pertinent biosolids plant available nitrogen (PAN) and crop nutrient needs (agronomic rate listed in Table 10) and shall not exceed the rates established in the nutrient management plan nor result in exceedance of the~~

~~cumulative trace element loading rates (Table 8) specified in 9VAC25-32-356 Table 2. Lime amended biosolids shall be applied at rates that are not expected to result in a target soil pH in the plow layer above a pH of 6.5 for soils located in the coastal plain and above a pH of 6.8 in other areas of the state. Agricultural use of treated septage shall be in accordance with these requirements (Table 12). The biosolids application rate, application timing and all other site management practices shall be restricted to the following criteria in accordance with the approved management practices plan including the nutrient management plan that may prescribe more restrictive site management practices than the following criteria:~~

b. Agricultural use of stabilized septage shall be in accordance with the same requirements as biosolids.

c. Crops. For proposed use of crops or plant available nitrogen (PAN) rates (lbs/A) not stipulated in regulations promulgated pursuant to § 10.1-104.2 of the Code of Virginia, adequate yield and PAN data are to be submitted in accordance with 9VAC25-32-60 F.

(1) Soybeans. Allowable PAN rates are equivalent to the PAN recommendation for corn stipulated in regulations promulgated pursuant to § 10.1-104.2 of the Code of Virginia. For double-crop or late beans planted after June 21 (of any year) allowable PAN rates are equivalent to the PAN recommendation for corn stipulated in regulations promulgated pursuant to § 10.1-104.2 of the Code of Virginia, minus 20 lbs PAN.

(2) Tallgrass hay. Application of the full PAN rate stipulated in regulations promulgated pursuant to § 10.1-104.2 of the Code of Virginia may only be applied between March 1 and September 30 in any year. Application of up to 50% of the listed PAN rate may be applied between October 1 of any year and February 28 of the following year, with remaining PAN applied after March 1 of that following year.

(3) Warm season grasses and alfalfa. From July 1 through September 14, applications to warm season grass hay and alfalfa shall only be applied at 50% of the rate stipulated in regulations promulgated pursuant to § 10.1-104.2 of the Code of Virginia. No biosolids applications shall be made to warm season grass and alfalfa between September 15 and March 15.

d. Application frequency.

(1) ~~For infrequent applications, Infrequent. If biosolids are applied to a field only once in a three-year period, biosolids may be applied such that the total crop needs for nitrogen (Table 10 Agronomic Rate) is not exceeded (in order to minimize the amount of nitrogen that passes below the crop root zone to actually or potentially pollute groundwater); during a one-year crop rotation period~~

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including the production and harvesting of two crops in succession within a consecutive 12-month growing season. However, the total application of biosolids shall not exceed a computed maximum loading of 15 dry tons per acre, unless a higher loading can be justified in relation to both the biosolids and the site characteristics, including the biosolids nutrient and dry solids content and the site slopes. No further applications of biosolids shall be allowed for a period of three years from the date that the agronomic rate is achieved for the crop or crops grown in the following 12 months. The infrequent application rate may be restricted (i) down to 10% of the maximum cumulative loading rate (9VAC25-32-356 Table 2) for cadmium and lead or (ii) to account for all sources of nutrients applied to the site, including existing residuals.

~~(2) The infrequent application rate may be restricted: (i) down to 10% of the maximum cumulative loading rate (Table 8) for cadmium and lead (i.e., 2.0 kilograms per hectare (kg/ha) for cadmium); or (ii) to account for all sources of nutrients applied to the site, including existing residuals.~~

~~(3) The infrequent application rate may also be restricted by the lime content of the biosolids.~~

~~(4) For systems designed for frequent application of biosolids (application of the PAN requirement for a normal crop rotation more frequently than once in every three years), the previous year's applied biosolids nitrogen and mineralization rates (Table 11) and soil phosphorus levels, shall be considered in the design and proposed subsequent application rates. Acceptable nutrient management requirements shall be included in the management practices plan for all sites proposed for frequent at agronomic application rates (9VAC25-32-680).~~

~~(5) (2) Frequent. Frequent below-agronomic application rate involves frequent applications of biosolids on permanent pasture or hay at less than the PAN requirement listed in Table 10. regulations promulgated pursuant to § 10.1-104.2 of the Code of Virginia. Frequent below agronomic application rates shall be calculated using one of the following options: A maximum of 70% of the nitrogen requirement of the permanent pasture or hay crop can be applied on an annual basis. The 70% application rate shall be calculated after accounting for residual nitrogen. For systems designed for frequent below-agronomic rates, surface and ground water monitoring shall not be required.~~

~~(a) A maximum of 70% of the nitrogen requirement of the permanent pasture or hay crop can be applied on an annual basis. The 70% application rate shall be~~

~~calculated after accounting for the previous two years' applied biosolids nitrogen mineralization rates.~~

~~(b) A maximum of 50% of the nitrogen requirement of the permanent pasture or hay crop can be applied on an annual basis. It is not necessary to account for the previous two years' applied biosolids nitrogen mineralization rates under this option.~~

~~For systems designed for frequent below agronomic rates, surface and groundwater monitoring shall not be required. Soil phosphorus levels shall be considered in the design of proposed subsequent application rates. No application shall be made between September 15 and March 15 on warm season grasses and alfalfa.~~

~~b. Standard slopes and topography. Management practices specifying uniform application of biosolids at approved rates should be established in accordance with standard slopes. Agronomic practices and crop growth on sites with slope of not greater than 7.0% will provide acceptable protection of surface water quality during the active growing season. If biosolids are applied to site slopes greater than 7.0% during the period of November 16 of one year to March 15 of the following year certain best management practices (BMP's) should be utilized (see subdivision 3 c (1) of this subsection). Biosolids should be directly injected into soils on sites exhibiting erosion potential unless other best management practices are utilized to minimize soil erosion and the potential of nonpoint runoff. Biosolids shall not be applied to site slopes exceeding 15%. Biosolids shall be directly injected or incorporated (mixed within the normal plow layer within 48 hours) if: (i) applied on sites with less than 60% uniform residue cover (stalks, vines, stubble, etc.) within any portion of the site; or (ii) applied to soils during periods of time soils may be subject to frequent flooding as defined by soil survey information.~~

~~e. Operations.~~

~~(1) Field management. The application rate of all application equipment shall be routinely measured as described in an approved sludge operations management plan and every effort shall be made to ensure uniform application of biosolids within sites in accordance with approved maximum design loading rates. Liquid sludges biosolids shall not be applied at rates exceeding 14,000 gallons per acre, per application. Sufficient drying times shall be allowed between subsequent applications. Application vehicles ~~should~~ shall be suitable for use on agricultural land. Pasture and hay fields ~~should~~ shall be grazed or clipped to a height of approximately ~~four and six inches, respectively;~~ prior to biosolids application unless the biosolids can be uniformly applied so as not to mat down the vegetative cover so that the site vegetation can be clipped to a height of approximately four inches within one week of the biosolids application. Biosolids~~

shall be applied such that uniform application is achieved. If application methods do not result in a uniform distribution of biosolids, additional operational methods shall be employed following application such as dragging with a pasture harrow, followed by clipping if required, to achieve a uniform distribution of the applied biosolids.

(2) Surface incorporation may be required on cropland by the department, or the local monitor with approval of the department, to mitigate excessive odors when incorporation is practicable and compatible with a soil conservation plan meeting the standards and specifications of the U.S. Department of Agriculture Natural Resources Conservation Service.

(3) Slopes above 15%. Biosolids shall not be applied to site slopes exceeding 15%.

(4) Biosolids application timing and slope restrictions shall conform to criteria contained in regulations promulgated pursuant to § 10.1-104.2 of the Code of Virginia.

In accordance with the management practices plan, when biosolids are applied to site slopes greater than 7.0% between the period of November 16 of one year, and March 15 of the following year, one of the following practices shall be used to prevent runoff and soil loss:

(a) Biosolids are surface applied or subsurface injected beneath an established living crop such as hay, pasture, or timely planted small grain or cover crop;

(b) Biosolids are surface applied or subsurface injected so that immediately after application the crop residue still provides at least 60% soil surface coverage; or

(c) Biosolids are applied by surface application or subsurface injection and the site is operated in compliance with an existing soil conservation plan approved by the U.S.D.A. Natural Resource Conservation Service and will remain in compliance after any subsequent tillage operation to incorporate the biosolids.

In accordance with the management practices plan if site slopes exceed 5.0% up to 7.0%, biosolids can be applied by surface application or subsurface injection followed by: (i) incorporation within 48 hours of application if crop residue still provides at least 30% soil surface coverage immediately following incorporation, or (ii) ridge tilling or chisel plowing within 48 hours of application; during the period of November 16 to March 15 of the following year. The site should be chisel plowed or ridge tilled predominately along the contour so that uniform parallel ridges of four inches or greater are created that will improve soil roughness and reduce runoff. Consideration should also be given to the use of

similar practices on slopes of 5.0% or less when feasible for applications during the late fall and winter

(2) Restrictions: (5) Snow. Biosolids application shall not be made during times when the seasonal high water table of the soil is within 18 inches of the ground surface. Biosolids may only be applied to snow-covered ground if the snow cover does not exceed one inch and the snow and biosolids are immediately incorporated within 24 hours of application. If snow melts during biosolids application, incorporation is not necessary. Liquid sludges may not be applied to frozen ground. Dry or dewatered sludges may be applied to frozen ground only if (i) site slopes are 5.0% or less; (ii) a 200 foot vegetative (i.e., at least 60% uniformly covered by stalks or other vegetation) buffer is maintained from surface water courses; and (iii) the entire application site has uniform soil coverage of at least 60% with stalks, vines, stubble, or other vegetation and (iv) the site soils are characterized as well drained.

In accordance with the management practices plan, when biosolids are land applied between March 15 and September 1, crop planting following biosolids application should occur within a 30 day period. When biosolids are applied to sites between September 1 and November 16, an agronomically justified crop capable of trapping plant available nitrogen such as small grain shall be planted within 45 days of the application of biosolids or prior to November 16, whichever comes first, or an established cool season grass sod or timely planted small grain crop shall be present. The crop planted should be capable of germination and significant growth before the onset of winter so the plant is able to use available nitrogen released by the biosolids.

On sites with a high leaching index (greater than 10) as defined by the Department of Conservation and Recreation, an established cool season grass or timely planted small grain crop should be present when biosolids are applied to such sites between November 16 and December 21 in accordance with the nutrient management plan. Biosolids should not be applied any earlier than 30 days prior to spring planting on environmentally sensitive sites in accordance with the nutrient management plan.

d. f. Buffer zones.

(1) Setback distances. If slopes are greater than 7.0% and biosolids will be applied between November 16 and March 15, setback distances to perennial streams and other surface water bodies shall be doubled. The location of land application of biosolids shall not occur within the following minimum buffer zone requirements (Table 2 of this section):

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**TABLE 2:
MINIMUM BUFFER ZONE REQUIREMENTS**

| Adjacent Features | Minimum Distances (Feet) to Land Application Area | | |
|--|---|--------------------------|-----------------------|
| | Surface Application ¹ | Incorporation | Winter ^{2,5} |
| Occupied dwellings | 200 ft. ^{2,3,4} | 200 ^{2,3,4} | 200 ^{2,3,4} |
| Water supply wells or springs | 100 ft. | 100 | 100 |
| <u>Water supply reservoirs³</u> | <u>400</u> | <u>400</u> | <u>400</u> |
| <u>All streams and tributaries designated as a PWS under the WQS</u> | <u>100</u> | <u>100</u> | <u>100</u> |
| <u>Property lines, w/o the presence of an "occupied dwelling"</u> | <u>50</u> | <u>50</u> | <u>50</u> |
| <u>Property lines, with the presence of an "occupied dwelling"⁶</u> | 100 ft. ³ | 50 <u>100</u> | 100 |
| Perennial streams and other surface waters except intermittent streams | 50 ft. | 35 | 100 |
| Intermittent streams/drainage ditches | 25 ft. | 25 | 50 |
| All improved roadways | 10 ft. | 5 | 10 |
| Rock outcrops and sinkholes | 25 ft. | 25 | 25 |
| <u>Limestone rock outcrops and sinkholes</u> | <u>50</u> | <u>50</u> | <u>50</u> |
| Agricultural drainage ditches with slopes equal to or less than 2.0% | 10 ft. | 5 | 10 |

¹Note: Not plowed or ~~diseed~~ disked to incorporate within 48 hours.

²The buffer to occupied dwellings may be reduced or waived upon written consent of the occupant of the dwelling.

³Buffer may be extended by the department based on documented site specific conditions.

⁴Buffer may exceed 400 feet where an evaluation by the Virginia Department of Health determines that a buffer in excess of 400 feet is necessary to prevent specific and immediate injury to the health of an individual.

^{2,5}Application occurs on average site slope greater than 7.0% during the time between November 16 of one year and March 15 of the following year.

⁶Property line buffers may be reduced or waived upon written consent of the adjacent property resident or landowner.

(2) Reduced buffer setback distances. The stated buffer zones to adjacent property boundaries and drainage ditches constructed for agricultural operations may be reduced by 50% for subsurface application (includes same day incorporation) unless state or federal regulations provide more stringent requirements. ~~Written consent of affected landowners is required to reduce buffer distances from property lines and dwellings.~~ In cases where more than one buffer distance is involved, the most restrictive distance governs. ~~Buffer requirements may be increased or decreased based on either site specific features, such as agricultural drainage features and site slopes, or on biosolids application procedures demonstrating precise placement methods.~~

(3) Waivers. Waivers from adjacent property residents and landowners may only be used to reduce buffer distances from occupied dwellings and property lines.

~~(2)~~ (4) Extended buffer setback distances. The department may increase buffer requirements based on site specific features, such as agricultural drainage features and site slopes. For applications where surface applied biosolids are not incorporated, the department (or the local monitor with approval of the department) may require as a site-specific permit condition, extended buffer zone setback distances when necessary to protect odor sensitive receptors. ~~When necessary, buffer zone setback distances from odor sensitive receptors may be extended to 400 feet or more and no biosolids shall be applied within such extended buffer zones. In accordance with 9VAC25-32-100 and 9VAC25-32-490, the board may impose standards and requirements that are more stringent when required to protect public health and the environment, or prevent nuisance conditions from developing, either prior to or during biosolids use operations.~~

~~e. Monitoring and testing.~~ Groundwater and surface water and soils monitoring and testing may be required by the department, or the local monitor with approval of the department for any frequent application sites (reach agronomic rate more than once in three years) for which a potential environmental or public health concern is identified by the board in accordance with this regulation

~~(9VAC25-32-400). Groundwater monitoring and testing should not be required for infrequent application of biosolids.~~

h. Voluntary extensions of buffer distances. If a permit holder negotiates a voluntary agreement with a landowner or resident to extend buffer distances or add other more restrictive criteria than required by this regulation, the permit holder shall document the agreement in writing and provide the agreement to the department. Voluntary buffer increases or other management criteria will not become an enforceable part of the land application permit unless the permit holder modifies the operations management plan to include the additional restriction.

i. Extension of buffer distances with phosphorus index. If the application rate included in a nutrient management plan for a biosolids land application site is dependent upon an extended setback distance calculated using the phosphorus index, the phosphorus index calculations shall be included in the nutrient management plan. The extended setback distance shall be an enforceable part of the permit.

C. Forestland (Silviculture). Silvicultural use includes application of biosolids to commercial timber and fiber production land, as well as federal and state forests. The forestland may be recently cleared and planted, young plantations (two-year-old to five-year-old trees), or established forest stands.

1. ~~Sludge Biosolids standards. Refer to 9VAC25-32-590 and 9VAC25-32-660 of this Article article.~~

2. Site suitability.

a. Site suitability requirements ~~should~~ shall conform to subdivision A 2 of this section the requirements contained in subdivision B 2 of this section.

b. ~~The Notwithstanding the requirements of subsection B 2 of this section the soil pH should~~ shall be managed at the natural soil pH for the types of trees proposed for growth.

c. ~~Notwithstanding the requirements of subsection B 2 of this section the soil test potassium level is not required to be at a minimum level at the time of biosolids application.~~

3. Management practices.

a. Application rates. Biosolids application rates shall be in accordance with the operations management practices plan ~~and~~. The operations management plan shall include information provided by the Virginia Department of Forestry.

b. Operations.

(1) Field management.

(a) High pressure spray shall not be utilized if public activity is occurring within 1,500 feet downwind of the application site. Public access to the site shall be ~~adequately limited or controlled following application (Article 3 (9VAC25-32-490 et seq.) of this part) in accordance with Article 3 (9VAC25-32-490 et seq.) of this part.~~

~~(b) The operations should only proceed when the wind velocity is less than or equal to 15 miles per hour. When high pressure spray is used windless conditions are preferred for such operations.~~

~~(e) (b) Biosolids application vehicles should~~ shall have adequate ground clearance to be suitable for silvicultural field use.

~~(d) (c) Application scheduling should~~ included in the operations management practices plan shall take into account ~~high~~ rainfall periods and periods of freezing conditions.

~~(e) (d) Monitoring requirements shall be site specific and may include groundwater~~ ground water, surface water or soils, for frequent application sites.

(2) Buffer zones. Buffer zones ~~should~~ shall conform to those for agricultural utilization. Refer to Table 2 of this section.

D. Reclamation of disturbed land. ~~Biosolids applied at rates exceeding the agronomic rate may reclaim disturbed land in one or more of the following ways: (i) surface or underground mining operations, (ii) the deposition of ore processing wastes, (iii) deposition of dredge spoils or fly ash in construction areas such as roads and borrow pits. Reclamation of disturbed land is within the jurisdiction of the Virginia Department of Mines, Minerals and Energy. That department should be contacted concerning issuance of a permit for these operations. The land reclamation management practices plan should be prepared with the assistance of the Virginia Department of Conservation and Recreation, the Soil Conservation Service and the Virginia Cooperative Extension Service.~~

1. ~~Sludge Biosolids standards. Refer to the standards of this article.~~

2. Site suitability. Site suitability requirements ~~should~~ shall conform to subdivision A 2 of this section the requirements contained in subdivision B 2 of this section. Exceptions may be considered on a case-by-case basis.

3. Management practices.

a. Application rates. The biosolids application rates shall be established in the nutrient management practices plan through recommendations provided by appropriate agencies including in consultation with the Virginia

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~~Department of Mines, Minerals and Energy and the Virginia Department of Conservation and Recreation, and the appropriate faculty of the Department of Crop and Soil Environmental Sciences of the Virginia Polytechnic Institute and State University. The nutrient management plan shall be approved by the Department of Conservation and Recreation prior to permit issuance.~~

b. Vegetation selection. The land ~~should~~ shall be seeded with grass and legumes even when reforested ~~in order to help prevent erosion and utilize available plant nitrogen.~~ The management practices plan ~~should~~ shall include information on the seeding mixture and a detailed seeding schedule.

c. Operations.

(1) The soil pH ~~should~~ shall be maintained at 6.0 or above if the cadmium level in the biosolids applied is at or above 21 mg/kg. during the first year after the initial application. Soil samples should be analyzed by a qualified laboratory. The application rate shall be limited by the most restrictive cumulative trace element loading ~~(Table 8)~~ (Table 2 of this section).

(2) Surface material ~~should~~ shall be turned or worked prior to the surface application of liquid biosolids, ~~to minimize potential for runoff, since solids in liquid sludge can clog soil surface pores.~~

(3) Unless the applied biosolids are determined to be Class A or have been documented as subjected to Class I treatment, crops intended for direct human consumption shall not be grown for a period of three years following the date of the last ~~sludge biosolids application unless the crop is tested to verify that the crop is not contaminated.~~ No animals whose products are intended for human consumption may graze the site or obtain feed from the site for a period of six months following the date of the last biosolids application, ~~unless representative samples of the animal products are tested after grazing and prior to marketing to verify that they are not contaminated.~~

9VAC25-32-570. Distribution and marketing.

A. Exceptional quality. Distribution or marketing provides for the sale or distribution of exceptional quality biosolids or mixtures of ~~Class I treated exceptional quality biosolids with other materials such that the mixture achieves the Class A pathogen control standard, vector attraction reduction and pollutant control standards.~~ Distribution or marketing of ~~Class I treated Class A biosolids that have been mixed with inert materials may be approved on a case-by-case basis. Inert materials shall not contain pathogens or attract vectors.~~ Use of such mixtures for agricultural purposes ~~should~~ shall be evaluated through proper testing or research programs designed to ~~access~~ assess the suitability of the material for such use. Exceptional quality biosolids marketed as fertilizers or soil conditioners must be registered with the Virginia

~~Department of Agriculture and Consumer Services. The permit applicant shall obtain such registration prior to issuance of a permit by the board for residential, agricultural, reclamation or silvicultural use. meet the following conditions:~~

1. The biosolids product must be registered with the Virginia Department of Agriculture and Consumer Services in accordance with regulations promulgated under § 3.2-3601 of the Code of Virginia. The permit applicant shall obtain such registration prior to issuance of a permit by the board.

~~1. Because of the high potential for public contact with distributed and marketed sludge or sludge products, only 2. The biosolids product must be processed to meet criteria specified for Class I treatment process sequences designed to eliminate or further reduce pathogens (PFRP) shall be sold or given away for application to land Class A pathogen requirements as specified in 9VAC25-32-675 A. In addition, the biosolids must meet vector attraction reduction requirements, and other quality standards (Table 8) as required for the intended use.~~

3. The biosolids product must meet one of the vector attraction reduction requirements as specified in 9VAC25-32-685 B 1 through B 8.

4. The biosolids product must meet the ceiling concentrations specified in 9VAC25-32-356 - Table 1.

5. The biosolids product must meet the pollutant concentrations specified in 9VAC25-32-356 - Table 3.

6. Additional parameters such as the organic chemicals listed in Table 1 of this section may be required for screening purposes as well as aluminum (mg/kg), water soluble boron (mg/kg), calcium (mg/kg), chlorides (mg/l), manganese (mg/kg), sulfates (mg/kg), and those pollutants for which removal credits are granted.

| <u>TABLE 1</u> <u>ORGANIC CHEMICAL TESTING MAY BE</u> <u>REQUIRED TO IDENTIFY AN EXCEPTIONAL</u> <u>QUALITY BIOSOLIDS</u> |
|--|
| <u>Organic chemicals</u> |
| <u>Aldrin/dieldrin (total)</u> |
| <u>Benzo (a) pyrene</u> |
| <u>Chlordane</u> |
| <u>DDT/DDE/DDD (total)*</u> |
| <u>Dimethyl nitrosamine</u> |
| <u>Heptachlor</u> |
| <u>Hexachlorobenzene</u> |

| |
|---|
| <u>Hexachlorobutadiene</u> |
| <u>Lindane</u> |
| <u>Polychlorinated biphenols</u> |
| <u>Toxaphene</u> |
| <u>Trichloroethylene</u> |
| <u>*Note:</u> |
| <u>DDT 2,2 - Bis (chlorophenyl) - 1,1,1 - Trichloroethane</u> |
| <u>DDE 1,1 - Bis (chlorophenyl) - 2,2 - Dichloroethane</u> |
| <u>DDD 1,1 - Bis (chlorophenyl) - 2,2 - Dichloroethane</u> |

2. B. Bulk distribution. Exceptional quality biosolids may be distributed and marketed in either bulk amounts (unpacked) or as a bagged product. For purposes of this regulation, a bulk use quantity of biosolids will be defined as a volume of that sludge product containing 15 dry tons or more of sewage sludge. Application of bulk use quantities of exceptional quality biosolids to home vegetable gardens shall not exceed an equivalent annual loading rate of approximately one pound dry weight of biosolids per square foot (garden products may constitute a significant portion of a family diet and the amount of applied biosolids cannot be specifically controlled as in agricultural use). Exceptional quality biosolids can ideally be used as soil amendments for horticulture and landscaping purposes such as The following requirements shall apply to distribution and marketing of biosolids products:

- a. Use in potting soil mixes;
- b. Use for seed beds, for establishment of grass and other vegetation and for topdressing of existing lawns and landscape vegetation.

1. Any permit holder who distributes or markets exceptional quality biosolids shall maintain records as required by regulations promulgated under § 3.2-3601 of the Code of Virginia and make the records available to the department upon request.

2. Bulk quantities of exceptional quality biosolids shall be land applied in accordance with a nutrient management plan prepared by a certified nutrient management planner as stipulated in regulations promulgated pursuant to § 10.1-104.2 of the Code of Virginia, except under the following conditions:

- a. The percent solids of the biosolids is equal to or greater than 90% based on moisture content and total solids, or
- b. The percent solids of a blended product derived from biosolids is equal to or greater than 40% based on

moisture content and total solids and achieves a carbon to nitrogen ratio of at least 25:1.

3. Within 30 days after land application at the site has commenced, the permit holder shall provide a copy of the plan to the department, the farmer operator of the site, and the Department of Conservation and Recreation regional office.

3. C. Approval of biosolids sources. Only exceptional quality biosolids produced from ~~an approved a~~ sludge processing facility approved by the board can be distributed and marketed. ~~Biosolids sold for use as soil amendments or fertilizers must be registered with the Virginia Department of Agriculture and Consumer Services. Approved sludge processing facilities are those facilities constructed and operated in compliance with required permits. Approved methods of Class I processing for biosolids for distribution or marketing include, but may not be limited to, the methods described in this article.~~

B. Permits. Any owner who proposes to distribute or market exceptional quality biosolids or materials derived from Class I biosolids (distributor), including soil additives or compost in bulk use quantities, shall be required to obtain a written approval issued by the board. The derived material shall achieve acceptable vector attraction reduction standards and contain acceptable levels of solids and pollutant concentrations in accordance with this regulation. A permit for distribution or marketing is not required provided that an operation permit has been issued for land application of the processed material as part of either an approved sludge management plan (12VAC5-585-140 H) or an approved management practices plan (12VAC5-585-240). Approval of the distribution of bulk use quantities of exceptional quality biosolids is not required for a holder of a valid permit that authorizes distribution in bulk use quantities. All requests for bulk use approval shall be directed initially to the appropriate regional office of the department. The Virginia Department of Health, the Virginia Department of Agriculture and Consumer Services and the Virginia Department of Conservation and Recreation may participate in the review of such permits involving land application. A permit for distribution of bulk use quantities of biosolids will require the submittal and review of an acceptable distribution information sheet as described in this regulation. The approval of a distribution information sheet for bulk use quantities of exceptional quality biosolids will be issued in the form of a letter of approval of such use by the department's regional offices.

The permittee shall maintain records on the sludge processing facility operation, maintenance and laboratory testing. Records shall be maintained for all samples to include the following: (i) the date and time of sampling, (ii) the sampling methods used, (iii) the date analyses were performed, (iv) the identity of the individual obtaining each

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sample and the analysts, and (v) the results of all required analyses and measurements. The records shall include all data and calculations used and shall be available to the department for inspections at reasonable times. All required records shall be kept for a minimum of five years.

~~C. D.~~ Information furnished to all users. Biosolids distributed for public use in Virginia shall have proper identification of the producer and a description of the product including an acceptable statement of quality based on representative analytical testing. This information shall be provided by the owner in either brochures for bulk distribution or by proper labeling on bagged material. Labeling requirements shall be addressed in an operations management plan or in the operation and maintenance manual for the processing facility. Either a label shall be affixed to the bag or other container in which exceptional quality biosolids is sold or given away for application to the land, or an information sheet shall be provided to the person who receives exceptional quality biosolids. The label or information sheet shall contain the following information:

1. The name and address of the person who prepared the exceptional quality biosolids;
2. A statement that application of the exceptional quality biosolids to the land is prohibited except in accordance with the instructions on the label or information sheet;
3. The annual whole sludge application rate for the biosolids that does not cause any of the annual pollutant loading rates in Table 4 of 9VAC25-32-356 to be exceeded; and
4. Information required in accordance with regulations promulgated under § 3.2-3601 of the Code of Virginia.

Information provided to users of marketed or distributed biosolids should note the following:

- (i) the nutrient content;
- (ii) the acceptable land application rates;
- (iii) the CCE value;
- the pH;
- (iv) to follow the stated directions for use, and
- (v) that for any uses not specified the user should contact the distributor at a listed address or telecommunications number.

~~D.~~ Distribution information. Distribution information should be maintained by the sludge processing facility owner or holder of a permit for distribution or marketing (distributor) and completed by any single biosolids distributor or user receiving bulk use quantities of marketed or distributed biosolids of more than 50 cubic yards during a period of 24 consecutive hours or less. Copies of this information should

be maintained by the sludge processing facility or distributor and be made available upon request by the department. These records should include the following information, as a minimum:

- ~~1. Date;~~
- ~~2. Name, address, and phone number of user;~~
- ~~3. Amount of exceptional quality biosolids obtained;—~~
- ~~4. Location and property owner where biosolids are being used;~~
- ~~5. Size of area where biosolids are spread;~~
- ~~6. Proximity of site to closest river or water supply source; and~~
- ~~7. Description of site uses.~~

Only the information listed in subdivisions 1 through 4 of this subsection shall be necessary for submission by a biosolids distributor.

The department reserves the right to prohibit the distribution of bulk use quantities of biosolids when it appears that such distribution is being accomplished in such a manner so as to circumvent the foregoing requirements.

~~E.~~ Other uses. The use of a nonhazardous sewage sludge product, such as incinerator ash, will be evaluated on a case-by-case basis as provided for by this regulation.

E. Recordkeeping.

1. The person who prepares exceptional quality biosolids shall develop the following information and shall retain the information for five years:

- a. The concentration of each pollutant listed in Table 3 of 9VAC25-32-356 in the biosolids;
- b. The following certification statement:

"I certify under penalty of law, that the information that will be used to determine compliance with the Class A pathogen requirements in 9VAC25-32-675 A and the vector attraction reduction requirement in (insert one of the vector attraction reduction requirements in 9VAC25-32-685 B 1 through B 8) was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.";

c. A description of how the Class A pathogen requirements in 9VAC25-32-675 A are met; and

d. A description of how one of the vector attraction reduction requirements in 9VAC25-32-685 B 1 through B 8 is met.

2. The person who derives the material that meets the criteria of exceptional quality biosolids shall develop the following information and shall retain the information for five years:

a. The concentration of each pollutant listed in Table 3 of 9VAC25-32-356 in the material;

b. The following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the Class A pathogen requirements in 9VAC25-32-675 A and the vector attraction reduction requirement in (insert one of the vector attraction reduction requirements in 9VAC25-32-685 B 1 through B 8) was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.";

c. A description of how the Class A pathogen requirements in 9VAC25-32-675 A are met; and

d. A description of how one of the vector attraction reduction requirements in 9VAC25-32-685 B 1 through B 8 is met.

3. If the requirements in 9VAC25-32-356 A 4 b are met when biosolids is sold or given away in a bag or other container for application to the land, the person who prepares the biosolids that is sold or given away in a bag or other container shall develop the following information and shall retain the information for five years:

a. The annual whole sludge application rate for the biosolids that does not cause the annual pollutant loading rates in Table 4 of 9VAC25-32-356 to be exceeded;

b. The concentration of each pollutant listed in Table 4 of 9VAC25-32-356 in the biosolids;

c. The following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the management practice in 9VAC25-32-570 E and F, the Class A pathogen requirement in 9VAC25-32-675 A, and the vector attraction reduction requirement in (insert one of the vector attraction reduction requirements in 9VAC25-32-685 B 1 through B 8) was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.";

d. A description of how the Class A pathogen requirements in 9VAC25-32-675 A are met; and

e. A description of how one of the vector attraction reduction requirements in 9VAC25-32-685 B 1 through B 8 is met.

F. An annual report shall be submitted to the department that includes the following information:

1. Total amount in dry tons of exceptional quality biosolids distributed in a bag or other container per year;

2. Total amount in dry tons of exceptional quality biosolids distributed in bulk; and

3. Total amount in dry tons of exceptional quality biosolids distributed from each approved source.

9VAC25-32-580. Sludge disposal.

Permits for sludge disposal practices will be issued through other state and federal regulations and are not subject to this regulation. Such practices may include:

1. Incineration. Emission quality control requirements will be established in accordance with state and federal regulations. The generated ash is required to be properly managed in accordance with local, state and federal regulations. Applicable regulatory requirements in addition to this regulation may involve permits issued by the appropriate state and federal agencies. Buffer separation requirements will be established on a site specific basis in accordance with the applicable regulations.

2. Landfill. Management of stabilized sludge suitable for topdressing of completed landfill areas will be subject to state and federal regulations. Codisposal of sludge within municipal solid waste landfills is subject to state and federal regulation. Codisposal requirements have included:

a. Stabilization treatment of sludges.

b. Dewatering of sludges by methods designed to achieve a suspended solids level of 20% or more, or a treated sludge sample passes the paint filter test standards for free water.

c. A nonhazardous declaration from the owner.

3. Lagooning (surface disposal). When these facilities are closed by burying the wastes in place, they may be considered to be surface disposal sites. A closure plan shall be provided to the appropriate agencies.

4. Dedicated sites. The primary purpose of surface disposal sites is to allow frequent long-term sludge application at a single location at amounts that exceed agronomic rates but not for the purpose of reclaiming disturbed soils. Sludge disposal operations on dedicated sites will be subject to local, state and federal regulations including site management practices. Permits will be issued through state and federal regulations to protect public health and the quality of state waters. Any dedicated site may be subject to local zoning requirements and may be recorded as a

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dedicated site in the appropriate circuit court deed book (Table A-1) by filing a Sludge Disposal Site Dedication Form.

9VAC25-32-590. Standards for agricultural use. (Repealed.)

~~A. Standards for agricultural use of sewage sludge as biosolids have been established such that the concentrations of sludge contaminants released to the environment will not exceed the human health and environmental quality criterion for the relevant exposure pathways.~~

~~B. Agricultural use standards involve regulation of the following:~~

- ~~1. Sludge characteristics as determined from sampling and testing as well as control of sewer use.~~
- ~~2. Sludge treatment (stabilization) in relation to process design and operational controls (Table 3).~~
- ~~3. Site management in relation to land application of biosolids for agronomic use, including (i) operational methods, (ii) access restrictions, and (iii) buffer restrictions.~~
- ~~4. Crop management in relation to land application of biosolids and crop rotation, including (i) application rate determinations, and (ii) crop use restrictions.~~
- ~~5. Standards for biosolids characteristics including (i) nutrient concentrations, (ii) heavy metal concentrations, (iii) organic chemical concentrations, and (iv) lime content/pH characteristics.~~
- ~~6. Standards for processing biosolids involving treatment process sequences for (i) pathogen reduction treatment and (ii) reduction of organic matter to minimize odors and reduce vector attraction.~~

9VAC25-32-600. Biosolids characteristics; nutrients; trace elements; organic chemicals. (Repealed.)

~~A. The primary agronomic value of biosolids, the nutrient content, shall be established prior to agricultural use. The applied nitrogen and phosphorous content of biosolids shall be limited to amounts established to support crop growth. Nitrate nitrogen developed as a result of biosolids application shall be controlled in order not to accumulate in groundwater as a pollutant. Thus, the amount of biosolids applied to land shall be restricted based on the nitrogen requirements of the crop grown on the amended site immediately following application (agronomic rate). In addition, soil erosion and site runoff should not result in phosphorous pollution of surface waters as a result of surface application of biosolids. The results of approved groundwater monitoring programs may be utilized to verify frequent application rates.~~

~~B. The heavy metal content of biosolids may restrict the application rate below the agronomic rate. However,~~

~~municipal biosolids would not normally contain excessive heavy metal concentrations unless a significant amount of a high metal content wastewater without pretreatment is routinely discharged into the municipal system. If a biosolid contains heavy metal concentrations below the ceiling values listed in Table 7, or is processed and evaluated as exceptional quality biosolids, the application rate for agricultural use shall be unrestricted up to the agronomic rate for infrequent applications. The accumulated amount of trace elements can restrict the application rate for frequent applications of biosolids.~~

~~C. Municipal biosolids can contain synthetic organic chemicals from industrial wastewater contributions and disposal of household chemicals and pesticides. Municipal biosolids typically contain very low levels of these compounds; however, biosolids may be required to be tested for certain toxic organic compounds prior to agricultural use (Table 12). If performed and validated, these test results shall be utilized to evaluate the maximum allowable annual loading rate for the tested biosolids. If analytical test results verify that biosolids contains levels of organic chemicals exceeding concentration limits incorporated in federal regulations or standards, appropriate restrictions shall be imposed for agricultural use of that biosolid.~~

9VAC25-32-610. Biosolids treatment. (Repealed.)

~~A. Stabilization. Biosolids treatment processes are primarily designed to increase the solids content of the biosolids by separation and removal of liquid and are designed to stabilize the solid fraction through biochemical conversions that inactivate pathogens and reduce vector attraction characteristics and the potential for odor production. Such treatment should be designed to improve the characteristics of the biosolids for a particular use/disposal practice, increase the economic viability of using a particular practice and reduce the potential for public health, environmental and nuisance problems.~~

~~B. Class I treatment. Class I treatment may be achieved by process sequences to further reduce (PFRP) or eliminate pathogens, i.e., Class A pathogen control. Class I treatment methods reduce all pathogens potentially contained in biosolids or septage to a level below specified limits (Table 3). Class A microbiological standards and an acceptable solids content shall be achieved at the time biosolids are used or prepared for distribution or marketing in accordance with the appropriate management practices specified in this regulation. Class I treatment processes should include one or more of the following operations:~~

~~1. Heat treatment. The temperature of the biosolids that is used or disposed is maintained at a specific value for a specified period of time:~~

- ~~a. When the percent solids of the biosolids is 7.0% or higher, the temperature of the biosolids shall be 50°C or~~

higher; the time period shall be 20 minutes or longer; and the temperature and time period shall be determined using equation B 1, except when small particles of biosolids are heated by either warmed gases or an immiscible liquid.

$$\text{Equation B 1: } D1 = (131,700,000) / 10(\exp 0.1400(t))$$

Where,

D1 = time in days that biosolids temperature is t or more

t = Biosolids temperature in degrees Celsius (°C).

exp = exponent or power that Base 10 is raised to.

b. When the percent solids of the biosolids is 7.0% or higher and small particles of biosolids are heated by either warmed gases or an immiscible liquid, the temperature of the biosolids shall be 50°C or higher; the time period shall be 15 seconds or longer; and the temperature and time period shall be determined using equation B 1.

c. When the percent solids of the biosolids is less than 7.0% and the time period is at least 15 seconds, but less than 30 minutes, the temperature and time period shall be determined using equation B 1.

d. When the percent solids of the biosolids is less than 7.0% the temperature of the biosolids is 50°C or higher; and time period is 30 minutes or longer, the temperature and time period shall be determined using equation B 2.

$$\text{Equation B 2: } D2 = (50,070,000) / 10(\exp 0.1400(t))$$

Where,

D2 = time in days that biosolids temperature is t or more

t = Biosolids temperature in degrees Celsius (°C).

e. The temperature of the biosolids is maintained at 70°C or higher for a time period of 30 minutes or longer (Pasteurization).

2. Heat drying. A process wherein dewatered biosolids cake is dried by direct or indirect contact with hot gases and the biosolids moisture content is reduced to 10% or lower. Direct drying is achieved when the biosolids particles reach temperatures of 80°C or higher. Indirect drying may involve the temperature of the gas stream measured at the point where the gas stream leaves the dryer. Indirect drying may be achieved when the wetbulb temperature of the gas stream leaving the dryer is in excess of 80°C or the biosolids particles reach temperatures of 80°C or higher.

3. Thermophilic composting. A process using the within-vessel composting method that maintains a treated biosolids temperature of 55°C or greater for three days. A process using the static aerated pile composting method that maintains a treated biosolids temperature of 55°C or

greater for three days. A process using the windrow composting method that maintains a treated biosolids temperature at 55°C or greater for at least 15 days during the composting period, and during the indicated high temperature period, there is a minimum of five turnings of the windrow. Operating temperatures are measured at the depth of 30 cm from the surface of the compost mixture. As thermophilic composting processes are less efficient in destroying pathogens than other disinfection processes an additional storage of processed compost up to 30 days or more may be necessary to achieve an adequate level of vector attraction reduction as verified by testing prior to final disposition (Table 3).

4. Thermophilic aerobic digestion. Liquid biosolids consisting of 50% or more waste biological liquid by dry weight, is agitated with air or oxygen to maintain one mg/l or more dissolved oxygen at mid depth, during a mean cell residence time of 10 days or more at 55°C or more.

5. Alkaline (PFRP) stabilization. Thorough blending of an alkaline additive to digested biosolids in sufficient quantities to produce a mixture pH of 12 or more for a period of 72 hours or more with one of the following: (i) mixture temperature of 55°C for a minimum period of 12 hours, or (ii) mixture temperature of 70°C or more for a minimum period of 30 minutes or more. Such treatment may be followed by storage for an acceptable period of time to dry the mixture to an adequate dry solids content. Alkaline addition to undigested biosolids will be considered on a case by case basis with extensive monitoring used to verify the level of pathogen control achieved.

6. Chlorine oxidation. A process of introducing high doses of chlorine (1,000 mg/l to 3,000 mg/l) into the biosolids stream under low pressure (30 psig or more) producing a biosolids pH of four or less in order to achieve Class A microbiological standards (Table 3), followed by acceptable drying to achieve a suspended solids content of 30% or more.

7. Alternative equivalent stabilization processes. The process operating parameters for alternative equivalent stabilization processes (PFRP) should be addressed, case-by-case, based on department evaluation of the results of adequate monitoring and testing programs (Table 3), with input from the USEPA staff, i.e., the Pathogen Equivalency Committee.

C. Class II treatment. Class II treatment may be achieved by process sequences to significantly reduce pathogens (PSRP), i.e., Class B pathogen control. Class II treatment methods reduce bacteria (fecal coliform, fecal streptococci, enterococci) found in the treated biosolids or septage 1 logs or more (32 fold) below the densities found in the raw biosolids to achieve a density of (6.3 log10 per gram of total solids or less (Table 3)). Class B microbiological standards

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shall be achieved at the time the biosolids are removed and transported for land application in accordance with the management practices specified. Class II treatment processes may include one or more of the following operations:

1. ~~Anaerobic digestion. A process whereby biosolids are maintained in an anaerobic environment for a mean cell residences period ranging from 60 days at 20°C to 15 days at 35°C.~~

2. ~~Aerobic digestion. A process of agitating biosolids with air or oxygen to maintain aerobic conditions for a mean cell residence period ranging from 60 days at 15°C to 40 days at 20°C.~~

3. ~~Low temperature composting. A process using the within vessel, aerated static pile or windrow composting methods, whereby the temperature of treated biosolids is maintained at a minimum of 40°C for five days. For four hours during this period the operating temperature of the treated biosolids exceeds 55°C. Additional storage of processed compost for 30 days or more may be necessary to provide the necessary level of vector attraction reduction prior to final disposition.~~

4. ~~Alkaline (PSRP) stabilization. A process where sufficient alkaline additive is blended with unstabilized biosolids to produce a minimum mixture pH of 12 after two hours of contact and a pH of 11.5 or more for 22 additional hours or more, with storage for a period sufficient to produce an acceptable dry solids content as necessary for the method of final disposition.~~

5. ~~Air drying. Biosolids treated by methods similar to those listed above, but not meeting Class II treatment standards are dried on sand beds or in basins with underdrains for a minimum period of three months, during which time the ambient daily temperature exceeds 0°C and dried biosolids are produced.~~

D. ~~Additional treatment methods to provide disinfection of treated biosolids. Pathogen treatment processes may be enhanced by providing additional treatment methods to eliminate parasitic worms and ova (EH process sequence). Any of the processes listed below, if added to stabilization processes described previously, will further lower pathogens. Because these processes when used alone do not reduce nuisance odors and the attraction of vectors, they are considered to be supplementary to typical stabilization and pathogen treatment processes.~~

1. ~~Beta ray irradiation. A process involving the irradiation of biosolids with beta rays at dosages of at least one megarad at 20°C.~~

2. ~~Gamma ray irradiation. A process involving the irradiation of biosolids with gamma rays from certain isotopes, such as 60Cobalt and 137Cesium, at dosages of at least 1.0 megarad at 20°C.~~

E. ~~Vector attraction reduction parameters. One of the appropriate vector attraction reduction requirements shall be achieved and Class A or B pathogen control obtained when bulk biosolids are applied to agricultural land, forest, a public contact site, reclamation site, lawn or home gardens. One of the appropriate vector attraction reduction requirements shall be met when Class A biosolids are sold or given away in a bag or other container for application to the land. The following operational methods will achieve the necessary vector attraction reduction requirements:~~

1. ~~The mass of volatile solids in the biosolids shall be reduced by a minimum of 38% (see calculation procedures in "Environmental Regulations and Technology Control of Pathogens and Vector Attraction in Sewage Sludge," EPA-625/R-92/013, July 2003, U.S. Environmental Protection Agency, Cincinnati, Ohio 45268).~~

2. ~~When the 38% volatile solids reduction cannot be met for an anaerobically digested biosolid, vector attraction reduction can be demonstrated by digesting a portion of the originally digested biosolids anaerobically in the laboratory in a bench scale unit for 40 additional days at a temperature between 30°C and 37°C. When at the end of the 40 days, the volatile solids in the biosolids at the beginning of that period is reduced by less than 17%, adequate vector attraction reduction is considered demonstrated for the originally digested biosolids.~~

3. ~~When the 38% volatile solids reduction requirement cannot be met for an aerobically digested biosolid, vector attraction reduction can be demonstrated by digesting a portion of the originally digested biosolids that has a percent solids of 2.0% or less aerobically in the laboratory in a bench scale unit for 30 additional days at 20°C. When at the end of the 30 days, the volatile solids in the biosolids at the beginning of that period is reduced by less than 15%, adequate vector attraction reduction is considered demonstrated for the originally digested biosolids.~~

4. ~~The specific oxygen uptake rate (SOUR) for biosolids treated in a Class II or better aerobic process shall be equal to or less than 1.5 milligrams of oxygen per hour per gram of total solids (dry weight basis) at a temperature of 20°C.~~

5. ~~Biosolids shall be treated in a Class II or better aerobic process for 14 days or longer. During that time, the temperature of the biosolids shall be higher than 40°C and the average temperature of the biosolids shall be higher than 45°C.~~

6. ~~The pH of treated biosolids shall be raised to 12 or higher by alkaline addition and, without the addition of more alkaline material, shall remain at 12 or higher for two hours and then at 11.5 or higher for an additional 22 hours. Alkaline stabilization of untreated biosolids shall be evaluated on a case by case basis.~~

7. The percent solids of treated biosolids that does not contain unstabilized solids generated in a primary wastewater treatment process shall be equal to or greater than 75% based on the moisture content and total solids prior to mixing with other materials.

8. The percent solids of treated biosolids that contains unstabilized solids generated in a primary wastewater treatment process shall be equal to or greater than 90% based on the moisture content and total solids prior to mixing with other materials.

9. For biosolids that are surface applied and incorporated, or injected, below the surface of the land:

a. No significant amount of the biosolids shall be present on the land surface within one hour after the biosolids are injected.

b. When the biosolids that are injected below the surface of the land are Class A with respect to pathogens, the biosolids shall be injected below the land surface within eight hours after being discharged from the pathogen treatment process.

c. Biosolids applied to the land surface shall be incorporated into the soil within six hours after application to or placement on the land.

d. When biosolids that are incorporated into the soil are Class A with respect to pathogens, the biosolids shall be applied to or placed on the land within eight hours after being discharged from the pathogen treatment process.

10. The pH of untreated domestic septage applied to land shall be raised to 12 or higher by alkaline addition and, without the addition of more alkaline material, shall remain at 12 or higher for 30 minutes prior to application.

9VAC25-32-620. Site access time restrictions. (Repealed.)

A. Unrestricted access (UA). Biosolids that have undergone Class I treatment to achieve Class A pathogen control may be applied or incorporated into the soil of agricultural lands and immediate public access is permitted. A waiting period is required up to 30 days following application (to allow adhering biosolids to be washed from the foliar portion of the plants by precipitation). This waiting period is required before (i) crops are harvested for human consumption, or (ii) domestic animals are allowed to graze on the site.

B. Restricted access (RA). Following application or incorporation of biosolids that have undergone Class II treatment to achieve Class B pathogen control public access and crop management shall be restricted as follows: (i) access to any site with a high potential for contact with the ground surface (public use) by the general public shall be controlled for a minimum time period of one year, (ii) access to agricultural sites and other sites with a low potential for public exposure shall be controlled for 30 days, (iii) food

crops with harvested parts that touch the biosolids/soil mixture and are not totally above the land surface shall not be harvested for 14 months, (iv) food crops with harvested parts below the surface of the land shall not be harvested for 20 months following application, when the biosolids remain on the land surface for four months or longer prior to incorporation into the soil, (v) food crops with subsurface harvested parts shall not be harvested for 38 months following application, when the biosolids remain on the land surface less than four months prior to incorporation, (vi) feeding of harvested crops to animals shall not take place for a total of one month following surface application (two months for lactating dairy livestock), (vii) grazing by animals whose products will or will not be consumed by humans is prevented for at least 30 days (60 days for lactating dairy livestock), and (viii) harvesting turf grass for placement on land with a high potential for public exposure or a lawn is prevented for 12 months.

C. Modified Access (MA). If a biosolids processing sequence is used to treat PSRP or PSLP biosolids that eliminates or inactivates helminth eggs (EH), public use access restrictions are reduced to six and eight months respectively, which shall include two summer months. A summary listing of access restrictions is presented in Table 9.

9VAC25-32-630. Biosolids management for nitrogen loading. (Repealed.)

A. Crop uptake guidelines. 9VAC25 32 560 B 3 states that application rates shall be approved by the board and that nitrogenous substances are often the limiting factoring determining these application rates. The applicant is responsible for providing site specific biosolids loading rates on a field by field basis. In cases where nitrogen is the rate limiting constituent, such rates may be justified by determining the predominant soil type in a field and then correlating the appropriate soil productivity group and nitrogen requirement for the proposed crop. Soil test recommendations developed through the Virginia Polytechnic Institute and State University or the Virginia Water Conservation, Department of Conservation and Recreation may be used for such purposes. Table 10 summarizes the correlation between nitrogen requirement and productivity class for several crops grown and harvested in Virginia. The applicant may also justify site specific loading rates by documenting historic crop yield records (average of three highest yields in five years of record) or by written verifications from the Virginia Polytechnic Institute and State University, the Cooperative Extension Service or Department of Conservation and Recreation Nutrient Management Specialist. Written verification shall accompany a request for higher yield goals than those posted in Table 10.

B. Application rate calculations. For biosolids application, a nitrogen balance must be evaluated to determine the acceptable loading rate. For frequent biosolids application,

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the evaluation will require an assessment of biosolids mineralization rates for organic nitrogen present in the biosolids for the year it is applied as well as residual organic nitrogen that will be mineralized from previous years' biosolids application. Table 11 summarizes acceptable organic nitrogen mineralization rates and ammonia volatilization rates for various types of biosolids and should be used in computing acceptable nitrogen loading rates unless information is provided to justify other rates. The nitrogen application rate on sites registered in the conservation reserve plan should be established in accordance with those land use restrictions. The application rates for treated septage shall be developed using equation 1 contained in Table 12 B.

9VAC25-32-640. Maximum application rates for trace elements. (Repealed.)

The maximum cumulative application of cadmium and other biosolids borne trace elements to soils used for crop production is summarized in Table 8. Parameters other than those listed in Tables 8, 9 and 14 can be used to evaluate the application rate of biosolids in accordance with current EPA technical regulations. Exceptional quality biosolids applied to lawns or home gardens in residential areas shall be of such quality so as to conform with the pollutant levels specified in Table 7 B.

9VAC25-32-650. Maximum application rates for high lime biosolids. (Repealed.)

Application rates for alkaline stabilized biosolids may be restricted in accordance with the soil pH buffer capacity, as determined by commercial and state soil testing laboratories. The application of biosolids will affect soil pH. Unless properly controlled, high rates of calcium carbonate equivalence (i.e., CCE, which is a factor that relates the liming potential of biosolids to calcium carbonate limestone) application can have an adverse effect on crop productivity by increasing the soil pH beyond the range optimum for maximum crop production. Agricultural use of biosolids with high CCE content should be controlled to correspond with current agricultural liming practices. Calcium carbonate equivalent loadings should not exceed rates designed to attain soil pH values in the plow layer above 6.5 for soils located in the coastal plain and above 6.8 for soils located in other areas of the state.

9VAC25-32-660. Maximum application rates for biosolids. (Repealed.)

If soils exhibit very high soil test phosphorus of 55 or more parts per million phosphorus (Mehlich I analytical test procedure or equivalent procedure approved by the Department of Conservation and Recreation), the maximum application rates for phosphorus contained in biosolids together with phosphorus contained in other applied nutrient sources to the site and all applicable phosphorus management

practices shall be consistent with the nutrient management plan.

**TABLE 7
A. RECOMMENDED CEILING LIMITS FOR THE
TRACE ELEMENT CONTENT OF BIOSOLIDS
ACCEPTABLE FOR LAND APPLICATION**

| TRACE ELEMENT | CONCENTRATION IN MILLIGRAMS PER KILOGRAMS (DRY WEIGHT) |
|---------------|--|
| Arsenic | 75 |
| Cadmium | 85 |
| Copper | 4300 |
| Lead | 840 |
| Mercury | 57 |
| Molybdenum | 75 |
| Nickel | 420 |
| Selenium | 100 |
| Zinc | 7500 |

**B. MAXIMUM MONTHLY AVERAGE TRACE
ELEMENT CONCENTRATIONS FOR APPLICATION
OF EXCEPTIONAL QUALITY BIOSOLIDS TO LAWNS
OR HOME GARDENS IN RESIDENTIAL LOCATIONS**

| TRACE ELEMENT | CONCENTRATION IN MILLIGRAMS PER KILOGRAMS (DRY WEIGHT) |
|---------------------------|--|
| Arsenic ⁽⁺⁾ | 41 |
| Cadmium | 39 |
| Copper | 1500 |
| Lead | 300 |
| Mercury | 17 |
| Molybdenum ⁽⁺⁾ | - |
| Nickel | 420 |
| Selenium | 100 |
| Zinc | 2800 |

Note: ⁽⁺⁾The monthly average concentration is currently under study by USEPA.

TABLE 8
 MAXIMUM CUMULATIVE APPLICATION OF
 BIOSOLIDS TRACE ELEMENTS THAT CAN BE
 APPLIED TO SOILS USED FOR CROP PRODUCTION⁽¹⁾

| TRACE ELEMENT | Kg/ha | (lbs/AC) |
|---------------------------|-------|----------|
| Arsenic ⁽²⁾ | 41 | (36) |
| Cadmium | 39 | (35) |
| Copper | 1,500 | (1,340) |
| Lead | 300 | (270) |
| Mercury | 17 | (16) |
| Molybdenum ⁽²⁾ | - | - |
| Nickel | 420 | (375) |
| Selenium | 100 | (89) |
| Zinc | 2,800 | (2,500) |

Notes: ⁽¹⁾Such total applications to be made on soils with the biosolids/soil mixture pH adjusted to 6.0 or greater if the biosolids cadmium content is greater than or equal to 21 mg/kg.

The maximum cumulative application rate is limited for all ranges of cation exchange capacity due to soil background pH in Virginia of less than 6.5 and lack of regulatory controls of soil pH adjustment after biosolids application ceases.

⁽²⁾The maximum cumulative application is currently under study by USEPA.

TABLE 9
 COMPARISONS OF TIME RESTRICTIONS
 FOLLOWING COMPLETION OF BIOSOLIDS
 APPLICATION ASSOCIATED WITH CLASS II
 TREATMENT LEVELS

| Type of Application | Surface ⁽¹⁾ | Incorporated ⁽²⁾ |
|--|------------------------|-----------------------------|
| Control of Access for Public Use ⁽³⁾ | 12 Months | 12 Months |
| Time lapse required before above ground food crops with harvested parts that touch the | 14 Months | 14 Months |

| | | |
|--|-----------|-----------|
| biosolids/soil mixture can be harvested: | | |
| Time lapse before food crops with harvested parts below the land surface can be harvested | 20 Months | 38 Months |
| Harvesting food crops, feed crops and fiber crops | 1 Month | 1 Month |
| Grazing and feeding harvested crops to animals whose products are consumed by humans ⁽⁴⁾ | 1 Month | 1 Month |
| Grazing of farm animals whose products are not consumed by humans | 1 Month | 1 Month |
| Harvesting turf for placement on land with a high potential for public exposure or a lawn ⁽⁵⁾ | 12 Months | 12 Months |

Notes: ⁽¹⁾Remains on land surface for four months or longer prior to incorporation.

⁽²⁾Remains on land surface for less than four months prior to incorporation.

⁽³⁾Public access to agricultural sites and other sites with a low potential for direct contact with the ground surface shall be controlled for 30 days.

⁽⁴⁾The restriction for lactating dairy cows is two months.

⁽⁵⁾This time restriction must be met unless otherwise specified by the permitting authority.

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TABLE 10
NITROGEN REQUIREMENTS FOR AGRONOMIC RATES

A. RECOMMENDED PLANT AVAILABLE NITROGEN (PAN) APPLICATION RATES IN POUNDS OF NITROGEN (N) PER ACRE FOR VARIOUS NONIRRIGATED CROPS GROWN ON SOILS RECEIVING INFREQUENT BIOSOLIDS APPLICATIONS⁽⁴⁾

| - | Soil Productivity Group | | | | | | | | |
|--|-------------------------|------------------|------------------|------------------|------------------|------------------|---------------|--------------|----------|
| | I | | II | | III | | IV | | V |
| | A | B | A | B | A | B | A | B | - |
| Crop | lbs N/acre | | | | | | | | |
| Corn grain | 180 | 170 | 160 | 150 | 140 | 130 | 120 | 100 | 80 |
| Corn silage | 200 | 185 | 175 | 165 | 155 | 145 | 130 | 110 | 90 |
| Grain sorghum | 140 | 130 | 120 | 110 | 100 | 90 | 90 | | 80 |
| Full season Soybeans ⁽²⁾ | 160 to 180 | 150 to 170 | 140 to 160 | 130 to 150 | 120 to 140 | 110 to 130 | 100 to 120 | 85 to 105 | 65 to 85 |
| Canola ⁽³⁾ | 100 | | 90 | | 80 | | 60 | | 60 |
| Wheat | 100 | | 90 | | 80 | | 60 | | 60 |
| Barley | 90 | | 80 | | 80 | | 60 | | 60 |
| Rye | 75 | | 75 | | 75 | | 75 | | 75 |
| Oats | 80 | | 80 | | 80 | | 60 | | 60 |
| Tallgrass hay ⁽⁴⁾ | 250 | | 250 | | 200 | | 160 | | 160 |
| Bermudagrass hay | 240—300 | | 240—300 | | 210—260 | | 210—260 | | 210—260 |
| Pasture Fescue/Orchardgrass ⁽⁵⁾ | 120 | | 120 | | 100 | | 80 | | 80 |
| Bermudagrass pasture ⁽⁷⁾ | 175—225 | | 175—225 | | 120—180 | | 120—180 | | 120—180 |
| Alfalfa ⁽⁷⁾ | 300 | | 300 | | 210 | | 150 | | 150 |
| Sudangrass, sudan- sorghum, millet ⁽⁶⁾ | 70 | | 70 | | 70 | | 70 | | 70 |
| Stockpiled tall fescue (summer application by August 15) | 60—100 | | 60—100 | | 50—80 | | 50—80 | | 50—80 |

Notes: ⁽¹⁾For proposed use of crops or PAN rates (lbs/A) not included in the following tables, adequate yield and PAN Data are to be submitted in accordance with Article 4 (9VAC25-32-670 et seq.) of this part.

⁽²⁾For doublecrop or late beans planted after 6/21 (of any year) allowable PAN rates are the lowest of the listed values, as rounded to nearest factor of 10.

⁽³⁾For fall application rate may sidedress up to 60 lbs fertilizer N/acre in late February before spring growth begins.

⁽⁴⁾Apply listed PAN rate when application occurs between 3/1 and 9/30 in any year and apply only one half of listed PAN rates if application will occur between 10/1 of any year and 2/28 of the following year, with remaining PAN applied after 3/1 of that following year.

⁽⁵⁾For frequent applications apply 60 lbs PAN/acre per year. Following infrequent application rate, subsequent frequent applications should be adjusted on a case by case basis, accounting for residual from other wastes and crops (Part IV, Table A-2).

⁽⁶⁾Sudangrass, sudan sorghum and pearl millet may receive a PAN rate of 120 lbs/A if the application occurs between 3/1 and 6/1 of any year and two cuttings are to be made, weather permitting. For Foxtail or German Millet, cut only once, application will be limited to a PAN rate of 70 LBS/A.

⁽⁷⁾From 7/1 through 9/14, applications to Bermuda grass hay or alfalfa shall only be applied at 50% of the listed rate

B. ESTIMATED YIELDS IN BUSHELS (bu) OR TONS (T) PER ACRE (A) OF VARIOUS NONIRRIGATED CROPS FOR IDENTIFIED SOIL PRODUCTIVITY GROUPS

| Crop | I | | II | | III | | IV | | V |
|------------------------------|---------------------------|------|---------|---------|---------|------|---------|------|------|
| | A | B | A | B | A | B | A | B | - |
| Corn Grain (bu/A) | 180 | 170 | 160 | 150 | 140 | 130 | 120 | 100 | 80 |
| Corn Silage (T/A) | 25.4 | 24.4 | 23.4 | 22.5 | 21.5 | 20.5 | 19.5 | 17.5 | 15.6 |
| Grain Sorghum (bu/A) | 140 | 130 | 120 | 110 | 100 | 90 | 90 | | 80 |
| Soybeans (bu/A) | - | - | - | - | - | - | - | - | - |
| --Early season | 50 | 45 | 40 | | 35 | | 25 | | 20 |
| --Late season ⁽⁸⁾ | 40 | 34 | 34 | 30 | 25 | | 18 | | 15 |
| Canola ⁽⁹⁾ | UNDETERMINED AT THIS TIME | | | | | | | | |
| Wheat (bu/A) | - | - | - | - | - | - | - | - | - |
| --Standard | 64 | | 56 | | 48 | | 40 | | 24 |
| --Intensive | 80 | | 70 | | 60 | | 50 | | 30 |
| Barley (bu/A) | - | - | - | - | - | - | - | - | - |
| --Standard | 110 | | 70 | | 60 | | 50 | | 30 |
| --Intensive | 115 | | 88 | | 75 | | 63 | | 38 |
| Oats | 80 | | 80 | | 80 | | 60 | | 60 |
| Fallgrass hay (T/A) | >4.0 | | 3.5-4.0 | 3.5-4.0 | 3.0-3.5 | | <3.0 | | <3.0 |
| Bermudagrass hay (T/A) | >6.0 | | 5.0-6.0 | | 4.0-5.0 | | 3.0-4.0 | | <3.0 |
| Alfalfa (T/A) | >6.0 | | 4.0-6.0 | | <4.0 | | <4.0 | | <4.0 |

Notes: ⁽⁸⁾Late season beans would be planted on or after 6/21 of that year.

⁽⁹⁾Sufficient yield data not currently available.

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C. RESIDUAL PLANT AVAILABLE NITROGEN (PAN) REMAINING FROM GROWTH OF VARIOUS LEGUMES DURING THE PREVIOUS YEAR⁽¹⁰⁾

| Crop | %Stand | Yield Description | Residual Pan (lbs/A) |
|-------------|--------|-------------------|----------------------|
| Alfalfa | 50-75 | Good (>4T/A) | 90 |
| - | 25-49 | Fair (3-4T/A) | 70 |
| - | <25 | Poor (<3T/A) | 50 |
| Red Clover | >50 | Good (>3T/A) | 80 |
| - | 25-49 | Fair (2-3T/A) | 60 |
| - | <25 | Poor (<2T/A) | 40 |
| Hairy Vetch | 80-100 | Good | 100 |
| - | 50-79 | Fair | 75 |
| - | <50 | Poor | 50 |
| Peanuts | | | 45 |
| Soybeans | | | 20 ⁽¹¹⁾ |

Notes: ⁽¹⁰⁾The residual PAN values must be subtracted from the PAN values listed in Table A of this section to determine biosolids application rates following growth of legume crops the previous year.

⁽¹¹⁾Where yield data is available utilize 0.5 pounds per bushel.

TABLE 11
A. ESTIMATED NITROGEN MINERALIZATION RATES FOR BIOSOLIDS

| - | Application Year ⁽¹⁾ | | | |
|--------------------------|---------------------------------|------|------|------|
| | 0-1 | 1-2 | 2-3 | 3-4 |
| Biosolids Type | | | | |
| Lime Stabilized | 0.30 | 0.10 | 0.10 | 0.05 |
| Aerobic digestion | 0.30 | 0.10 | 0.10 | 0.05 |
| Anaerobic digestion | 0.30 | 0.10 | 0.10 | 0.05 |
| Composted ⁽²⁾ | 0.10 | 0.05 | 0.03 | 0.00 |

Notes: ⁽¹⁾To determine nitrogen available from previous biosolids applications, multiply the initial organic nitrogen analysis by the appropriate mineralization factor.

⁽²⁾Total organic nitrogen content of 2.0% or less and no significant ammonia nitrogen.

B. ESTIMATED BIOSOLIDS AMMONIA NITROGEN AVAILABILITY FACTORS BASED ON EXPECTED VOLATILIZATION RATES FOR BIOSOLIDS

| - | Availability Factor ⁽¹⁾ | |
|---------------------------------|------------------------------------|------------------------------|
| | Biosolids pH Less than 10 | Biosolids pH Greater than 10 |
| Method of Application | | |
| Injection below surface | 1.0 | 1.0 |
| Surface application with/ | - | - |
| - Incorporation within 24 hours | 0.85 | 0.75 |
| - Incorporation within 1-7 days | 0.70 | 0.50 |

| | | |
|---|------|------|
| Incorporation after 7 days | 0.50 | 0.25 |
| ⁽⁴⁾ To determine the plant available biosolids ammonium nitrogen in the soil, multiply the biosolids ammonium nitrogen concentration or total weight applied by the appropriate availability factor. | | |

TABLE 12

A. ORGANIC CHEMICAL TESTING THAT MAY BE REQUIRED TO IDENTIFY AN EXCEPTIONAL QUALITY BIOSOLIDS

- Organic Chemicals
- Aldrin/dieldrin (total)
- Benzo (a) pyrene
- Chlordane
- DDT/DDE/DDD (total) (1)

- Dimethyl nitrosamine
- Heptachlor
- Hexachlorobenzene
- Hexachlorobutadiene
- Lindane
- Polychlorinated biphenols
- Toxaphene
- Trichloroethylene
- (1) Note: DDT 2,2-Bis (chlorophenyl) 1,1,1-Trichloroethane
- DDE 1,1-Bis (chlorophenyl) 2,2-Dichloroethane
- DDD 1,1-Bis (chlorophenyl) 2,2-Dichloroethane

B. THE RECOMMENDED APPLICATION RATE FOR DOMESTIC SEPTAGE APPLIED TO AGRICULTURAL LAND, FOREST, OR A RECLAMATION SITE SHALL NOT EXCEED THE ANNUAL APPLICATION RATE CALCULATED USING THE FOLLOWING EQUATION:

$$AAR = N / (0.0026)$$

Where:

AAR = Annual application rate in gallons per acre per 365-day period.

N = Amount of nitrogen in pounds per acre per 305-day period needed by the crop or vegetation grown on the land.

Article 4
Pathogen and Vector Attraction Reduction

9VAC25-32-665. Scope.

A. This article contains the requirements for a biosolids to be classified either Class A or Class B with respect to pathogens.

B. This article contains the site restrictions for land on which a Class B biosolids is applied.

C. This article contains the pathogen requirements for domestic septage applied to agricultural land, forest, or a reclamation site.

D. This article contains alternative vector attraction reduction requirements for biosolids that is applied to the land or placed on a surface disposal site.

Article 4
Permit Application Information for Biosolids Use

9VAC25-32-670. Minimum information required for a management practices plan utilizing land application. (Repealed.)

A. General information:

1. Legal Name and Address: The legal name of the owner making application for a permit is to appear on the title page or in the opening paragraph or both. Both the mailing and physical address should be included.
2. Owner Contact: The name, title, address, and telephone number of the individual to be contacted regarding this application should be furnished.
3. A general description of the proposed plan including name and location of generators and owners involved and copies of agreements developed, biosolids quality, biosolids treatment and handling processes, means of biosolids transport or conveyance, location and volume of storage proposed, general location of sites proposed for application and methods of biosolids application proposed. A description of temporary storage methods should be provided.
4. Written permission of landowners and farmers on a form approved by the board and pertinent lease agreements as may be necessary for operation of the treatment works.
5. Methods for notification of local government and obtaining compliance with local government zoning and applicable ordinances.
6. A copy of a letter of approval of the nutrient management plan for the operation from the Department of

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~~Conservation and Recreation if required in 9VAC25-32-680 A 3.~~

~~B. Design information.~~

~~1. Biosolids characterization.~~

~~a. Amounts and volumes to be handled.~~

~~b. Biosolids laboratory analytical data of a representative number of samples of biosolids in accordance with the guideline specified in accordance with Tables 2 and 3. Statement that the biosolids is nonhazardous, documentation statement for treatment and quality and description of how treated biosolids meets other standards in accordance with this regulation.~~

~~2. Plans and specifications for storage facilities of all biosolids to be handled, including routine and emergency storage, shall be submitted for the issuance of a certificate to construct and a certificate to operate in accordance with the Sewage Collection and Treatment Regulations (9VAC25-790) and shall depict the following information:~~

~~a. Site layout on a recent 7.5 minute topographic quadrangle or other appropriate scaled map with the following information.~~

~~(1) Location of any required soil, geologic and hydrologic test holes or borings will be submitted.~~

~~(2) Location of the following field features within 0.25 miles of the site boundary (indicate on map) with the approximate distances from the site boundary:~~

~~(a) Water wells (operating or abandoned).~~

~~(b) Surface waters.~~

~~(c) Springs.~~

~~(d) Public water supplies.~~

~~(e) Sinkholes.~~

~~(f) Underground and/or surface mines.~~

~~(g) Mine pool (or other) surface water discharge points.~~

~~(h) Mining spoil piles and mine dumps.~~

~~(i) Quarries.~~

~~(j) Sand and gravel pits.~~

~~(k) Gas and oil wells.~~

~~(l) Diversion ditches.~~

~~(m) Occupied dwellings, including industrial and commercial establishments.~~

~~(n) Landfills dumps.~~

~~(o) Other unlined impoundments.~~

~~(p) Septic tanks and drainfields.~~

~~(q) Injection wells.~~

~~b. Topographic map (10-foot contour preferred) of sufficient detail to clearly show the following information:~~

~~(1) Maximum and minimum percent slopes.~~

~~(2) Depressions on the site that may collect water.~~

~~(3) Drainageways that may attribute to rainfall run on to or runoff from this site.~~

~~(4) Portions of the site (if any) that are located within the 100 year floodplain.~~

~~c. Data and specifications for the liner proposed for seepage control.~~

~~d. Scaled plan view and cross sectional view of the facilities showing inside and outside slopes of all embankments and details of all appurtenances.~~

~~e. Calculations justifying impoundment capacity.~~

~~f. Groundwater monitoring plans for the facilities including pertinent geohydrological data to justify upgradient and downgradient well location and depth.~~

~~3. Generic plans for on-site temporary storage.~~

~~4. A legible topographic map of proposed application areas to scale as needed to depict the following features:~~

~~a. Property boundaries.~~

~~b. Surface water courses.~~

~~c. Water supply wells and springs.~~

~~d. Roadways.~~

~~e. Rock outcrops.~~

~~f. Slopes.~~

~~g. Frequently flooded areas (SCS designation).~~

~~The map shall also show the acreage to be amended with biosolids together with the net acres for biosolids application computed.~~

~~5. County map or other map of sufficient detail to show general location of the site and proposed transport vehicle haul routes to be utilized from the treatment plant.~~

~~6. A USDA soil survey map, if available, of proposed sites for land application of biosolids.~~

~~7. Representative soil samples are to be collected to address each major soil types for each field and analyzed for the soil parameters indicated in accordance with Table 5, and test results should be submitted with the management practices plan.~~

~~8. For projects utilizing frequent application of biosolids the following additional site information will be necessary.~~

a. Information specified (subdivisions 2 a and 4 of this subsection):

b. Representative soil borings and test pits to a depth of five feet or to bedrock if shallower, are to be coordinated for each major soil type and the following tests performed and data collected:

- (1) Soil type.
- (2) Soil texture for each horizon (USDA classification).
- (3) Soil color for each horizon.
- (4) Depth from surface to mottling and bedrock if less than two feet.
- (5) Depth from surface to subsoil restrictive layer.
- (6) Indicated infiltration rate (surface soil).
- (7) Indicated permeability of subsoil restrictive layer.

e. Additional soil testing in accordance with Table 5.

d. Groundwater monitoring plans for the land treatment area including pertinent geohydrologic data to justify upgradient and downgradient well location and depth.

9. Description of agricultural practices including a list of proposed crops to be grown, their respective anticipated yield, planting and harvesting schedules, proposed biosolids application rates on a field by field basis and how biosolids application will be integrated with these schedules.

10. Pertinent calculations justifying storage and land area requirements for biosolids application including an annual biosolids balance incorporating such factors as precipitation, evapotranspiration, soil percolation rates, wastewater loading, monthly storage (input and drawdown).

9VAC25-32-675. Pathogens.

A. Biosolids - Class A.

1. The requirement in subdivision 2 of this subsection and the requirements in either subdivision 3, 4, 5, 6, 7, or 8 of this subsection shall be met for a sewage sludge to be classified as Class A biosolids with respect to pathogens.

2. The Class A pathogen requirements in subdivisions 3 through 8 of this subsection shall be met either prior to meeting or at the same time the vector attraction reduction requirements in 9VAC25-32-685, except the vector attraction reduction requirements in 9VAC25-32-685 B 6 through B 8, are met.

3. Class A - Alternative 1.

a. Either the density of fecal coliform in the biosolids shall be less than 1,000 Most Probable Number per gram of total solids (dry weight basis), or the density of

Salmonella sp. bacteria in the biosolids shall be less than three Most Probable Number per four grams of total solids (dry weight basis) at the time the biosolids is used or disposed; at the time the biosolids is prepared for sale or giveaway in a bag or other container for application to the land; or at the time the biosolids or material derived from biosolids is prepared to meet the ceiling concentrations in 9VAC25-32-356 Table 1, the pollutant concentrations in 9VAC25-32-356 Table 3, the Class A pathogen requirements in subsection A of this section, and one of the vector attraction reduction requirements in 9VAC25-32-685 B 1 through B 8.

b. The temperature of the sewage sludge that is used as biosolids or disposed shall be maintained at a specific value for a period of time.

(1) When the percent solids of the sewage sludge is 7.0% or higher, the temperature of the sewage sludge shall be 50°C or higher, the time period shall be 20 minutes or longer; and the temperature and time period shall be determined using equation (1), except when small particles of sewage sludge are heated by either warmed gases or an immiscible liquid.

| |
|---|
| <u>EQUATION (1)</u> |
| $D = 131,700,000/10^{0.1400t}$ |
| <u>D = time in days</u> |
| <u>t = temperature in degrees Celsius</u> |

(2) When the percent solids of the sewage sludge is 7.0% or higher and small particles of sewage sludge are heated by either warmed gases or an immiscible liquid, the temperature of the sewage sludge shall be 50°C or higher; the time period shall be 15 seconds or longer; and the temperature and time period shall be determined using equation (1).

(3) When the percent solids of the sewage sludge is less than 7.0% and the time period is at least 15 seconds, but less than 30 minutes, the temperature and time period shall be determined using equation (1).

(4) When the percent solids of the sewage sludge is less than 7.0%, the temperature of the sewage sludge is 50°C or higher; and the time period is 30 minutes or longer; the temperature and time period shall be determined using equation (2).

| |
|---|
| <u>EQUATION (2)</u> |
| $D = 50,070,000/10^{0.1400t}$ |
| <u>D = time in days</u> |
| <u>t = temperature in degrees Celsius</u> |

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4. Class A - Alternative 2.

a. Either the density of fecal coliform in the biosolids shall be less than 1,000 Most Probable Number per gram of total solids (dry weight basis) at the time the biosolids is used or disposed; or the density of Salmonella sp. bacteria in the biosolids shall be less than three Most Probable Number per four grams of total solids (dry weight basis) at the time the biosolids is prepared for sale or giveaway in a bag or other container for application to the land; or at the time the biosolids or material derived from biosolids is prepared to meet the ceiling concentrations in 9VAC25-32-356 Table 1; the pollutant concentrations in 9VAC25-32-356 Table 3; the Class A pathogen requirements in subsection A of this section, and one of the vector attraction reduction requirements in 9VAC25-32-685 B 1 through B 8.

b. The pH and temperature of the sewage sludge that is used as biosolids or disposed shall be maintained at specific values for a period of time.

(1) The pH of the sewage sludge that is used as biosolids or disposed shall be raised to above 12 and shall remain above 12 for 72 hours.

(2) The temperature of the sewage sludge shall be above 52°C for 12 hours or longer during the period that the pH of the sewage sludge is above 12; and

(3) At the end of the 72-hour period during which the pH of the sewage sludge is above 12, the sewage sludge shall be air dried to achieve a percent solids in the sewage sludge greater than 50%.

5. Class A - Alternative 3.

a. Either the density of fecal coliform in the biosolids shall be less than 1,000 Most Probable Number per gram of total solids (dry weight basis), or the density of Salmonella sp. bacteria in biosolids shall be less than three Most Probable Number per four grams of total solids (dry weight basis) at the time the biosolids is used or disposed; at the time the biosolids is prepared for sale or giveaway in a bag or other container for application to the land; or at the time the biosolids or material derived from biosolids is prepared to meet the ceiling concentrations in 9VAC25-32-356 Table 1; the pollutant concentrations in 9VAC25-32-356 Table 3; the Class A pathogen requirements in subsection A of this section; and one of the vector attraction reduction requirements in 9VAC25-32-685 B 1 through B 8.

b. The sewage sludge shall be analyzed prior to pathogen treatment to determine whether the sewage sludge contains enteric viruses.

(1) When the density of enteric viruses in the sewage sludge prior to pathogen treatment is less than one plaque-forming unit per four grams of total solids (dry

weight basis), the sewage sludge is Class A with respect to enteric viruses until the next monitoring episode for the sewage sludge;

(2) When the density of enteric viruses in the sewage sludge prior to pathogen treatment is equal to or greater than one plaque-forming unit per four grams of total solids (dry weight basis), the sewage sludge is Class A with respect to enteric viruses when the density of enteric viruses in the sewage sludge after pathogen treatment is less than one plaque-forming unit per four grams of total solids (dry weight basis) and when the values or ranges of values for the operating parameters for the pathogen treatment process that produces the sewage sludge that meets the enteric virus density requirement are documented; and

(3) After the enteric virus reduction in subdivision 5 b (2) of this subsection is demonstrated for the pathogen treatment process, the sewage sludge continues to be Class A with respect to enteric viruses when the values for the pathogen treatment process operating parameters are consistent with the values or ranges of values documented in subdivision 5 b (2) of this subsection.

c. The sewage sludge shall be analyzed prior to pathogen treatment to determine whether the sewage sludge contains viable helminth ova.

(1) When the density of viable helminth ova in the sewage sludge prior to pathogen treatment is less than one per four grams of total solids (dry weight basis), the sewage sludge is Class A with respect to viable helminth ova until the next monitoring episode for the sewage sludge.

(2) When the density of viable helminth ova in the sewage sludge prior to pathogen treatment is equal to or greater than one per four grams of total solids (dry weight basis), the sewage sludge is Class A with respect to viable helminth ova when the density of viable helminth ova in the sewage sludge after pathogen treatment is less than one per four grams of total solids (dry weight basis) and when the values or ranges of values for the operating parameters for the pathogen treatment process that produces the sewage sludge that meets the viable helminth ova density requirement are documented.

(3) After the viable helminth ova reduction in subdivision 5 c (2) of this subsection is demonstrated for the pathogen treatment process, the sewage sludge continues to be Class A with respect to viable helminth ova when the values for the pathogen treatment process operating parameters are consistent with the values or ranges of values documented in subdivision 5 c (2) of this subsection.

6. Class A - Alternative 4.

a. Either the density of fecal coliform in the biosolids shall be less than 1,000 Most Probable Number per gram of total solids (dry weight basis), or the density of Salmonella sp. bacteria in the biosolids shall be less than three Most Probable Number per four grams of total solids (dry weight basis) at the time the biosolids is used or disposed; at the time the biosolids is prepared for sale or giveaway in a bag or other container for application to the land; or at the time the biosolids or material derived from biosolids is prepared to meet the ceiling concentrations in 9VAC25-32-356 Table 1; the pollutant concentrations in 9VAC25-32-356 Table 3; the Class A pathogen requirements in subsection A of this section; and one of the vector attraction reduction requirements in 9VAC25-32-685 B 1 through B 8.

b. The density of enteric viruses in the biosolids shall be less than one plaque-forming unit per four grams of total solids (dry weight basis) at the time the biosolids is used or disposed; at the time the biosolids is prepared for sale or giveaway in a bag or other container for application to the land; or at the time the biosolids or material derived from biosolids is prepared to meet the ceiling concentrations in 9VAC25-32-356 Table 1; the pollutant concentrations in 9VAC25-32-356 Table 3; the Class A pathogen requirements in subsection A of this section; and one of the vector attraction reduction requirements in 9VAC25-32-685 B 1 through B 8, unless otherwise specified by the board.

c. The density of viable helminth ova in the sewage sludge shall be less than one per four grams of total solids (dry weight basis) at the time the biosolids is used or disposed; at the time the biosolids is prepared for sale or giveaway in a bag or other container for application to the land; or at the time the biosolids or material derived from biosolids is prepared to meet the ceiling concentrations in 9VAC25-32-356 Table 1; the pollutant concentrations in 9VAC25-32-356 Table 3; the Class A pathogen requirements in subsection A of this section, and one of the vector attraction reduction requirements in 9VAC25-32-685 B 1 through B 8, unless otherwise specified by the board.

7. Class A - Alternative 5.

a. Either the density of fecal coliform in the biosolids shall be less than 1,000 Most Probable Number per gram of total solids (dry weight basis), or the density of Salmonella sp. bacteria in the biosolids shall be less than three Most Probable Number per four grams of total solids (dry weight basis) at the time the biosolids is used or disposed; at the time the biosolids is prepared for sale or giveaway in a bag or other container for application to the land; or at the time the biosolids or material derived from biosolids is prepared to meet the ceiling

concentrations in 9VAC25-32-356 Table 1; the pollutant concentrations in 9VAC25-32-356 Table 3; the Class A pathogen requirements in subsection A of this section; and one of the vector attraction reduction requirements in 9VAC25-32-685 B 1 through B 8.

b. Biosolids that is used or disposed shall be treated in one of the processes to further reduce pathogens described in subsection E of this section.

8. Class A - Alternative 6.

a. Either the density of fecal coliform in the biosolids shall be less than 1,000 Most Probable Number per gram of total solids (dry weight basis), or the density of Salmonella sp. bacteria in the biosolids shall be less than three Most Probable Number per four grams of total solids (dry weight basis) at the time the biosolids is used or disposed; at the time the biosolids is prepared for sale or giveaway in a bag or other container for application to the land; or at the time the biosolids or material derived from biosolids is prepared to meet the ceiling concentrations in 9VAC25-32-356 Table 1; the pollutant concentrations in 9VAC25-32-356 Table 3; the Class A pathogen requirements in subsection A of this section; and one of the vector attraction reduction requirements in 9VAC25-32-685 B 1 through B 8.

b. Biosolids that is used or disposed shall be treated in a process that is equivalent to a process to further reduce pathogens, as determined by the board.

B. Biosolids - Class B.

1. Minimum requirements for Class B biosolids.

a. The requirements in either subdivisions 2, 3, or 4 of this subsection shall be met for a sewage sludge to be classified as Class B biosolids with respect to pathogens.

b. The site restrictions in subdivision B 5 of this section shall be met when biosolids that meets the Class B pathogen requirements in subdivision 2, 3, or 4 of this subsection is applied to the land.

2. Class B - Alternative 1.

a. Seven representative samples of the biosolids that is used or disposed shall be collected.

b. The geometric mean of the density of fecal coliform in the samples collected in subdivision 2 a of this subsection shall be less than either 2,000,000 most probable number per gram of total solids (dry weight basis) or 2,000,000 colony forming units per gram of total solids (dry weight basis).

3. Class B - Alternative 2. Biosolids that is used or disposed shall be treated in one of the processes to significantly reduce pathogens described in subsection D of this section.

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4. Class B - Alternative 3. Sewage sludge that is used or disposed shall be treated in a process that is equivalent to a process to significantly reduce pathogens, as determined by the board.

5. Site restrictions.

a. Food crops with harvested parts that touch the biosolids/soil mixture and are totally above the land surface shall not be harvested for 14 months after application of biosolids.

b. Food crops with harvested parts below the surface of the land shall not be harvested for 20 months after application of biosolids when the biosolids remains on the land surface for four months or longer prior to incorporation into the soil.

c. Food crops with harvested parts below the surface of the land shall not be harvested for 38 months after application of biosolids when the biosolids remains on the land surface for less than four months prior to incorporation into the soil.

d. Food crops, feed crops, and fiber crops shall not be harvested for 30 days after application of biosolids.

e. Animals shall not be grazed on the land for 30 days after application of biosolids (60 days for lactating dairy livestock).

f. Feeding of harvested crops to animals shall not take place for 30 days following surface application (two months for lactating dairy livestock).

g. Turf grown on land where biosolids is applied shall not be harvested for one year after application of the biosolids when the harvested turf is placed on either land with a high potential for public exposure or a lawn, unless otherwise specified by the board.

h. Public access to land with a high potential for public exposure shall be restricted for one year after application of biosolids.

i. Public access to land with a low potential for public exposure shall be restricted for 30 days after application of biosolids.

| TABLE 1 TIME RESTRICTIONS FOLLOWING COMPLETION OF BIOSOLIDS APPLICATION ASSOCIATED WITH CLASS B PATHOGEN REDUCTION | | |
|--|------------------------|-----------------------------|
| Type of Application | Surface ⁽¹⁾ | Incorporated ⁽²⁾ |
| Control of access for high potential for | 12 months | 12 months |

| public contact ⁽³⁾ | | |
|---|-----------|-----------|
| Time lapse required before above ground food crops with harvested plants that touch the biosolids/soil mixture can be harvested | 14 months | 14 months |
| Time lapse before food crops with harvested parts below the land surface can be harvested | 20 months | 38 months |
| Harvesting food crops, feed crops and fiber crops | 1 month | 1 month |
| Grazing and feeding harvested crops to animals whose products are consumed by humans ⁽⁴⁾ | 1 month | 1 month |
| Grazing of farm animals whose products are not consumed by humans | 1 month | 1 month |
| Harvesting turf for placement on land with a high potential for public exposure or a lawn ⁽⁵⁾ | 12 months | 12 month |

Notes:

⁽¹⁾ Remains on land surface for four months or longer prior to incorporation.

⁽²⁾ Remains on land surface for less than four months prior to incorporation.

⁽³⁾ Public access to agricultural sites and other sites with a low potential for direct contact with the ground surface shall be controlled for 30 days.

⁽⁴⁾ The restriction for lactating dairy cows is two months.

⁽⁵⁾ This time restriction must be met unless otherwise specified by the permitting authority.

C. Domestic septage.

1. The site restrictions in subdivision B 5 of this section shall be met when domestic septage is applied to agricultural land, forest, or a reclamation site; or
2. The pH of domestic septage applied to agricultural land, forest, or a reclamation site shall be raised to 12 or higher by alkaline addition and, without the addition of more alkaline material, shall remain at 12 or higher for 30 minutes and the site restrictions in subdivisions B 5 a through B 5 d of this section shall be met.

D. Processes to significantly reduce pathogens (PSRP).

1. Aerobic digestion. Sewage sludge is agitated with air or oxygen to maintain aerobic conditions for a specific mean cell residence time at a specific temperature. Values for the mean cell residence time and temperature shall be between 40 days at 20°C and 60 days at 15°C.
2. Air drying. Sewage sludge is dried on sand beds or on paved or unpaved basins. The sewage sludge dries for a minimum of three months. During two of the three months, the ambient average daily temperature is above 0°C.
3. Anaerobic digestion. Sewage sludge is treated in the absence of air for a specific mean cell residence time at a specific temperature. Values for the mean cell residence time and temperature shall be between 15 days at 35°C to 55°C and 60 days at 20°C.
4. Composting. Using either the within-vessel, static aerated pile, or windrow composting methods, the temperature of the sewage sludge is raised to 40°C or higher and remains at 40°C or higher for five days. For four hours during the five days, the temperature in the compost pile exceeds 55°C.
5. Lime stabilization. Sufficient lime is added to the sewage sludge to raise the pH of the sewage sludge to 12 after two hours of contact.

E. Processes to further reduce pathogens (PFRP).

1. Composting. Using either the within-vessel composting method or the static aerated pile composting method, the temperature of the sewage sludge is maintained at 55°C or higher for three days. Using the windrow composting method, the temperature of the sewage sludge is maintained at 55°C or higher for 15 days or longer. During the period when the compost is maintained at 55°C or higher, there shall be a minimum of five turnings of the windrow.
2. Heat drying. Sewage sludge is dried by direct or indirect contact with hot gases to reduce the moisture content of the sewage sludge to 10.0% or lower. Either the temperature of the sewage sludge particles exceeds 80°C or the wet bulb temperature of the gas in contact with the sewage sludge as the sewage sludge leaves the dryer exceeds 80°C.

3. Heat treatment. Liquid sewage sludge is heated to a temperature of 180°C or higher for 30 minutes.
4. Thermophilic aerobic digestion. Liquid sewage sludge is agitated with air or oxygen to maintain aerobic conditions and the mean cell residence time of the sewage sludge is 10 days at 55°C to 60°C.
5. Beta ray irradiation. Sewage sludge is irradiated with beta rays from an accelerator at dosages of at least 1.0 megarad at room temperature (ca. 20°C).
6. Gamma ray irradiation. Sewage sludge is irradiated with gamma rays from certain isotopes, such as Cobalt 60 and Cesium 137, at dosages of at least 1.0 megarad at room temperature (ca. 20°C).
7. Pasteurization. The temperature of the sewage sludge is maintained at 70°C or higher for 30 minutes or longer.

~~9VAC25-32-680. Minimum site specific information required for a management practices plan. (Repealed.)~~

~~A. Site management plans.~~

- ~~1. A comprehensive, general description of the operation shall be provided, including biosolids source(s), quantities, flow diagram illustrating treatment works biosolids flows and solids handling units, site description, methodology of biosolids handling for application periods, including storage and nonapplication period storage, and alternative management methods when storage is not provided.~~
- ~~2. A nutrient management plan prepared by a person who is certified as a nutrient management planner by the Department of Conservation and Recreation shall be developed for all application sites prior to biosolids application. Copies of the nutrient management plan shall be provided to the farmer operator of the site, the Department of Conservation and Recreation regional office and the chief executive officer or designee for the local government, unless they request in writing not to receive the nutrient management plan.~~
- ~~3. A nutrient management plan approved by the Department of Conservation and Recreation shall be required for application sites prior to board authorization under specific conditions, including but not limited to, sites operated by an owner or lessee of a confined animal feeding operation, as defined in subsection A of § 62.1-44.17:1 of the Code of Virginia, or confined poultry feeding operation, as defined in subsection A of § 62.1-44.17:1.1 of the Code of Virginia; sites where land application more frequently than once every three years at greater than 50% of the annual agronomic rate is proposed; and other sites based on site specific conditions that increase the risk that land application may adversely impact state waters.~~

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4. All nutrient management plans shall account for all sources of nutrients to be applied to the site and include at a minimum the following information: (i) a site map indicating the location of any waste storage facilities and the fields where biosolids or animal waste will be applied; (ii) site evaluation and assessment of soil types and potential productivities; (iii) nutrient management sampling including soil monitoring; (iv) biosolids or animal waste application rates based on the overall nutrient requirements of the proposed crop and soil monitoring results; and (v) biosolids and other nutrient source application schedules and land area requirements.

B. Biosolids transport.

1. Description and specifications on the bed or the tank vehicle.
2. Haul routes to be used from the biosolids generator to the storage unit and land application sites.
3. Procedures for biosolids offloading at the biosolids facilities and the land application site together with spill prevention, cleanup, (including vehicle cleaning), field reclamation and emergency spill notification and cleanup measures.
4. Voucher system used for documentation and recordkeeping.

C. Field operations.

1. Storage.

- a. Routine storage—supernatant handling and disposal; biosolids handling, and loading of transport vehicles; equipment cleaning, freeboard maintenance, inspections for structural integrity.
- b. Emergency storage—procedures for department/board approval and implementation.
- c. Temporary or field storage—procedures to be followed including either designated site locations provided in the "Design Information" or the specific site criteria for such locations including the liner/cover requirements and the time limit assigned to such use.
- d. Field reclamation of offloading (staging) areas.

2. Application methodology.

- a. Description and specifications on spreader vehicles.
- b. Procedures for calibrating equipment for various biosolids contents to ensure uniform distribution and appropriate loading rates on a day-to-day basis.
- c. Procedures used to ensure that operations address the following constraints: application of biosolids to frozen ground, pasture/hay fields, crops for direct human consumption and saturated or ice/snow covered ground; maintenance buffer zones, slopes, prohibited access for

beef and dairy animals, soil pH requirements, and proper site specific biosolids loading rates on a field-by-field basis.

TABLE A-1

SLUDGE DISPOSAL SITE DEDICATION

....., a Virginia Corporation, does dedicate that tract or parcel of real estate situated, lying and being in..... County, Virginia, more particularly described by deed and plat of survey of record in Deed Book....., pages....., and....., of the Clerk's Office of the Circuit Court of..... County, Virginia, and being the identical real estate that said corporation acquired by grant with General Warranty of Title and Modern English Covenants from..... Said dedication being to establish the aforesaid area for the disposal of sewage sludge only, and that said sludge disposal site will not be used for human habitation, grazing land for domestic animals or for agricultural purposes, and will not be accessible to the public. The full interest and control of the foresaid area dedicated shall remain with the..... and this instrument is solely for the purpose of assuring the Department of Health and the Water Control Board of the Commonwealth of Virginia as to the matters hereinabove set forth. WITNESS the following signatures and seal this.... day of....., 19....

BY:..... ATTEST:.....

State of.....

County of.....

The foregoing instrument was acknowledged before me this..... day of....., 19...., by..... of..... a..... corporation, on behalf of the corporation.....

Notary Public

My Commission Expires.....

For use of Clerk of Court

This Sludge Disposal Site Dedication Document, as described above, was recorded in Deed Book..... page.... on the..... day of....., 19....

SIGNED:..... of the..... Circuit Clerks Office

9VAC25-32-685. Vector attraction reduction.

A. Conditions under which vector attraction reductions are required:

1. One of the vector attraction reduction requirements in subdivisions B 1 through B 10 of this section shall be met when bulk biosolids is applied to agricultural land, forest, a public contact site, or a reclamation site;

2. One of the vector attraction reduction requirements in subdivisions B 1 through B 8 of this section shall be met when bulk biosolids is applied to a lawn or a home garden;

3. One of the vector attraction reduction requirements in subdivisions B 1 through B 8 of this section shall be met when biosolids is sold or given away in a bag or other container for application to the land;

4. One of the vector attraction reduction requirements in subdivisions B 1 through B 11 of this section shall be met when sewage sludge (other than domestic septage) is placed on an active sewage sludge unit;

5. One of the vector attraction reduction requirements in subdivision B 9, B 10, or B 12 of this section shall be met when domestic septage is applied to agricultural land, forest, or a reclamation site; and

6. One of the vector attraction reduction requirements in subdivisions B 9 through B 12 shall be met when domestic septage is placed on an active sewage sludge unit.

B. Vector attraction reduction requirements:

1. The mass of volatile solids in the sewage sludge shall be reduced by a minimum of 38%, calculated according to the method in 9VAC25-32-450 F 8.

2. When the 38% volatile solids reduction requirement in subdivision 1 of this subsection cannot be met for an anaerobically digested sewage sludge, vector attraction reduction can be demonstrated by digesting a portion of the previously digested sewage sludge anaerobically in the laboratory in a bench-scale unit for 40 additional days at a temperature between 30°C and 37°C. When at the end of the 40 days, the volatile solids in the sewage sludge at the beginning of that period is reduced by less than 17%, vector attraction reduction is achieved.

3. When the 38% volatile solids reduction requirement in subdivision 1 of this section cannot be met for an aerobically digested sewage sludge, vector attraction reduction can be demonstrated by digesting a portion of the previously digested sewage sludge that has a percent solids of 2.0% or less aerobically in the laboratory in a bench-scale unit for 30 additional days at 20°C. When at the end of the 30 days, the volatile solids in the sewage sludge at the beginning of that period is reduced by less than 15%, vector attraction reduction is achieved.

4. The specific oxygen uptake rate (SOUR) for sewage sludge treated in an aerobic process shall be equal to or less than 1.5 milligrams of oxygen per hour per gram of total solids (dry weight basis) at a temperature of 20°C.

5. Sewage sludge shall be treated in an aerobic process for 14 days or longer. During that time, the temperature of the sewage sludge shall be higher than 40°C and the average temperature of the sewage sludge shall be higher than 45°C.

6. The pH of sewage sludge shall be raised to 12 or higher by alkaline addition and, without the addition of more

alkaline material, shall remain at 12 or higher for two hours and then at 11.5 or higher for an additional 22 hours.

7. The percent solids of sewage sludge that does not contain unstabilized solids generated in a primary wastewater treatment process shall be equal to or greater than 75% based on the moisture content and total solids prior to mixing with other materials.

8. The percent solids of sewage sludge that contains unstabilized solids generated in a primary wastewater treatment process shall be equal to or greater than 90% based on the moisture content and total solids prior to mixing with other materials.

9. Sewage sludge shall be injected below the surface of the land.

a. No significant amount of the sewage sludge shall be present on the land surface within one hour after the sewage sludge is injected.

b. When the sewage sludge that is injected below the surface of the land is Class A with respect to pathogens, the sewage sludge shall be injected below the land surface within eight hours after being discharged from the pathogen treatment process.

10. Sewage sludge applied to the land surface or placed on an active sewage sludge unit:

a. Sewage sludge shall be incorporated into the soil within six hours after application to or placement on the land unless otherwise specified by the board.

b. When the sewage sludge that is incorporated into the soil is Class A with respect to pathogens, the sewage sludge shall be applied to or placed on the land within eight hours after being discharged from the pathogen treatment process.

11. Sewage sludge placed on an active sewage sludge unit shall be covered with soil or other material at the end of each operating day.

12. The pH of domestic septage shall be raised to 12 or higher by alkaline addition and, without the addition of more alkaline material, shall remain at 12 or higher for 30 minutes.

Article 5 Certification of Land Applicators

9VAC25-32-690. Certificate requirements for land applicators.

A. No person shall land apply biosolids pursuant to a permit issued in accordance with this regulation unless an individual holding a valid certificate of competence as specified in this regulation (certified land applicator) is onsite at all times during such land application. Certified land applicators may be considered to be onsite if they are at the site permitted for

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land application and, if it is necessary to leave the site, they are available within 30 minutes to return to the site to verify and ensure that land application of biosolids is in compliance with the issued permit. Certified land applicators shall possess the site-specific permit information necessary to conduct land application on the site in accordance with the issued permit and make available at the land application site proper identification, including their certificate number issued by the department. Monthly reports submitted in accordance with the requirements of ~~9VAC25-32-440-B~~ 9VAC25-32-360 A shall bear the name and certificate number of the certified land applicators with an approved statement attesting that they were onsite at the times of the reported operations and that those operations were in compliance with the permit. The following parts of this regulation apply to any individual seeking a certificate of competence as required in § 62.1-44.19:3.1 of the Code of Virginia.

B. Certificates of competence shall be issued by the department to certified land applicators. The department may issue such certification based on specified areas of training, experience and level of knowledge as demonstrated through successful completion of examinations as acceptable to the department.

9VAC25-32-700. Eligibility requirements.

A. Certification may be obtained by satisfying all of the following requirements:

1. Satisfactorily completing and submitting to the department an application in the form required by the department, including a statement of any felony convictions. Such application shall be submitted to the department at least 30 days before the scheduled examination date set by the department. The application shall request information relating to the person's education, work experience, knowledge of land application of biosolids and applicable regulations, and willingness to abide by the requirements of this regulation;
2. Supplying proof of meeting one of the following:
 - a. A copy of a transcript or similar documentation indicating completion of a high school or higher degree or equivalent education level with work experience in an agriculturally related area including farming and three months of practical experience related to land application of biosolids acceptable to the department;
 - b. A combination of training acceptable to the department that may include soil science or nutrient management or farming practice related educational training and a minimum of six months of practical experience related to land application of biosolids; or
 - c. Evidence of prior supervisory level experience with land application of biosolids of two or more years that is acceptable to the department;

3. Obtaining a passing score on each part of the land applicators certification examination administered by the department; and

4. Submitting the required certification fee by check or money order to the department.

B. Certificates shall be valid upon notification by the department and for two years following each renewal from the established renewal date and will expire on the last day of the expiration month. Certified land applicators or applicants shall notify the department of any change in mailing address within 30 days of such change in address.

C. The department, upon review, may accept or approve land applicator certification programs of other states as satisfying partial requirements for certification.

D. Individuals certified as land application operators in other states under certification or licensing programs acceptable to the department will be eligible for certification in Virginia by complying with all requirements of these regulations except for subdivision A 2 of this section. These individuals may also substitute, for the requirements in this regulation, 9VAC25-32-720, the attainment of a passing score on a Virginia specific examination component that shall include at a minimum the elements listed in 9VAC25-32-720 C 1 and C 6.

9VAC25-32-760. Compliance with regulations and disciplinary action.

A. If the department finds that a certified land applicator or an applicant for certification violated any applicable requirements of this regulation, including the procedural violations listed in subsection B of this section, the department may deny, suspend or revoke certification, following the informal fact-finding procedures of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

B. Certification procedural violations include:

1. Providing misleading, false, or fraudulent information in applying for a certificate;
2. Providing the department with any misleading, false, or fraudulent report;
3. Failing to ensure that land application of biosolids complies with permit requirements ~~in accordance with 9VAC25-32-480 through 9VAC25-32-500~~ due to negligence of responsibilities by the certified land applicator;
4. Failing to promptly and accurately record observed permit noncompliance or, failure to promptly notify the permittee of observed permit noncompliance or, preventing access to inspect any land application site or, failure to provide required field records upon request, in accordance with this regulation; and

5. Conviction of a felony related in any way to the responsibilities of a certified land applicator.

Article 6

Liability Requirements for Transport, Storage, and Land Application of Biosolids

9VAC25-32-770. Definitions.

The following terms are used in the specifications for liability insurance and the financial tests liability coverage. The definitions contained in this section are intended to assist in the understanding of these regulations and are not intended to limit the meanings of terms in a way that conflicts with general insurance industry usage or with generally accepted accounting practices.

"Assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity.

"Current assets" means cash or other assets or resources commonly identified as those that are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.

"Current liabilities" means obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities.

"Independently audited" means an audit performed by an independent certified public accountant in accordance with generally accepted auditing standards.

"Legal defense costs" means any expenses that an insurer incurs in defending against claims of third parties brought under the terms and conditions of an insurance policy.

"Liabilities" means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

"Local government" means a county, city, or town or any authority, commission, or district created by one or more counties, cities, or towns.

"Net working capital" means current assets minus current liabilities.

"Net worth" means total assets minus total liabilities and is equivalent to owner's equity.

"Substantial business relationship" means the extent of a business relationship necessary under applicable state law to make a guarantee contract issued incident to that relationship valid and enforceable. A "substantial business relationship" must arise from a pattern of recent or ongoing business transactions, in addition to the guarantee itself, such that a currently existing business relationship between the guarantor and the permit holder is demonstrated to the satisfaction of the department.

"Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets would not include intangibles such as goodwill and rights to patents or royalties.

9VAC25-32-780. Liability requirements.

A. A permit holder or applicant must demonstrate financial responsibility for clean-up costs, personal injury, bodily injury, and property damage resulting from the transport, storage, and land application of biosolids in Virginia. The permit holder or applicant must have and maintain liability coverage in the amount of \$2 million per occurrence with an annual aggregate of at least \$2 million, exclusive of legal defense costs.

B. The permit holder or applicant may demonstrate the required liability coverage by using one of the mechanisms specified below:

1. Having liability insurance as specified in 9VAC25-32-790;

2. Passing a corporate financial test as specified in 9VAC25-32-800 or using the corporate guarantee for liability coverage as specified in 9VAC25-32-810;

3. Passing a local government financial test as specified in 9VAC25-32-820 or using the local government guarantee for liability coverage as specified in 9VAC25-32-830;

4. Obtaining a letter of credit for liability coverage as specified in 9VAC25-32-840; or

5. Obtaining a trust fund for liability coverage as specified in 9VAC25-32-850.

C. The permit holder or applicant shall notify the department in writing within 30 days whenever:

1. A claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in this section;

2. A certification of valid claim for bodily injury or property damages caused by the transport, storage, or land application of biosolids in Virginia is entered between the owner or operator and a third-party claimant for liability coverage in this section; or

3. A final court order establishing a judgment for bodily injury or property damage caused by the transport, storage, or land application of biosolids in Virginia is issued against the permit holder or applicant or an instrument that is providing financial assurance for liability coverage authorized in this section.

9VAC25-32-790. Liability insurance.

A. Each insurance policy must be amended by attachment of a biosolids liability endorsement or evidenced by a certificate of liability insurance. The wording of the endorsement must be identical to that specified in the Biosolids Liability

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Endorsement form. The wording of the certificate of insurance must be identical to that specified in the Certificate of Liability Insurance form. The permit holder or applicant must submit a signed duplicate original of the endorsement or the certificate of insurance to the department. If requested by the department, the permit holder or applicant must provide a signed duplicate original of the insurance policy. An applicant for a new permit must submit the signed duplicate original of the biosolids liability endorsement or the certificate of liability insurance to the department at least 60 days before the initial application of biosolids. The insurance must be effective before the initial application of biosolids.

B. Each insurance policy must be issued by an insurer that, at a minimum, is licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in Virginia.

9VAC25-32-800. Corporate financial test.

A. A permit holder or applicant may satisfy the requirements of this section by demonstrating that he passes a financial test as specified in this section. To pass this test the permit holder or applicant must meet the criteria of subsection B of this section.

B. A permit holder or applicant must have:

1. Net working capital and tangible net worth each at least six times the amount of liability coverage to be demonstrated by this test, and a tangible net worth of at least \$10 million; or

2. A current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's, or Aaa, Aa, A, or Baa as issued by Moody's and a tangible net worth of at least \$10 million; and a tangible net worth at least six times the amount of liability coverage to be demonstrated by this test; and assets in the United States amounting to either:

a. At least 90% of this total assets; or

b. At least six times the amount of liability coverage to be demonstrated by this test.

3. For the purposes of this section, the phrase "amount of liability coverage" refers to the annual aggregate amounts for which coverage is required under 9VAC25-32-780 A.

C. To demonstrate that he passes this test, the permit holder or applicant must submit the following three items to the department:

1. A letter signed by the permit holder or applicant's chief financial officer;

2. A copy of the independent certified public accountant's report on examination of the permit holder or applicant's financial statements for the latest completed fiscal year; and

3. A special report from the permit holder or applicant's independent certified public accountant to the permit holder or applicant stating that:

a. He has compared the data that the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

b. In connection with that procedure, no matters came to his attention that caused him to believe that the specified data should be adjusted.

D. A new permit holder or new applicant must submit the items specified in subsection C of this section at least 30 days before the date on which the biosolids are first applied.

E. After the initial submission of the items specified in subsection C of this section, the permit holder or applicant must send updated information to the department within 90 days after the close of each succeeding fiscal year. This information must consist of all three items specified in subsection C of this section.

F. If the permit holder or applicant no longer meets the requirements of subsection B of this section, he must obtain insurance, a letter of credit, a surety bond, a trust fund, or a guarantee for the entire amount of the required liability coverage as specified in this section. Evidence of liability coverage must be submitted to the department within 90 days after the end of the fiscal year for which the year-end financial data show that the permit holder or applicant no longer meets the test requirements.

G. The department may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on an examination of the permit holder's or applicant's financial statements. An adverse opinion or a disclaimer of opinion may be cause for disallowance. The department will evaluate other qualifications on an individual basis. The permit holder or applicant must provide evidence for the entire amount of the required liability coverage as specified in this section within 30 days of notification of disallowance.

9VAC25-32-810. Corporate guarantee.

A. A permit holder or applicant may meet the requirements of this section by obtaining a written guarantee, hereafter referred to as "guarantee." The guarantor must be the direct or higher-tier parent corporation of the permit holder or the applicant; a firm whose parent corporation is also the parent corporation of the permit holder or applicant; or a firm with a substantial business relationship with the permit holder or applicant. The guarantor must meet the requirements for the permit holder or applicant as specified in 9VAC25-32-800. A certified copy of the guarantee must accompany the items sent to the department as specified in 9VAC25-32-800 C.

One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the permit holder or the applicant, this letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a substantial business relationship with the permit holder or applicant, this letter must describe this substantial business relationship and the value received in consideration of the guarantee.

B. If the permit holder or applicant fails to satisfy a judgment based on a determination of liability for bodily injury or property damage to third parties caused by the transport, storage, or land application of biosolids in Virginia or fails to pay an amount agreed to in a settlement of claims arising from or alleged to arise from such injury or damage, the guarantor will do so up to the limits of coverage.

C. The guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the permit holder or applicant and to the department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the permit holder or applicant and the department, as evidenced by return receipts.

D. If a guarantee is cancelled, the permit holder or applicant shall, within 90 days following receipt of the cancellation notice by the permit holder or applicant and the department, obtain alternate financial assurance and provide evidence of that alternate financial assurance to the department. If the permit holder or applicant fails to provide evidence of alternate financial assurance within the 90-day period, the guarantor shall provide that alternate financial assurance within 120 days following the close of the guarantor's fiscal year; obtain alternate assurance acceptable to the department; and provide evidence of the alternate assurance to the department.

E. Recordkeeping and reporting.

1. The permit holder or applicant shall submit a signed original guarantee to the department along with the items required under 9VAC25-32-800 C. The guarantee shall be worded as specified on the Corporate Guarantee form.

2. The permit holder or applicant is no longer required to maintain the items specified in 9VAC25-32-800 C when:

- a. The permit holder or applicant substitutes alternate financial assurance as specified in this section; or
- b. The permit holder or applicant is released from the requirements of this chapter.

F. If a guarantor no longer meets the requirements specified in this section, the permit holder or applicant shall, within 90 days following close of the guarantor's fiscal year, obtain alternate financial assurance acceptable to the department and submit evidence of the alternate financial assurance to the

department. If the permit holder or applicant fails to provide alternate financial assurance within the 90-day period, the guarantor shall provide that alternate financial assurance within 120 days.

9VAC25-32-820. Local government financial test.

A. A permit holder or applicant that satisfies the requirements of this section may demonstrate financial assurance using the local government financial test.

B. The permit holder or applicant shall satisfy the provisions of this section as applicable:

1. If the permit holder or applicant has outstanding, rated general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, he shall supply the department with documentation demonstrating that the permit holder or applicant has a current rating of Aaa, Aa, A, or Baa as issued by Moody's or AAA, AA, A, or BBB as issued by Standard and Poor's on all such general obligation bonds; or

2. If the permit holder or applicant does not have outstanding, rated general obligation bonds, he shall satisfy each of the following financial ratios based on the permit holder's or applicant's most recent audited annual financial statements:

a. A ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05; and

b. A ratio of annual debt service to total expenditures less than or equal to 0.20.

C. The permit holder or applicant shall prepare his financial statements in conformity with generally accepted accounting principles for governments and have his financial statements audited by an independent certified public accountant or by the Auditor of Public Accounts.

D. A permit holder or applicant is not eligible to assure its obligations under this section if he:

1. Is currently in default on any outstanding general obligation bonds;

2. Has any outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard and Poor's;

3. Operated at a deficit equal to 5.0% or more of total annual revenue in each of the past two fiscal years; or

4. Receives an adverse opinion, disclaimer of opinion, or other qualified opinion from the independent certified public accountant or Auditor of Public Accounts auditing his financial statements as required under subsection C of this section. However, the department may evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the department deems the

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qualification insufficient to warrant disallowance of the test.

E. The local government permit holder or applicant must submit to the department the following items:

1. An original letter signed by the local government's chief financial officer stating that the permit holder or applicant meets the requirements of this section:

2. The local government's independently audited year-end financial statements for the latest fiscal year, including the unqualified opinion of the auditor who must be an independent, certified public accountant or an appropriate state agency that conducts equivalent comprehensive audits;

3. A report of the local government from the local government's independent certified public accountant or the Auditor of Public Accounts based on performing an agreed upon procedures engagement relative to the financial ratios required by subdivision B 2 of this section, if applicable, and the requirements of this section. The certified public accountant's or state agency's report shall state the procedures performed and the certified public accountant's or state agency's findings; and

4. A copy of the comprehensive annual financial report (CAFR) used to comply with subdivision B 2 of this section.

9VAC25-32-830. Local government guarantee.

A. A local government who is also the permit holder or applicant may meet the requirements of this section by providing a written guarantee, herein referred to as "guarantee" by a local government. The guarantor shall meet the requirements of the local government financial test in section 9VAC25-32-820 and shall comply with the terms of the written guarantee identified in subsection B of this section.

B. Terms of the written guarantee.

1. The guarantee shall be effective before the initial application of biosolids and

2. The guarantee shall provide that:

a. If the permit holder or applicant fails to satisfy a judgment based on a determination of liability for bodily injury or property damage to third parties caused by the transport, storage, or land application of biosolids in Virginia or fails to pay an amount agreed to in settlement of claims arising from or alleged to arise from such injury or damage, the guarantor will do so up to the limits of coverage;

b. The guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the permit holder or applicant and to the department.

Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the permit holder or applicant and the department, as evidenced by return receipts; and

c. If a guarantee is cancelled, the permit holder or applicant shall within 90 days following receipt of the cancellation notice by the permit holder or the applicant and the department obtain alternate financial assurance and notify the department. If the permit holder or applicant fails to provide alternate financial assurance within the 90-day period, the guarantor shall provide that alternate financial assurance within 120 days following the close of the guarantor's fiscal year; obtain alternative financial assurance acceptable to the department; and submit evidence of that alternate financial assurance to the department.

C. Recordkeeping and reporting.

1. The permit holder or applicant shall submit a signed original guarantee on the Local Government Guarantee form to the department along with the items required under 9VAC25-32-820 E before the initial application of biosolids.

2. The permit holder or applicant is no longer required to maintain the items specified in 9VAC25-32-820 E when:

a. The permit holder or applicant substitutes alternate financial assurance as specified in this section; or

b. The permit holder or applicant is released from the requirements of this section.

D. If a local government guarantor no longer meets the requirements of this section, the permit holder or applicant shall, within 90 days following the close of the guarantor's fiscal year, obtain alternate financial assurance acceptable to the department and submit evidence of that alternate financial assurance to the department. If the permit holder or applicant fails to provide alternate financial assurance within the 90-day period, the guarantor shall provide that alternate financial assurance within 120 days.

9VAC25-32-840. Letter of credit.

A. A permit holder or applicant may satisfy the requirements of this article by obtaining an irrevocable standby letter of credit that satisfies the terms of the letter of credit and by submitting the original letter of credit to the department.

B. Terms of the letter of credit.

1. The letter of credit shall be effective before the initial application of biosolids.

2. The issuing institution shall be a bank or other financial institution that has the authority to issue letters of credit and whose letter of credit operations are regulated and

examined by the Commonwealth of Virginia, by a federal agency, or by an agency of another state.

3. The letter of credit shall be irrevocable and issued for a period of at least one year in an amount of \$2 million to cover the costs for clean-up costs, personal injury, bodily injury, and property damage that may result from the transport, storage, or land application of biosolids in Virginia by the permit holder or applicant.

4. The letter of credit shall provide that the expiration date will be automatically extended for a period of at least one year. If the issuing institution decides not to extend the letter of credit beyond the current expiration date, it shall, at least 120 days before the date, notify both the permit holder or applicant and the department by certified mail of that decision. The 120-day period will begin on the date of receipt by the department as shown on the signed return receipt. Expiration cannot occur, however, while an enforcement action is pending. Within 60 days of receipt of notice from the issuing institution that it does not intend to extend the letter of credit, the permit holder or applicant shall obtain alternate financial assurance and submit evidence of the alternate financial assurance to the department.

C. In the event of failure of the permit holder or applicant to comply with the requirements of this article, the department may cash the letter of credit.

D. The permit holder or applicant may cancel the letter of credit only if alternate financial assurance acceptable to the department is substituted as specified in this article or if the permit holder or applicant is released by the department from the requirements of this chapter.

E. The department shall return the original letter of credit to the issuing institution for termination when:

1. The permit holder or applicant substitutes acceptable alternate financial assurance for clean-up costs, personal injury, bodily injury, and property damage resulting from the transport, storage, or land application of biosolids in Virginia; or

2. The department notifies the permit holder or applicant that he is no longer required by this article to maintain financial assurance for clean-up costs, personal injury, bodily injury, and property damage resulting from the transport, storage, or land application of biosolids in Virginia.

F. The permit holder or applicant shall establish a standby trust fund. The standby trust fund shall meet the requirements of 9VAC25-32-850, except the requirements for initial payments and subsequent annual payments.

G. Payments made under the terms of the letter of credit will be deposited by the issuing institution directly into the

standby trust fund. Payments from the trust fund shall be approved by the department.

H. The department may cash the letter of credit if it is not replaced 30 days prior to expiration with alternate financial assurance approved by the department.

I. The wording of the letter of credit shall be identical to that specified in the Letter of Credit form.

9VAC25-32-850. Trust fund.

A. A permit holder or applicant may satisfy the requirements of this article by establishing a trust fund that conforms to the requirements of subsection B of this section and submitting an originally signed duplicate of the trust agreement to the department.

B. Trust fund requirements.

1. The trustee must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by the Commonwealth of Virginia, by a federal agency, or by an agency of another state.

2. The trust fund for liability coverage must be funded for the full amount of the liability coverage to be provided by the trust fund before it may be relied upon to satisfy the requirements of this section. If at any time after the trust fund is created, the amount of funds in the trust fund is reduced below the full amount of the liability coverage to be provided, the permit holder or applicant, by the anniversary date of the establishment of the fund, must either add sufficient funds to the trust fund to cause its value to be equal to the full amount of the liability coverage to be provided, or obtain other alternate financial assurance as specified in this section to cover the difference.

3. For purpose of this section, "the full amount of liability coverage provided" means the amount of coverage for clean-up costs, personal injury, bodily injury, and personal damage resulting from the transport, storage, or land application of biosolids in Virginia.

4. The wording of the trust fund must be identical to that specified in the Trust Fund form.

REGISTRAR'S NOTICE: The following forms used in administering the regulation have been filed by the agency. Amended or added forms are reflected in the listing and are published following the listing. Online users of this issue of the *Virginia Register of Regulations* may click on the name to access a form. The forms are also available through the agency contact or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

Regulations

FORMS (9VAC25-32)

[Virginia Pollution Abatement Permit Application, General Instructions \(rev. 4/09\).](#)

[Virginia Pollution Abatement Permit Application, Form A, All Applicants \(rev. 4/09\).](#)

[Virginia Pollution Abatement Permit Application, Form B, Animal Waste \(rev. 10/95\).](#)

[Virginia Pollution Abatement Permit Application, Form C, Industrial Waste \(rev. 10/95\).](#)

[Virginia Pollution Abatement Permit Application, Form D, Municipal Effluent and Biosolids \(rev. 4/09\).](#)

[Application for a Biosolids Use Permit, 2007.](#)

[Application for Land Application Supervisor Certification \(rev. 2/11\).](#)

[Application for Renewal of Land Application Supervisor Certification \(rev. 2/11\).](#)

[Sludge Disposal Site Dedication Form, Form A-1 \(rev. 11/09\).](#)

[Biosolids Land Application Local Monitoring Expenses Reimbursement Invoice, Form I \(rev. 5/10\).](#)

[Liability Requirements for Transport, Storage, and Land Application of Biosolids, Form I, Insurance Liability Endorsement \(rev. 11/09\).](#)

[Liability Requirements for Transport, Storage, and Land Application of Biosolids, Form II, Certificate of Liability Insurance \(rev. 11/09\).](#)

[Liability Requirements for Transport, Storage, and Land Application of Biosolids, Form III, Corporate Letter \(rev. 11/09\).](#)

[Liability Requirements for Transport, Storage, and Land Application of Biosolids, Form IV, Corporate Guarantee \(rev. 11/09\).](#)

[Liability Requirements for Transport, Storage, and Land Application of Biosolids, Form V, Letter of Credit \(rev. 11/09\).](#)

[Liability Requirements for Transport, Storage, and Land Application of Biosolids, Form VI, Trust Agreement \(rev. 11/09\).](#)

DOCUMENTS INCORPORATED BY REFERENCE (9VAC25-32)

Environmental Regulations and Technology-Control of Pathogens and Vector Attraction in Sewage Sludge, EPA-625/R-92/013, July 2003, U.S. Environmental Protection Agency, Cincinnati, Ohio 45268.

[Method 1668B Chlorinated Biphenyl Congeners in Water, Soil, Sediment, Biosolids, and Tissue by HRGC/HRMS.](#)

[EPA-821-R-08-020, November 2008, U.S. Environmental Protection Agency, Office of Water and Office of Science and Technology Engineering and Analysis Division \(4303T\), 1200 Pennsylvania Avenue, NW, Washington, DC 20460.](#)

[Glossary-Water and Wastewater Control Engineering, 1969, American Public Health Association \(APHA\), American Society of Civil Engineers \(ASCE\), American Water Works Association \(AWWA\), and the Water Environment Federation \(WEF\).](#)

[Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, EPA Publication SW-846, Third Edition \(1986\) as amended by final updates I, II, IIA, IIB, IIIA, IIIB, IVA, and IVB, National Technical Information Service, Springfield, Virginia.](#)

VA.R. Doc. No. R08-1248; Filed January 27, 2011; 3:15 p.m.

STATE WATER CONTROL BOARD

Forms

REGISTRAR'S NOTICE: The following forms used in administering the regulation have been filed by the State Water Control Board. Amended or added forms are reflected in the listing and are published following the listing. Online users of this issue of the *Virginia Register of Regulations* may click on the name to access a form. The forms are also available for public inspection at the Department of Environmental Quality (contact information below) and at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

Title of Regulation: **9VAC25-32. Virginia Pollution Abatement (VPA) Permit Regulation.**

Agency Contact: Cindy M. Berndt, Director, Regulatory Affairs, Department of Environmental Quality, 629 E. Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4378, FAX (804) 698-4346, email cindy.berndt@deq.virginia.gov.

FORMS (9VAC25-32)

[Virginia Pollution Abatement Permit Application, General Instructions, ~~revised 4/2009~~ \(rev. 4/09\).](#)

[Virginia Pollution Abatement Permit Application, Form A, All Applicants, ~~revised 4/2009~~ \(rev. 4/09\).](#)

[Virginia Pollution Abatement Permit Application, Form B, Animal Waste, ~~revised 10/95~~ \(rev. 10/95\).](#)

[Virginia Pollution Abatement Permit Application, Form C, Industrial Waste, ~~revised 10/95~~ \(rev. 10/95\).](#)

[Virginia Pollution Abatement Permit Application, Form D, Municipal Effluent and Biosolids, ~~revised 4/2009~~ \(rev. 4/09\).](#)

[Application for a Biosolids Use Permit, 2007.](#)

~~Application for Land Application Supervisor Certification (eff. 1/08).~~

[Application for Renewal of Land Application Supervisor Certification \(rev. 2/11\).](#)

[Application for Land Application Supervisor Certification \(rev. 2/11\).](#)

Department of Environmental Quality
Office of Land Application Programs
APPLICATION FOR LAND APPLICATION SUPERVISOR CERTIFICATION
By authority of the Virginia Pollution Abatement Permit Regulation (9VAC25-32),
this form must be completed and submitted in order to be considered for certification.
Please print or type this application.

| | | | |
|--|-------|----------|---|
| Personal Information: | | | DATE: |
| NAME (Last, First, Middle Initial): | | | E-MAIL ADDRESS |
| HOME MAILING ADDRESS: | | | HOME PHONE NO. (Include Area Code): |
| CITY | STATE | ZIP CODE | BUSINESS PHONE NO. (Include Area Code): |
| PLEASE CIRCLE YOUR ANSWER: Are you a certified Virginia Nutrient Management Planner? Y / N Have you ever been convicted of a felony? Y / N If yes, was this felony related in any way to the responsibilities of a certified land applicator? Y / N | | | |
| Eligibility Information | | | |
| HIGHEST LEVEL OF EDUCATION COMPLETED: | | | DATES OF EMPLOYMENT: |
| NAME OF LAND APPLICATION COMPANY/ EMPLOYER: | | | From: _____ (mo/yr.) To: _____ (mo/yr.) |
| ADDRESS: | | | JOB DUTIES: _____ |
| CITY | STATE | ZIP CODE | |
| List any experience related to agriculture and farming, land application, wastewater treatment, etc. | | | |
| List any training related to farming practices, nutrient management, soil science, land application, wastewater treatment, etc. | | | |
| INDICATE YOUR FIRST AND SECOND CHOICES FROM THE TRAINING COURSES AS POSTED AT: http://www.deq.virginia.gov/vpa/Biosolids_Training.html | | | DESCRIBE ANY SPECIAL TRAINING NEEDS BELOW: |
| 1) _____ | | | _____ |
| 2) _____ | | | _____ |
| I HEREBY CERTIFY THAT ALL INFORMATION CONTAINED ON ALL PAGES, INCLUDING ATTACHMENTS, IS ACCURATE AND COMPLETE. I FULLY UNDERSTAND THAT FALSIFICATION OF THIS APPLICATION MAY RESULT IN DENIAL OR REVOCATION OF CERTIFICATION. | | | Mail this completed application with \$100 fee to: (Please make check or money order payable to the <i>Treasurer of Virginia</i>) |
| Applicant Signature _____ | | | Department of Environmental Quality Receipts Control P. O. Box 1104 Richmond, VA 23218 |
| Date _____ | | | |

Revised 2/2011

Department of Environmental Quality
Office of Land Application Programs
APPLICATION FOR RENEWAL OF LAND APPLICATION SUPERVISOR CERTIFICATION

By authority of the Virginia Pollution Abatement Permit Regulation (9VAC25-32),
this form must be completed and submitted in order to be considered for recertification.

Please print or type this application.

| | | | |
|--|------------------|----------------|--|
| Personal Information: | | | DATE: |
| LAND APPLICATOR CERTIFICATE NUMBER: | EXPIRATION DATE: | E-MAIL ADDRESS | |
| NAME (Last, First, Middle Initial): | | | |
| HOME MAILING ADDRESS: | | | HOME PHONE NO. (Including Area Code): |
| CITY | STATE | ZIP CODE | BUSINESS PHONE NO (Including Area Code): |
| LIST CONTINUING EDUCATION COURSES ATTENDED SINCE YOUR CURRENT CERTIFICATE WAS ISSUED: Include AGENCY, TITLE and DATE of COURSE. | | | |
| PLEASE CIRCLE YOUR ANSWER: Are you a certified Virginia Nutrient Management Planner: Y / N Have you ever been convicted of a felony? Y / N If yes, was this felony related in any way to the responsibilities of a certified land applicator? Y / N | | | |

| | | |
|---|--------|------|
| Employer Information: | | |
| NAME OF LAND APPLICATION COMPANY/ EMPLOYER: | | |
| ADDRESS: | | |
| CITY: | STATE: | ZIP: |

I HEREBY CERTIFY THAT ALL INFORMATION CONTAINED HEREIN IS ACCURATE AND COMPLETE. I FULLY UNDERSTAND THAT FALSIFICATION OF THIS APPLICATION MAY RESULT IN DENIAL OR REVOCATION OF CERTIFICATION.

Applicant Signature

Date

Mail this completed application with \$100 renewal fee to:
(Please make check or money order payable to the *Treasurer of Virginia*)

**Department of Environmental Quality
Receipts Control
P. O. Box 1104
Richmond, VA 23218**

Revised 2/2011

VA.R. Doc. No. R11-2741; Filed February 11, 2011, 1:25 p.m.

TITLE 9. ENVIRONMENT**STATE WATER CONTROL BOARD****Final Regulation**

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

Title of Regulation: **9VAC25-800. 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 federal Clean Water Act.

Effective Date: April 10, 2011.

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:

This final action 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 are 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, (iii) aquatic animal pest control, and (iv) forest canopy pest control.

The 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.

Additionally, since the publication of the EPA proposed pesticide general permit, EPA verbally has informed the states that changes to the federal pesticide permit are eminent, including changes to the pesticide uses listed above. DEQ has taken some of the verbal recommendations and incorporated them into the final regulations. Changes made may be found in 9VAC25-800-10, 9VAC25-800-30, and 9VAC25-800-60. The substantive changes relate to applicability.

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

CHAPTER 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

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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 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).

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"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. [VDACS administers the provisions of Virginia's pesticide statute, Chapter 39 (§ 3.2-3900 et seq.) of Title 3.2 of the Code of Virginia, as well as the regulations promulgated by the Virginia Pesticide Control Board. VDACS also has delegated authority to enforce the provisions of FIFRA. As such, VDACS is the primary agency for the regulatory oversight of pesticides in the Commonwealth.]

"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:

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~~ Weed, bacteria, fungi,] and algae control - to control invasive or other [~~aquatic (emergent, floating or submerged)~~] nuisance weeds and algae in surface waters. [~~Aquatic nuisance~~ Nuisance] weeds include, but are not limited to, cattails, hydrilla, and watermeal.

3. [~~Aquatic animal~~ Animal] pest control - to control [~~aquatic~~] invasive or other [~~aquatic~~] animal pests in surface waters. [~~Aquatic animal~~ 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~~ 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.

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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> | [640 6400] acres of treatment area |
| <u>Aquatic Weed and Algae Control:</u> | |
| - <u>In Water</u> | [20 80] acres of treatment area ¹ |
| - <u>At Water's Edge</u> | 20 linear miles of treatment area at water's edge ² |
| <u>Aquatic Animal Pest Control:</u> | |
| - <u>In Water</u> | [20 80] acres of treatment area ¹ |
| - <u>At Water's Edge</u> | 20 linear miles of treatment area at water's edge ² |
| <u>Forest Canopy Pest Control</u> | [640 6400] acres of treatment area |

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~~ but count the linear area only once]. For example, treating both sides of a 10 mile ditch is equal to [~~20~~ 10] miles of water treatment area. [Applying pesticides twice a year to a 10 mile ditch is counted as 20 acres of 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~~ VAG87]
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 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

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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 [or assess environmental conditions that can no longer be tolerated based on economic, human health, aesthetic, or other effects] 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 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

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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 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).

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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 I 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

(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.

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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:

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- (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

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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 an 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 February 7, 2011, 2:33 p.m.

TITLE 10. FINANCE AND FINANCIAL INSTITUTIONS

STATE CORPORATION COMMISSION

Final Regulation

REGISTRAR'S NOTICE: The State Corporation Commission is exempt from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

Title of Regulation: **10VAC5-160. Rules Governing Mortgage Lenders and Brokers (amending 10VAC5-160-10, 10VAC5-160-20, 10VAC5-160-40, 10VAC5-160-50; adding 10VAC5-160-90, 10VAC5-160-100).**

Statutory Authority: §§ 6.2-1613 and 12.1-13 of the Code of Virginia.

Effective Date: February 15, 2011.

Agency Contact: E.J. Face, Jr., Commissioner, Bureau of Financial Institutions, State Corporation Commission, P.O. Box 640, Richmond, VA 23218, telephone (804) 371-9659, FAX (804) 371-9416, or email joe.face@scv.virginia.gov.

Regulations

Summary:

The amendments to this regulation governing mortgage lenders and brokers accomplish three basic goals: (i) address the transition of mortgage lender and broker licensees and new applicants to the electronic National Mortgage Licensing System and Registry (NMLS); (ii) provide basic codes of conduct for licensees in maintaining records with NMLS and supervising mortgage loan originators (already licensed through NMLS); and (iii) make technical changes and corrections to conform to NMLS, as well as to the recodification of Title 6.1 of the Code of Virginia into Title 6.2. All applications for mortgage lender or broker licenses under Chapter 16 (§ 6.2-1600 et seq.) of Title 6.2 of the Code of Virginia must be sent through NMLS beginning January 3, 2011. Mortgage lenders and brokers licensed prior to January 1, 2011, are required to transition to NMLS no later than April 1, 2011. Licensees may not employ persons who are not licensed as mortgage loan originators under Chapter 17 (§ 6.2-1700 et seq.) of Title 6.2 of the Code of Virginia to take applications for, or offer or negotiate the terms of, residential mortgage loans. Licensees must disclose on all documents provided to a borrower the licensee's NMLS unique identifier, as well as the unique identifier of any mortgage loan originator associated with the loan. Licensees are required to keep their information current in NMLS. The commission may enforce these regulations or Chapter 16 by fines or suspension or revocation of licenses.

In response to comments received, the final regulations differ from the proposed regulations in that the licensee's unique identifier and the unique identifier of the mortgage loan originator must be included on the loan application only, rather than on all documents provided to the borrower as originally proposed. Licensees are required to keep their information current in NMLS. The State Corporation Commission may enforce these regulations or Chapter 16 (§ 6.2-1600 et seq.) of Title 6.2 of the Code of Virginia by civil penalties or by suspension or revocation of licenses.

AT RICHMOND, FEBRUARY 15, 2010

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. BFI-2010-00255

Ex Parte: In re: Mortgage Lenders and Brokers

ORDER ADOPTING REGULATIONS

The Bureau of Financial Institutions ("Bureau") submitted to the Commission proposed amendments to 10 VAC 5-160 ("Chapter 160") of the Virginia Administrative Code, which governs the conduct of licensed mortgage lenders and brokers ("Licensees"). The impetus for the proposed amendments is

Chapter 831 of the 2010 Virginia Acts of Assembly ("Chapter 831"), which became effective on July 1, 2010, and required all Licensees to register with the Nationwide Mortgage Licensing System and Registry ("NMLS"). The proposed regulation set forth the requirements for Licensees to transition to NMLS and maintain current and accurate records in NMLS, as well as the requirements for new mortgage lenders and brokers to apply for licensure through NMLS. The proposed regulation also clarified certain operating rules for Licensees through their participation in NMLS and supervision of mortgage loan originators, also licensed through NMLS.

On November 16, 2010, the State Corporation Commission ("Commission") entered an Order to Take Notice of a proposal by the Commission to amend 10 VAC 5-160, regulations governing mortgage lenders and brokers. The Order and proposed regulations were published in the Virginia Register of Regulations on December 6, 2010, published on the Commission's web site, and mailed to all licensed mortgage lenders and brokers and other interested parties. Interested parties were afforded the opportunity to provide written comments or request a hearing on or before December 20, 2010.

Comments on the proposed regulations were filed by Professional Mortgage Corp., the Virginia Association of Mortgage Brokers, Nfm, Inc., and First Savings Mortgage Corporation. Each party's comments were confined to expressing concern over the proposed requirement that a licensee disclose its NMLS-assigned unique identifier and that of the applicable mortgage loan originator on all documents provided to a borrower. No party requested a hearing in this matter.

NOW THE COMMISSION, upon consideration of the proposed regulations, the written comments filed, the recommendations of staff, and applicable law, concludes that the proposed regulations should be modified to (i) require a licensee to disclose its NMLS-assigned unique identifier and that of the applicable mortgage loan originator only on an application for a mortgage loan; and (ii) accommodate and reflect recodification of Title 6.1 of the Code of Virginia as Title 6.2 of the Code of Virginia.¹

Accordingly, IT IS ORDERED THAT:

(1) The proposed regulations, 10 VAC 5-160, as modified herein and attached hereto, are adopted effective as of the date of this Order.

(2) This Order and the attached regulations shall be posted on the Commission's website at: <http://www.scc.virginia.gov/case>.

(3) The Commission's Division of Information Resources shall send a copy of this Order, including a copy of the attached regulations, to the Virginia Registrar of Regulations for publication in the Virginia Register of Regulations.

(4) This case is dismissed from the Commission's docket of active cases.

AN ATTESTED COPY hereof shall be sent to the Commissioner of Financial Institutions, who shall forthwith mail a copy of this Order, including a copy of the attached regulations, to all licensed mortgage lenders and brokers, as well as other interested parties as he may designate.

10VAC5-160-10. Definitions.

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

"Advertisement" means a commercial message in any medium that promotes, directly or indirectly, a mortgage loan. The term includes a communication sent to a consumer as part of a solicitation of business, but excludes messages on promotional items such as pens, pencils, notepads, hats, calendars, etc., as well as rate sheets or other information distributed or made available solely to other businesses.

"Affiliate" for purposes of subdivision 3 of § ~~6.1-411~~ 6.2-1602 of the Code of Virginia means an entity of which 25% or more of the voting shares or ownership interest is held, directly or indirectly, by a company that also owns a bank, savings institution, or credit union.

"Chapter 16" means Chapter 16 (§ 6.2-1600 et seq.) of Title 6.2 of the Code of Virginia.

"Commission" and "commissioner" shall have the meanings ascribed to them in § ~~6.1-409~~ [~~6.2-1600~~ 6.2-100] of the Code of Virginia.

"Commitment" means a written offer to make a mortgage loan signed by a person authorized to sign such offers on behalf of a mortgage lender.

"Commitment agreement" means a commitment accepted by an applicant for a mortgage loan, as evidenced by the applicant's signature thereon.

"Commitment fee" means any fee or charge accepted by a mortgage lender, or by a mortgage broker for transmittal to a mortgage lender, as consideration for binding the mortgage lender to make a mortgage loan in accordance with the terms of a commitment or as a requirement for acceptance by the applicant of a commitment, but the term does not include fees paid to third persons or interest.

"Dwelling" means one- to four-family residential property located in the Commonwealth.

"Fees paid to third persons" means the bona fide fees or charges paid by the applicant for a mortgage loan to third persons other than the mortgage lender or mortgage broker, or paid by the applicant to, or retained by, the mortgage lender or mortgage broker for transmittal to such third persons in connection with the mortgage loan, including, but not limited

to, recording taxes and fees, reconveyance or releasing fees, appraisal fees, credit report fees, attorney fees, fees for title reports and title searches, title insurance premiums, surveys and similar charges.

"Licensee" means a person licensed under Chapter 16 (§ ~~6.1-408 et seq.~~) of Title 6.1 of the Code of Virginia.

"Lock-in agreement" means a written agreement between a mortgage lender, or a mortgage broker acting on behalf of a mortgage lender, and an applicant for a mortgage loan that establishes and sets an interest rate and the points to be charged in connection with a mortgage loan that is closed within the time period specified in the agreement. A lock-in agreement can be entered into before mortgage loan approval, subject to the mortgage loan being approved and closed, or after such approval. A commitment agreement that establishes and sets an interest rate and the points to be charged in connection with a mortgage loan that is closed within the time period specified in the agreement is also a lock-in agreement. The interest rate that is established and set by the agreement may be either a fixed rate or an adjustable rate.

"Lock-in fee" means any fee or charge accepted by a mortgage lender, or by a mortgage broker for transmittal to a mortgage lender, as consideration for making a lock-in agreement, but the term does not include fees paid to third persons or interest.

"Mortgage lender," "mortgage broker," and "mortgage loan" shall have the meanings ascribed to them in § ~~6.1-409~~ 6.2-1600 of the Code of Virginia.

"Mortgage loan originator," "Nationwide Mortgage Licensing System and Registry," and "Registry" shall have the meanings ascribed to them in § 6.2-1700 of the Code of Virginia.

"Personal, family or household purposes" for purposes of § ~~6.1-409~~ 6.2-1600 of the Code of Virginia means that the individual obtaining the loan intends to use the proceeds to build or purchase a dwelling that will be occupied by such individual or another individual as their temporary or permanent residence. The term includes a loan used to build or purchase a dwelling that will be (i) improved or rehabilitated by or on behalf of the purchaser for subsequent sale to one or more other individuals who will reside in the dwelling on a temporary or permanent basis, or (ii) leased by the purchaser to one or more other individuals who will reside in the dwelling on a temporary or permanent basis.

"Points" means any fee or charge retained or received by a mortgage lender or mortgage broker stated or calculated as a percentage or fraction of the principal amount of the loan, other than or in addition to fees paid to third persons or interest.

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"Reasonable period of time" means that period of time, determined by a mortgage lender in good faith on the basis of its most recent relevant experience and other facts and circumstances known to it, within which the mortgage loan will be closed.

"Senior officer" for purposes of §§ ~~6.1-414~~ 6.2-1605, ~~6.1-415~~ 6.2-1606, ~~6.1-416~~ 6.2-1607, and ~~6.1-416.1~~ 6.2-1608 of the Code of Virginia means an individual who has significant management responsibility within an organization or otherwise has the authority to influence or control the conduct of the organization's affairs, including but not limited to its compliance with applicable laws and regulations.

"Subsidiary" for purposes of subdivision 3 of § ~~6.1-411~~ 6.2-1602 of the Code of Virginia means an entity of which 25% or more of the voting shares or ownership interest is held, directly or indirectly, by a bank, savings institution, or credit union.

10VAC5-160-20. Operating rules.

A licensee shall conduct its business in accordance with the following rules:

1. No licensee shall misrepresent the qualification requirements for a mortgage loan or any material loan terms or make false or misleading statements to induce an applicant to apply for a mortgage loan or to induce an applicant to enter into any commitment agreement or lock-in agreement or to induce an applicant to pay any commitment fee or lock-in fee in connection therewith. A "material loan term" means the loan terms required to be disclosed to a consumer pursuant to (i) the Truth in Lending Act (15 USC § 1601 et seq.), and regulations and official commentary issued thereunder, as amended from time to time, (ii) § ~~6.1-2.9:5~~ 6.2-406 of the Code of Virginia, and (iii) 10VAC5-160-30. A misrepresentation or false or misleading statement resulting directly from incorrect information furnished to a licensee by a third party, or a good-faith misunderstanding of information furnished by a third party, shall not be considered a violation of this section if the licensee has supporting documentation thereof and the licensee's reliance thereon was reasonable.

2. No licensee shall retain any portion of any fees or charges imposed upon consumers for goods or services provided by third parties. All moneys received by a licensee from an applicant for fees paid to third persons shall be accounted for separately, and all disbursements for fees paid to third persons shall be supported by adequate documentation of the services for which such fees were or are to be paid. All such moneys shall be deposited in an escrow account in a bank, savings institution, or credit union segregated from other funds of the licensee.

3. The mortgagor who obtains a mortgage loan shall be entitled to continue to make payments to the transferor of

the servicing rights under a mortgage loan until the mortgagor is given written notice of the transfer of the servicing rights by the transferor. The notice shall specify the name and address to which future payments are to be made and shall be mailed or delivered to the mortgagor at least 10 calendar days before the first payment affected by the notice.

4. If a person has been or is engaged in business as a mortgage lender or mortgage broker and has filed a bond with the commissioner, as required by § ~~6.1-413~~ 6.2-1604 of the Code of Virginia, such bond shall be retained by the commissioner notwithstanding the occurrence of any of the following events:

- a. The person's application for a license is withdrawn or denied;
- b. The person's license is surrendered, suspended, or revoked; or
- c. The person ceases engaging in business as a mortgage lender or mortgage broker.

5. Within 15 days of becoming aware of the occurrence of any of the following events, a licensed mortgage lender or mortgage broker shall file a written report with the commissioner describing such event and its expected impact, if any, on the activities of the licensee in the Commonwealth:

- a. The licensee files for bankruptcy or reorganization.
- b. Any governmental authority institutes revocation or suspension proceedings against the licensee, or revokes or suspends a mortgage-related license held or formerly held by the licensee.
- c. Any governmental authority takes (i) formal regulatory or enforcement action against the licensee relating to its mortgage business or (ii) any other action against the licensee relating to its mortgage business where the total amount of restitution or other payment from the licensee exceeds \$20,000. A licensee shall not be required to provide the commissioner with information about such event to the extent that such disclosure is prohibited by the laws of another state.
- d. Based on allegations by any governmental authority that the licensee violated any law or regulation applicable to the conduct of its licensed mortgage business, the licensee enters into, or otherwise agrees to the entry of, a settlement or consent order, decree, or agreement with or by such governmental authority.
- e. The licensee surrenders its license to engage in any mortgage-related business in another state in lieu of threatened or pending license revocation, license suspension, or other regulatory or enforcement action.

f. The licensee is denied a license to engage in any mortgage-related business in another state.

g. The licensee or any of its employees, officers, directors, or principals is indicted for a felony.

h. The licensee or any of its employees, officers, directors, or principals is convicted of a felony.

6. No licensee shall inform a consumer that such consumer has been or will be "preapproved" or "pre-approved" for a mortgage loan unless the licensee contemporaneously provides the consumer with a separate written disclosure (in at least 10-point type) that (i) explains what preapproved means; (ii) informs the consumer that the consumer's loan application has not yet been approved; (iii) states that a written commitment to make a mortgage loan has not yet been issued; and (iv) advises the consumer what needs to occur before the consumer's loan application can be approved. This provision shall not apply to advertisements subject to 10VAC5-160-60. In the case of a preapproval initially communicated to a consumer by telephone, the licensee shall provide the written disclosure to the consumer within three business days.

7. No licensee shall permit any individual who is not licensed as a mortgage loan originator pursuant to Chapter 17 (§ 6.2-1700 et seq.) of Title 6.2 of the Code of Virginia to, on behalf of the licensee, take an application for or offer or negotiate the terms of a residential mortgage loan as defined in [§ 6.2-1700 of the Code of Virginia. § 1503(8) of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (P.L. 110-289), that is secured by real property located in the Commonwealth.]

8. Beginning April 1, 2011, every licensee shall disclose on [all documents any application] provided to the borrower associated with a Virginia residential mortgage loan: (i) the licensee's unique identifier assigned by the Registry; and (ii) the unique identifier assigned by the Registry to any mortgage loan originator who took the application [or negotiated the terms of for] the loan.

10VAC5-160-40. Schedule of annual fees for the examination, supervision, and regulation of mortgage lenders and mortgage brokers.

Pursuant to § ~~6.1-420~~ 6.2-1612 of the Code of Virginia, the Commission sets the following schedule of annual fees to be paid by mortgage lenders and mortgage brokers required to be licensed under Chapter 16 (~~§ 6.1-408 et seq.~~) of Title 6.1 of the Code of Virginia. Such fees are to defray the costs of examination, supervision and regulation of such lenders and brokers by the Bureau of Financial Institutions. The fees are related to the actual costs of the Bureau, to the volume of business of the lenders and brokers, and to other factors relating to supervision and regulation.

SCHEDULE

LENDER LICENSEE: Minimum fee -- \$800, plus \$6.60 per loan

BROKER LICENSEE: Minimum fee -- \$400, plus \$6.60 per loan

DUAL AUTHORITY (LENDER/BROKER):
Minimum fee -- \$1,200, plus \$6.60 per loan

The annual fee for each mortgage lender shall be computed on the basis of the number of mortgage loans, as defined in § ~~6.1-409~~ 6.2-1600 of the Code of Virginia, made or originated during the calendar year preceding the year of assessment. The annual fee for each mortgage broker shall be based on the number of such loans brokered. The annual fee for each mortgage lender/broker shall be based on the total number of mortgage loans made or originated and mortgage loans brokered. The annual fee computed using the above schedule shall be rounded down to the nearest whole dollar.

Fees shall be assessed on or before April 25 for the current calendar year. By law the fee must be paid on or before May 25.

The annual report of each licensee shall be due March 1 of each year and shall provide the basis for licensee assessment, i.e., the number of loans made or brokered. If the annual report of a licensee has not been filed by the assessment date, a provisional fee, subject to adjustment when the report is filed, shall be assessed. In cases where a license or additional authority has been granted between January 1 and March 31, one of the following fees or additional fee shall be assessed: lender -- \$400; broker -- \$200; lender/broker -- \$600.

Fees prescribed and assessed by this schedule are apart from, and do not include, the reimbursement for expenses permitted by subsection [~~B~~ C] of § ~~6.1-420~~ 6.2-1612 of the Code of Virginia.

10VAC5-160-50. Responding to requests from Bureau of Financial Institutions.

A. When the Bureau of Financial Institutions (bureau) requests a written response, books, records, documentation, or other information from a mortgage lender or mortgage broker (licensee) in connection with the bureau's investigation, enforcement, or examination of compliance with applicable laws, the licensee shall deliver a written response as well as any requested books, records, documentation, or information within the time period specified in the bureau's request. If no time period is specified, a written response as well as any requested books, records, documentation, or information shall be delivered by the licensee to the bureau not later than 30 days from the date of such request. In determining the specified time period for responding to the bureau and when considering a request for an extension of time to respond, the bureau shall take into consideration the volume and complexity of the requested

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written response, books, records, documentation or information and such other factors as the bureau determines to be relevant under the circumstances.

B. Requests made by the bureau pursuant to subsection A are deemed to be in furtherance of the bureau's investigation and examination authority provided for in § ~~6.1-419~~ 6.2-1611 of the Code of Virginia. Failure to comply with subsection A may result in [~~fines civil penalties~~], license suspension, or license revocation.

10VAC5-160-90. National Mortgage Licensing System and Registry.

A. Beginning January 3, 2011, applications for a mortgage lender or mortgage broker license shall be made through the Registry in accordance with instructions provided by the Commissioner. The Commissioner may provide these instructions through the Registry, on the Commission's Internet web site, or by any other means the Commissioner deems appropriate.

B. The Commissioner shall notify all licensees no later than January 1 of each calendar year of the information required to be included in the annual report to be submitted by each licensee pursuant to § 6.2-1610 of the Code of Virginia.

C. Entities exempt from the requirement for licensure under Chapter 16 that supervise mortgage loan originators licensed pursuant to Chapter 17 (§ 6.2-1700 et seq.) of Title 6.2 of the Code of Virginia may obtain a unique identifier through the Registry.

D. All licensees holding a license under Chapter 16 prior to January 1, 2011, shall obtain such unique identifier and provide all required information to the Registry no later than April 1, 2011.

E. Every licensee shall maintain current information in its records with the Registry. Any changes to the licensee's address, principal officers, or any other information in the Registry shall be updated by the licensee as soon as is practicable, but in no event later than five business days from when the change takes effect.

10VAC5-160-100. Enforcement.

A. Failure to comply with any provision of Chapter 16 or this chapter may result in [~~fines civil penalties~~], license suspension, or license revocation.

B. Pursuant to § 6.2-1624 of the Code of Virginia, a licensee shall be subject to a [~~fine civil penalty~~] of up to \$2,500 for every violation of Chapter 16, this chapter, or other law or regulation applicable to the conduct of the licensee's business. Furthermore, if a licensee violates any provision of Chapter 16, this chapter, or other law or regulation applicable to the conduct of the licensee's business in connection with multiple borrowers, loans, or prospective loans, the licensee shall be subject to a separate [~~fine civil penalty~~] for each borrower,

loan, or prospective loan. For example, if a licensee makes five loans and the licensee violates two provisions of this chapter in connection with each of the five loans, there would be a total of 10 violations and the licensee would be subject to a maximum [~~fine civil penalty~~] of \$25,000.

VA.R. Doc. No. R11-2653; Filed February 15, 2011, 2:47 p.m.



TITLE 12. HEALTH

STATE BOARD OF HEALTH

Final Regulation

Title of Regulation: **12VAC5-90. Regulations for Disease Reporting and Control (amending 12VAC5-90-10, 12VAC5-90-30, 12VAC5-90-80, 12VAC5-90-90, 12VAC5-90-100, 12VAC5-90-103, 12VAC5-90-107, 12VAC5-90-110, 12VAC5-90-130, 12VAC5-90-140, 12VAC5-90-225, 12VAC5-90-370).**

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

Effective Date: March 28, 2011.

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

Summary:

The amendments update the regulation to conform to recent changes in the Code of Virginia pertaining to reporting of outbreaks, prenatal testing for HIV infection, immunization requirements, and tuberculosis control; add or remove diseases from the list of reportable diseases; expand the list of conditions for which laboratories are required to submit specimens; and clarify current requirements and definitions.

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

Part I Definitions

12VAC5-90-10. Definitions.

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

"Acute care hospital" means a hospital as defined in § 32.1-123 of the Code of Virginia that provides medical treatment for patients having an acute illness or injury or recovering from surgery.

"Adult intensive care unit" means a nursing care area that provides intensive observation, diagnosis, and therapeutic procedures for persons 18 years of age or more who are critically ill. Such units may also provide intensive care to pediatric patients. An intensive care unit excludes nursing areas that provide step-down, intermediate care, or telemetry only.

"Affected area" means any part or the whole of the Commonwealth ~~that, which~~ has been identified as where ~~individuals~~ persons reside, or may be located, who are known to have been exposed to or infected with, or who are reasonably suspected to have been exposed to or infected [with], a communicable disease of public health threat ~~reside or may be located~~. "Affected area" shall include, but not be limited to, cities, counties, towns, and subsections of such areas, public and private property, buildings, and other structures.

"Arboviral infection" means a viral illness that is transmitted by a mosquito, tick, or other arthropod. This includes, but is not limited to, chikungunya, dengue, eastern equine encephalitis (EEE), LaCrosse encephalitis (LAC), St. Louis encephalitis (SLE), and West Nile virus (WNV) infection.

"Board" means the State Board of Health.

"Cancer" means all carcinomas, sarcomas, melanomas, leukemias, and lymphomas excluding localized basal and squamous cell carcinomas of the skin, except for lesions of the mucous membranes.

"Central line-associated bloodstream infection" means a primary bloodstream infection identified by laboratory tests, with or without clinical signs or symptoms, in a patient with a central line device, and meeting the current Centers for Disease Control and Prevention (CDC) surveillance definition for laboratory-confirmed primary bloodstream infection.

"Central line device" means a vascular infusion device that terminates at or close to the heart or in one of the greater vessels. The following are considered great vessels for the purpose of reporting central line infections and counting central line days: aorta, pulmonary artery, superior vena cava, inferior vena cava, brachiocephalic veins, internal jugular veins, subclavian veins, external iliac veins, and common femoral veins.

"Child care center" means a child day center, ~~child day center system~~, child day program, family day home, family day system, or registered family day home as defined by § 63.2-100 of the Code of Virginia, or a similar place providing day care of children by such other name as may be applied.

"Clinic" means any facility, freestanding or associated with a hospital, that provides preventive, diagnostic, therapeutic, rehabilitative, or palliative care or services to outpatients.

"Commissioner" means the State Health Commissioner or his duly designated officer or agent, unless stated in a provision of these regulations that it applies to the State Health Commissioner in his sole discretion.

"Communicable disease" means an illness due to an infectious agent or its toxic products which is transmitted, directly or indirectly, to a susceptible host from an infected person, animal, or arthropod or through the agency of an intermediate host or a vector or through the inanimate environment.

"Communicable disease of public health significance" means an illness caused by a specific or suspected infectious agent that may be transmitted directly or indirectly from one individual to another. This includes but is not limited to infections caused by human immunodeficiency viruses, bloodborne pathogens, and tubercle bacillus. The State Health Commissioner may determine that diseases caused by other pathogens constitute communicable diseases of public health significance.

"Communicable disease of public health threat" means an illness of public health significance, as determined by the State Health Commissioner in accordance with these regulations, caused by a specific or suspected infectious agent that may be reasonably expected or is known to be readily transmitted directly or indirectly from one individual to another and has been found to create a risk of death or significant injury or impairment; this definition shall not, however, be construed to include human immunodeficiency viruses or the tubercle bacilli, unless used as a bioterrorism weapon.

"Companion animal" means any domestic or feral dog, domestic or feral cat, nonhuman primate, guinea pig, hamster, rabbit not raised for human food or fiber, exotic or native animal, reptile, exotic or native bird, or any feral animal or any animal under the care, custody, or ownership of a person or any animal that is bought, sold, traded, or bartered by any person. Agricultural animals, game species, or any animals regulated under federal law as research animals shall not be considered companion animals for the purpose of this regulation.

"Condition" means any adverse health event, such as a disease, an infection, a syndrome, or as indicated by a procedure (including but not limited to the results of a physical exam, laboratory test, or imaging interpretation) suggesting that an exposure of public health importance has occurred.

"Contact" means a person or animal known to have been in such association with an infected person or animal as to have had an opportunity of acquiring the infection.

"Contact services" means a broad array of services that are offered to persons with infectious diseases and their contacts. Contact services include contact tracing, providing

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information about current infections, developing risk reduction plans to reduce the chances of future infections, and connecting to appropriate medical care and other services.

"Contact tracing" means the process by which an infected person or health department employee notifies others that they may have been exposed to the infected person in a manner known to transmit the infectious agent in question.

"Decontamination" means the use of physical or chemical means to remove, inactivate, or destroy hazardous substances or organisms from a person, surface, or item to the point that such substances or organisms are no longer capable of causing adverse health effects and the surface or item is rendered safe for handling, use, or disposal.

"Department" means the State Department of Health.

"Designee" or "designated officer or agent" means any person, or group of persons, designated by the State Health Commissioner, to act on behalf of the commissioner or the board.

"Ehrlichiosis/anaplasmosis" means human infections caused by Ehrlichia chaffeensis (formerly included in the category "human monocytic ehrlichiosis" or "HME"), Ehrlichia ewingii or Anaplasma phagocytophilum (formerly included in the category "human granulocytic ehrlichiosis" or "HGE").

"Epidemic" means the occurrence in a community or region of cases of an illness clearly in excess of normal expectancy.

"Essential needs" means basic human needs for sustenance including but not limited to food, water, and health care, e.g., medications, therapies, testing, and durable medical equipment.

"Exceptional circumstances" means the presence, as determined by the commissioner in his sole discretion, of one or more factors that may affect the ability of the department to effectively control a communicable disease of public health threat. Factors to be considered include but are not limited to: (i) characteristics or suspected characteristics of the disease-causing organism or suspected disease-causing organism such as virulence, routes of transmission, minimum infectious dose, rapidity of disease spread, the potential for extensive disease spread, and the existence and availability of demonstrated effective treatment; (ii) known or suspected risk factors for infection; (iii) the potential magnitude of the effect of the disease on the health and welfare of the public; and (iv) the extent of voluntary compliance with public health recommendations. The determination of exceptional circumstances by the commissioner may take into account the experience or results of investigation in Virginia, another state, or another country.

"Foodborne outbreak" means two or more cases of a similar illness acquired through the consumption of food contaminated with chemicals or an infectious agent or its toxic products. Such illnesses include but are not limited to

heavy metal intoxication, staphylococcal food poisoning, botulism, salmonellosis, shigellosis, Clostridium perfringens food poisoning, hepatitis A, and Escherichia coli O157:H7 infection.

"Healthcare-associated infection" (also known as nosocomial infection) means a localized or systemic condition resulting from an adverse reaction to the presence of an infectious agent or agents or its toxin or toxins that (i) occurs in a patient in a healthcare setting (e.g., a hospital or outpatient clinic), (ii) was not found to be present or incubating at the time of admission unless the infection was related to a previous admission to the same setting, and (iii) if the setting is a hospital, meets the criteria for a specific infection site as defined by CDC.

"Hepatitis C, acute" means the following clinical characteristics are met: (i) discrete onset of symptoms indicative of viral hepatitis and (ii) jaundice or elevated serum aminotransferase levels and the following laboratory criteria are met: (a) serum alanine aminotransferase levels (ALT) greater than 400 IU/L; (b) IgM anti-HAV negative (if done); (c) IgM anti-HBc negative (if done); and (d) hepatitis C virus antibody (anti-HCV) screening test positive with a signal-to-cutoff ratio predictive of a true positive as determined for the particular assay as defined by CDC, HCV antibody positive by immunoblot (RIBA), or HCV RNA positive by nucleic acid test.

"Hepatitis C, chronic" means that the laboratory criteria specified in clauses (b), (c) and (d) listed above for an acute case are met but clinical signs or symptoms of acute viral hepatitis are not present and serum alanine aminotransferase (ALT) levels do not exceed 400 IU/L. This category will include cases that may be acutely infected but not symptomatic.

"Immunization" means a procedure that increases the protective response of an individual's immune system to specified pathogens.

"Independent pathology laboratory" means a nonhospital or a hospital laboratory performing surgical pathology, including fine needle aspiration biopsy and bone marrow specimen examination services, which reports the results of such tests directly to physician offices, without reporting to a hospital or accessioning the information into a hospital tumor registry.

"Individual" means a person or companion animal. When the context requires it, "person or persons" shall be deemed to include any individual.

"Infection" means the entry and multiplication or persistence of a disease-causing organism (prion, virus, bacteria, fungus, parasite, or ectoparasite) in the body of an individual. An infection may be inapparent (i.e., without recognizable signs or symptoms but identifiable by laboratory means) or manifest (clinically apparent).

"Influenza A, novel virus" means infection of a human with an influenza A virus subtype that is different from currently circulating human influenza H1 and H3 viruses. Novel subtypes include H2, H5, H7, and H9 subtypes or influenza H1 and H3 subtypes originating from a nonhuman species.

"Invasive" means the organism is affecting a normally sterile site, including but not limited to blood or cerebrospinal fluid.

"Investigation" means an inquiry into the incidence, prevalence, extent, source, mode of transmission, causation of, and other information pertinent to a disease occurrence.

"Isolation" means the physical separation, including confinement or restriction of movement, of an individual or individuals who are infected with, or are reasonably suspected to be infected with, a communicable disease ~~of public health threat~~ in order to prevent or limit the transmission of the communicable disease ~~of public health threat~~ to uninfected and unexposed individuals.

"Isolation, complete" means the full-time confinement or restriction of movement of an individual or individuals infected with, or reasonably suspected to be infected with, a communicable disease in order to prevent or limit the transmission of the communicable disease to uninfected and unexposed individuals.

"Isolation, modified" means a selective, partial limitation of freedom of movement or actions of an individual or individuals infected with, or reasonably suspected to be infected with, a communicable disease. Modified isolation is designed to meet particular situations and includes but is not limited to the exclusion of children from school, the prohibition or restriction from engaging in a particular occupation or using public or mass transportation, or requirements for the use of devices or procedures intended to limit disease transmission.

"Isolation, protective" means the physical separation of a susceptible individual or individuals not infected with, or not reasonably suspected to be infected with, a communicable disease from an environment where transmission is occurring, or is reasonably suspected to be occurring, in order to prevent the individual or individuals from acquiring the communicable disease.

"Laboratory" as used herein means a clinical laboratory that examines materials derived from the human body for the purpose of providing information on the diagnosis, prevention, or treatment of disease.

"Laboratory director" means any person in charge of supervising a laboratory conducting business in the Commonwealth of Virginia.

"Law-enforcement agency" means any sheriff's office, police department, adult or youth correctional officer, or other agency or department that employs persons who have law-

enforcement authority that is under the direction and control of the Commonwealth or any local governing body. "Law-enforcement agency" shall include, by order of the Governor, the Virginia National Guard.

~~"Lead-elevated blood levels"~~ "Lead, elevated blood levels" means a confirmed blood level greater than or equal to 10 micrograms of lead per deciliter ($\mu\text{g/dL}$) of whole blood in a child or children 15 years of age and younger, a venous blood lead level greater than or equal to 25 $\mu\text{g/dL}$ in a person older than 15 years of age, or such lower blood lead level as may be recommended for individual intervention by the department or the Centers for Disease Control and Prevention.

"Least restrictive" means the minimal limitation of the freedom of movement and communication of an individual while under an order of isolation or an order of quarantine that also effectively protects unexposed and susceptible individuals from disease transmission.

"Medical care facility" means any hospital or nursing home licensed in the Commonwealth, or any hospital operated by or contracted to operate by an entity of the United States government or the Commonwealth of Virginia.

"Midwife" means any person who is licensed as a nurse midwife by the Virginia Boards of Nursing and Medicine or who ~~possesses a midwife permit issued by the State Health Commissioner~~ is licensed by the Board of Medicine as a certified professional midwife.

"National Healthcare Safety Network (NHSN)" means a surveillance system created by the CDC for accumulating, exchanging, and integrating relevant information on infectious adverse events associated with healthcare delivery.

~~"Nosocomial outbreak" means any group of illnesses of common etiology occurring in patients of a medical care facility acquired by exposure of those patients to the disease agent while confined in such a facility.~~

"Nucleic acid detection" means laboratory testing of a clinical specimen to determine the presence of deoxyribonucleic acid (DNA) or ribonucleic acid (RNA) specific for an infectious agent using any method, including hybridization, sequencing, or amplification such as polymerase chain reaction.

"Nurse" means any person licensed as a professional nurse or as a licensed practical nurse by the Virginia Board of Nursing.

"Occupational outbreak" means a cluster of illness or disease that is indicative of a work-related exposure. Such conditions include but are not limited to silicosis, asbestosis, byssinosis, pneumoconiosis, and tuberculosis.

"Outbreak" means the occurrence of more cases of a disease than expected.

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"Period of communicability" means the time or times during which the etiologic agent may be transferred directly or indirectly from an infected person to another person, or from an infected animal to a person.

"Physician" means any person licensed to practice medicine or osteopathy by the Virginia Board of Medicine.

"Quarantine" means the physical separation, including confinement or restriction of movement, of an individual or individuals who are present within an affected area or who are known to have been exposed, or may reasonably be suspected to have been exposed, to a communicable disease ~~of public health threat~~ and who do not yet show signs or symptoms of infection with the communicable disease ~~of public health threat~~ in order to prevent or limit the transmission of the communicable disease of public health threat to unexposed and uninfected individuals.

"Quarantine, complete" means the full-time confinement or restriction of movement of an individual or individuals who do not have signs or symptoms of infection but may have been exposed, or may reasonably be suspected to have been exposed, to a communicable disease of public health threat in order to prevent the transmission of the communicable disease of public health threat to uninfected individuals.

"Quarantine, modified" means a selective, partial limitation of freedom of movement or actions of an individual or individuals who do not have signs or symptoms of the infection but have been exposed to, or are reasonably suspected to have been exposed to, a communicable disease of public health threat. Modified quarantine may be designed to meet particular situations and includes but is not limited to limiting movement to the home, work, and/or one or more other locations, the prohibition or restriction from using public or mass transportation, or requirements for the use of devices or procedures intended to limit disease transmission.

"Reportable disease" means an illness due to a specific toxic substance, occupational exposure, or infectious agent, which affects a susceptible individual, either directly, as from an infected animal or person, or indirectly through an intermediate host, vector, or the environment, as determined by the board.

"SARS" means severe acute respiratory syndrome (SARS)-associated coronavirus (SARS-CoV) disease.

"School" means (i) any public school from kindergarten through grade 12 operated under the authority of any locality within the Commonwealth; (ii) any private or parochial school that offers instruction at any level or grade from kindergarten through grade 12; (iii) any private or parochial nursery school or preschool, or any private or parochial child care center licensed by the Commonwealth; and (iv) any preschool handicap classes or Head Start classes.

"Serology" means the testing of blood, serum, or other body fluids for the presence of antibodies or other markers of an infection or disease process.

"Surveillance" means the ongoing systematic collection, analysis, and interpretation of outcome-specific data for use in the planning, implementation, and evaluation of public health practice. A surveillance system includes the functional capacity for data analysis as well as the timely dissemination of these data to persons who can undertake effective prevention and control activities.

"Susceptible individual" means a person or animal who is vulnerable to or potentially able to contract a disease or condition. Factors that affect an individual's susceptibility include but are not limited to physical characteristics, genetics, previous or chronic exposures, chronic conditions or infections, immunization history, or use of medications.

"Toxic substance" means any substance, including any raw materials, intermediate products, catalysts, final products, or by-products of any manufacturing operation conducted in a commercial establishment, that has the capacity, through its physical, chemical or biological properties, to pose a substantial risk of death or impairment either immediately or over time, to the normal functions of humans, aquatic organisms, or any other animal but not including any pharmaceutical preparation which deliberately or inadvertently is consumed in such a way as to result in a drug overdose.

"Tubercle bacilli" means disease-causing organisms belonging to the *Mycobacterium tuberculosis* complex and includes *Mycobacterium tuberculosis*, *Mycobacterium bovis*, and *Mycobacterium africanum* or other members as may be established by the commissioner.

"Tuberculin skin test (TST)" means a test for demonstrating infection with tubercle bacilli, performed according to the Mantoux method, in which 0.1 ml of 5 TU strength tuberculin purified protein derivative (PPD) is injected intradermally on the volar surface of the arm. Any reaction is observed 48-72 hours after placement and palpable induration is measured across the diameter transverse to the long axis of the arm. The measurement of the indurated area is recorded in millimeters and the significance of the measured induration is based on existing national and department guidelines.

"Tuberculosis" means a disease caused by tubercle bacilli.

"Tuberculosis, active disease" (also "active tuberculosis disease" and "active TB disease"), as defined by § 32.1-49.1 of the Code of Virginia, means a disease caused by an airborne microorganism and characterized by the presence of either (i) a specimen of sputum or other bodily fluid or tissue that has been found to contain tubercle bacilli as evidenced by culture or nucleic acid amplification, including preliminary identification by rapid methodologies; (ii) a specimen of sputum or other bodily fluid or tissue that is suspected to

contain tubercle bacilli as evidenced by smear, and where sufficient clinical and radiographic evidence of active tuberculosis disease is present as determined by a physician licensed to practice medicine in Virginia; or (iii) sufficient clinical and radiographic evidence of active tuberculosis disease as determined by the commissioner is present, but a specimen of sputum or other bodily fluid or tissue containing, or suspected of containing, tubercle bacilli is unobtainable.

"Tuberculosis infection in children age less than 4 years" means a significant reaction resulting from a tuberculin skin test (TST) or other approved test for latent infection without clinical or radiographic evidence of active tuberculosis disease, in children from birth up to their fourth birthday.

"Vaccinia, disease or adverse event" means vaccinia infection or serious or unexpected events in persons who received the smallpox vaccine or their contacts, including but not limited to bacterial infections, eczema vaccinatum, erythema multiforme, generalized vaccinia, progressive vaccinia, inadvertent inoculation, post-vaccinial encephalopathy or encephalomyelitis, ocular vaccinia, and fetal vaccinia.

"Waterborne outbreak" means two or more cases of a similar illness acquired through the ingestion of or other exposure to water contaminated with chemicals or an infectious agent or its toxic products. Such illnesses include but are not limited to giardiasis, viral gastroenteritis, cryptosporidiosis, hepatitis A, cholera, and shigellosis. A single case of laboratory-confirmed primary amebic meningoencephalitis or of waterborne chemical poisoning is considered an outbreak.

12VAC5-90-30. Purpose.

This chapter is designed to provide for the uniform reporting of diseases of public health importance occurring within the Commonwealth in order that appropriate control measures may be instituted to ~~interrupt the transmission~~ reduce the occurrence of disease.

Part III
Reporting of Disease

12VAC5-90-80. Reportable disease list.

A. The board declares suspected or confirmed cases of the following named diseases, toxic effects, and conditions to be reportable by the persons enumerated in 12VAC5-90-90. Conditions identified by an asterisk (*) require rapid immediate communication to the local health department ~~within 24 hours of~~ by the most rapid means available upon suspicion or confirmation, as defined in subsection C of this section. Other conditions should be reported within three days of suspected or confirmed diagnosis.

Acquired immunodeficiency syndrome (AIDS)

Amebiasis

*Anthrax

Arboviral infections (e.g., dengue, EEE, LAC, SLE, WNV)

*Botulism

*Brucellosis

Campylobacteriosis

Chancroid

Chickenpox (Varicella)

Chlamydia trachomatis infection

*Cholera

Creutzfeldt-Jakob disease if <55 years of age

Cryptosporidiosis

Cyclosporiasis

*Diphtheria

*Disease caused by an agent that may have been used as a weapon

~~Ehrlichiosis~~ Ehrlichiosis/Anaplasmosis

Escherichia coli infection, Shiga toxin-producing

Giardiasis

Gonorrhea

Granuloma inguinale

*Haemophilus influenzae infection, invasive

Hantavirus pulmonary syndrome

Hemolytic uremic syndrome (HUS)

*Hepatitis A

Hepatitis B: (acute and chronic)

Hepatitis C (acute and chronic)

Hepatitis, other acute viral

Human immunodeficiency virus (HIV) infection

Influenza

*Influenza-associated deaths in children <18 years of age

~~Kawasaki syndrome~~

~~Lead-elevated blood levels~~ Lead, elevated blood levels

Legionellosis

Leprosy (~~Hansen's~~) (Hansen disease)

Listeriosis

Lyme disease

Lymphogranuloma venereum

Malaria

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*Measles (Rubeola)
*Meningococcal disease
*Monkeypox
Mumps
Ophthalmia neonatorum
*Outbreaks, all (including but not limited to foodborne, nosocomial, healthcare-associated, occupational, toxic substance-related, and waterborne)
*Pertussis
*Plague
~~*Polio~~ Poliovirus infection, including poliomyelitis
*Psittacosis
*Q fever
*Rabies, human and animal
Rabies treatment, post-exposure
[~~Rocky Mountain spotted fever~~]
*Rubella, including congenital rubella syndrome
Salmonellosis
*Severe acute respiratory syndrome (SARS)
Shigellosis
*Smallpox (Variola)
[Spotted fever rickettsiosis]
Staphylococcus aureus infection, vancomycin-intermediate or vancomycin-resistant]
Streptococcal disease, Group A, invasive or toxic shock
Streptococcus pneumoniae infection, invasive, in children <5 years of age
Syphilis (report *primary and *secondary syphilis by rapid means)
Tetanus
~~Toxic shock syndrome~~
Toxic substance-related illness
Trichinosis (Trichinellosis)
*Tuberculosis, active disease
Tuberculosis infection in children <4 years of age
*Tularemia
*Typhoid [~~*Typhoid/paratyphoid~~ *Typhoid/Paratyphoid] fever

*Unusual occurrence of disease of public health concern
*Vaccinia, disease or adverse event
[~~Vancomycin intermediate or vancomycin-resistant Staphylococcus aureus infection~~]
*Vibrio infection
*Viral hemorrhagic fever
*Yellow fever
Yersiniosis

B. Conditions reportable by directors of laboratories.

Conditions identified by an asterisk (*) require ~~rapid~~ immediate communication to the local health department ~~within 24 hours of~~ by the most rapid means available upon suspicion or confirmation, as defined in subsection C of this section. Other conditions should be reported within three days of suspected or confirmed diagnosis.

Amebiasis—by microscopic examination, culture, antigen detection, nucleic acid detection, or serologic results consistent with recent infection

*Anthrax—by culture, antigen detection or nucleic acid detection

Arboviral infection—by culture, antigen detection, nucleic acid detection, or serologic results consistent with recent infection

*Botulism—by culture or identification of toxin in a clinical specimen

*Brucellosis—by culture, antigen detection, nucleic acid detection, or serologic results consistent with recent infection

Campylobacteriosis—by culture

Chancroid—by culture, antigen detection, or nucleic acid detection

Chickenpox (varicella)—by culture, antigen detection, nucleic acid detection, or serologic results consistent with recent infection

Chlamydia trachomatis infection—by culture, antigen detection, nucleic acid detection or, for lymphogranuloma venereum, serologic results consistent with recent infection

*Cholera—by culture or serologic results consistent with recent infection

Creutzfeldt-Jakob disease if <55 years of age - ~~presumptive diagnosis~~ — by histopathology in patients under the age of 55 years

Cryptosporidiosis—by microscopic examination, antigen detection, or nucleic acid detection

Cyclosporiasis—by microscopic examination or nucleic acid detection

*Diphtheria—by culture

~~Ehrlichiosis~~—by Ehrlichiosis/Anaplasmosis—by culture, nucleic acid detection, or serologic results consistent with recent infection

Escherichia coli infection, Shiga toxin-producing—by culture of E. coli O157 or other Shiga toxin-producing E. coli, Shiga toxin detection (e.g., by EIA), or nucleic acid detection

Giardiasis—by microscopic examination or antigen detection

Gonorrhea—by microscopic examination of a urethral smear specimen (males only), culture, antigen detection, or nucleic acid detection

*Haemophilus influenzae infection, invasive—by culture, antigen detection, or nucleic acid detection from a normally sterile site

Hantavirus pulmonary syndrome—by antigen detection (immunohistochemistry), nucleic acid detection, or serologic results consistent with recent infection

*Hepatitis A—by detection of IgM antibodies

Hepatitis B (acute and chronic)—by detection of HBsAg or IgM antibodies

Hepatitis C (acute and chronic)—by hepatitis C virus antibody (anti-HCV) screening test positive with a signal-to-cutoff ratio predictive of a true positive as determined for the particular assay as defined by CDC, HCV antibody positive by immunoblot (RIBA), or HCV RNA positive by nucleic acid test. For all hepatitis C patients, also report available results of serum alanine aminotransferase (ALT), anti-HAV IgM, anti-HBc IgM, and HBsAg

Human immunodeficiency virus infection—by culture, antigen detection, nucleic acid detection, or detection of antibody confirmed with a supplemental test. For HIV-infected patients, report all results of CD4 and HIV viral load tests

Influenza—by culture, antigen detection by direct fluorescent antibody (DFA)₂ or nucleic acid detection

~~Lead elevated~~ Lead, elevated blood levels—by blood lead level greater than or equal to 10 µg/dL in children ages 0-15 years, or greater than or equal to 25 µg/dL in persons older than 15 years of age

Legionellosis—by culture, antigen detection (including urinary antigen), nucleic acid detection, or serologic results consistent with recent infection

Listeriosis—by culture

Lyme disease—by culture, antigen detection, or detection of antibody confirmed with a supplemental test

Malaria—by microscopic examination, antigen detection, or nucleic acid detection

*Measles (rubeola)—by culture, antigen detection, nucleic acid detection, or serologic results consistent with recent infection

*Meningococcal disease—by culture or antigen detection from a normally sterile site

*Monkeypox—by culture or nucleic acid detection

Mumps—by culture, nucleic acid detection, or serologic results consistent with recent infection

*Mycobacterial diseases—(See 12VAC5-90-225 B) Report any of the following:

1. Acid fast bacilli by microscopic examination;
2. Mycobacterial identification—preliminary and final identification by culture or nucleic acid detection;
3. Drug susceptibility test results for M. tuberculosis.

*Pertussis—by culture, antigen detection, or nucleic acid detection

*Plague—by culture, antigen detection, nucleic acid detection, or serologic results consistent with recent infection

~~*Polio~~ myelitis—by ~~*Polio~~ virus infection—by culture

*Psittacosis—by culture, antigen detection, nucleic acid detection, or serologic results consistent with recent infection

*Q fever—by culture, antigen detection, nucleic acid detection, or serologic results consistent with recent infection

*Rabies, human and animal—by culture, antigen detection by direct fluorescent antibody test, nucleic acid detection, or, for humans only, serologic results consistent with recent infection

~~[Rocky Mountain spotted fever by culture, antigen detection (including immunohistochemical staining), nucleic acid detection, or serologic results consistent with recent infection]~~

*Rubella—by culture, nucleic acid detection, or serologic results consistent with recent infection

Salmonellosis—by culture

*Severe acute respiratory syndrome—by culture, nucleic acid detection, or serologic results consistent with recent infection

Shigellosis—by culture

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*Smallpox (variola)—by culture or nucleic acid detection

[Spotted fever rickettsiosis—by culture, antigen detection (including immunohistochemical staining), nucleic acid detection, or serologic results consistent with recent infection]

Staphylococcus aureus infection, resistant, as defined below.

1. Methicillin-resistant - by antimicrobial susceptibility testing of a Staphylococcus aureus isolate, with a susceptibility result indicating methicillin resistance, cultured from a normally sterile site
2. Vancomycin-intermediate or vancomycin-resistant Staphylococcus aureus infection - by antimicrobial susceptibility testing of a Staphylococcus aureus isolate, with a vancomycin susceptibility result of intermediate or resistant, cultured from a clinical specimen

Streptococcal disease, Group A, ~~invasive~~—by invasive or toxic shock—by culture from a normally sterile site

Streptococcus pneumoniae infection, invasive, in children <5 years of age—by culture from a normally sterile site in a child under the age of five years

*Syphilis—by microscopic examination (including dark field), antigen detection (including direct fluorescent antibody), or serology by either treponemal or nontreponemal methods

Toxic substance-related illness—by blood or urine laboratory findings above the normal range, including but not limited to heavy metals, pesticides, and industrial-type solvents and gases. When applicable and available, report speciation of metals when blood or urine levels are elevated in order to differentiate the chemical species (elemental, organic, or inorganic).

Trichinosis (trichinellosis)—by microscopic examination of a muscle biopsy or serologic results consistent with recent infection

*Tularemia—by culture, antigen detection, nucleic acid detection, or serologic results consistent with recent infection

*Typhoid [~~*Typhoid/paratyphoid~~ *Typhoid/Paratyphoid] fever—by culture

*Vaccinia, disease or adverse event—by culture or nucleic acid detection

*Vibrio infection—by culture

*Viral hemorrhagic fever—by culture, antigen detection (including immunohistochemical staining), nucleic acid detection, or serologic results consistent with recent infection

*Yellow fever—by culture, antigen detection, nucleic acid detection, or serologic results consistent with recent infection

Yersiniosis—by culture, nucleic acid detection, or serologic results consistent with recent infection

C. Reportable diseases requiring rapid communication. Certain of the diseases in the list of reportable diseases, because of their extremely contagious nature or their potential for greater harm, or both, require immediate identification and control. Reporting of persons confirmed or suspected of having these diseases, listed below, shall be made ~~within 24 hours~~ immediately by the most rapid means available, preferably that of telecommunication (e.g., telephone, telephone transmitted facsimile, pagers, etc.) to the local health director or other professional employee of the department. (These same diseases are also identified by an asterisk (*) in subsection A and subsection B, where applicable, of this section.)

Anthrax

Botulism

Brucellosis

Cholera

Diphtheria

Disease caused by an agent that may have been used as a weapon

Haemophilus influenzae infection, invasive

Hepatitis A

~~Influenza~~ Influenza-associated deaths in children <18 years of age

Influenza A, novel virus

Measles (Rubeola)

Meningococcal disease

Monkeypox

Outbreaks, all

Pertussis

Plague

~~Poliomyelitis~~ Poliovirus infection, including poliomyelitis

Psittacosis

Q fever

Rabies, human and animal

Rubella, including congenital rubella syndrome

Severe acute respiratory syndrome (SARS)

- Smallpox (Variola)
- Syphilis, primary and secondary
- Tuberculosis, active disease
- Tularemia
- Typhoid [~~*Typhoid/paratyphoid~~ *Typhoid/Paratyphoid] fever
- Unusual occurrence of disease of public health concern
- Vaccinia, disease or adverse event
- Vibrio infection
- Viral hemorrhagic fever
- Yellow ~~Fever~~ fever

D. Toxic substance-related illnesses. All toxic substance-related illnesses, including pesticide and heavy metal poisoning or illness resulting from exposure to an occupational dust or fiber or radioactive substance, shall be reported.

If such illness is verified or suspected and presents an emergency or a serious threat to public health or safety, the report of such illness shall be by rapid communication as in subsection C of this section.

E. Outbreaks. The occurrence of outbreaks or clusters of any illness which may represent a group expression of an illness which may be of public health concern shall be reported to the local health department by the most rapid means available.

F. Unusual or ill-defined diseases or emerging or reemerging pathogens. Unusual or emerging conditions of public health concern shall be reported to the local health department by the most rapid means available. In addition, the commissioner or his designee may establish surveillance systems for diseases or conditions that are not on the list of reportable diseases. Such surveillance may be established to identify cases (delineate the magnitude of the situation), to identify the mode of transmission and risk factors for the disease, and to identify and implement appropriate action to protect public health. Any person reporting information at the request of the department for special surveillance or other epidemiological studies shall be immune from liability as provided by § 32.1-38 of the Code of Virginia.

12VAC5-90-90. Those required to report.

A. Physicians. Each physician who treats or examines any person who is suffering from or who is suspected of having a reportable disease or condition shall report that person's name, address, age, date of birth, race, sex, and pregnancy status for females; name of disease diagnosed or suspected; the date of onset of illness; and the name, address, and telephone number of the physician and medical facility where the examination was made, except that influenza should be

reported by number of cases only (and type of influenza, if available). Reports are to be made to the local health department serving the jurisdiction where the physician practices. A physician may designate someone to report on his behalf, but the physician remains responsible for ensuring that the appropriate report is made. Any physician, designee, or organization making such report as authorized herein shall be immune from liability as provided by § 32.1-38 of the Code of Virginia.

Such reports shall be made on a form to be provided by the department (Form Epi-1), a computer generated printout containing the data items requested on Form Epi-1, or a Centers for Disease Control and Prevention (CDC) surveillance form that provides the same information and shall be made within three days of the suspicion or confirmation of disease unless the disease in question requires rapid reporting under 12VAC5-90-80 C. Reporting may be done by means of secure electronic transmission upon agreement of the physician and the department.

Pursuant to § 32.1-49.1 of the Code of Virginia, additional elements are required to be reported for individuals with confirmed or suspected active tuberculosis disease. Refer to Part X for details on these requirements.

B. Directors of laboratories. Any person who is in charge of a laboratory conducting business in the Commonwealth shall report any laboratory examination of any clinical specimen, whether performed in-house or referred to an out-of-state laboratory, which yields evidence, by the laboratory method(s) indicated or any other confirmatory test, of a disease listed in 12VAC5-90-80 B.

Each report shall give the source of the specimen and the laboratory method and result; the name, address, age, date of birth, race, sex, and pregnancy status for females (if known) of the person from whom the specimen was obtained; and the name, address, and telephone number of the physician and medical facility for whom the examination was made. When the influenza virus is isolated, the type should be reported, if available. Reports shall be made within three days of identification of evidence of disease, except that those identified by an asterisk shall be reported ~~within 24 hours~~ by the most rapid means available, to the local health department serving the jurisdiction in which the laboratory is located. Reports shall be made on Form Epi-1 or on the laboratory's own form if it includes the required information. Computer generated reports containing the required information may be submitted. Reporting may be done by means of secure electronic transmission upon agreement of the laboratory director and the department. Any person making such report as authorized herein shall be immune from liability as provided by § 32.1-38 of the Code of Virginia.

A laboratory identifying evidence of ~~anthrax, cholera, diphtheria, E. coli O157 infection, invasive H. influenzae infection, listeriosis, meningococcal disease, pertussis,~~

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~~plague, poliomyelitis, salmonellosis, shigellosis, invasive Group A streptococcal disease, yersiniosis, and other diseases as may be requested by the health department, shall notify the health department of the positive culture and submit the initial isolate to the Virginia Division of Consolidated Laboratory Services (DCLS). Stool specimens that test positive for Shiga toxin shall be submitted to DCLS for organism identification. A laboratory identifying Mycobacterium tuberculosis complex (see 12VAC5-90-225) shall submit a representative and viable sample of the initial culture to DCLS or other laboratory designated by the board to receive such specimen. any of the following conditions shall notify the health department of the positive culture and submit the initial isolate to the Virginia Division of Consolidated Laboratory Services (DCLS). All specimens must be identified with the patient and physician information required in this subsection.~~

Anthrax

Brucellosis

Cholera

Diphtheria

E. coli infection, Shiga toxin-producing. (Laboratories that use a Shiga toxin EIA methodology but do not perform simultaneous culture for Shiga toxin-producing E. coli should forward all positive stool specimens or positive broth cultures to DCLS for confirmation and further characterization.)

Haemophilus influenzae infection, invasive

Influenza A, novel virus

Listeriosis

Meningococcal disease

Pertussis

Plague

Poliovirus infection

Q fever

Salmonellosis

Shigellosis

Streptococcal disease, Group A, invasive

Tuberculosis (A laboratory identifying Mycobacterium tuberculosis complex (see 12VAC5-90-225) shall submit a representative and viable sample of the initial culture to DCLS or other laboratory designated by the board to receive such specimen.)

[~~Typhoid~~ Typhoid/Paratyphoid] fever

Vancomycin-intermediate or vancomycin-resistant Staphylococcus aureus infection

Yersiniosis

Other diseases as may be requested by the health department

Laboratories operating within a medical care facility shall be considered to be in compliance with the requirement to notify the health department when the director of that medical care facility assumes the reporting responsibility; however, laboratories are still required to submit isolates to DCLS or other designated laboratory as noted above.

C. Persons in charge of a medical care facility. Any person in charge of a medical care facility shall make a report to the local health department serving the jurisdiction where the facility is located of the occurrence in or admission to the facility of a patient with a reportable disease listed in 12VAC5-90-80 A unless he has evidence that the occurrence has been reported by a physician. Any person making such report as authorized herein shall be immune from liability as provided by § 32.1-38 of the Code of Virginia. The requirement to report shall include all inpatient, outpatient and emergency care departments within the medical care facility. Such report shall contain the patient's name, address, age, date of birth, race, sex, and pregnancy status for females; name of disease being reported; the date of admission; hospital chart number; date expired (when applicable); and attending physician. Influenza should be reported by number of cases only (and type of influenza, if available). Reports shall be made within three days of the suspicion or confirmation of disease unless the disease in question requires rapid reporting under 12VAC5-90-80 C and shall be made on Form Epi-1, a computer generated printout containing the data items requested on Form Epi-1, or a Centers for Disease Control and Prevention (CDC) surveillance form that provides the same information. Reporting may be done by means of secure electronic transmission upon agreement of the medical care facility and the department.

A person in charge of a medical care facility may assume the reporting responsibility on behalf of the director of the laboratory operating within the facility.

D. Persons in charge of a residential or day program, service, or facility licensed or operated by any agency of the Commonwealth, [or a] school, child care center, or summer camp. Any person in charge of a residential or day program, service, or facility licensed or operated by any agency of the Commonwealth, [or a] school, child care center, or summer camp as defined in § 35.1-1 of the Code of Virginia shall report immediately to the local health department the presence or suspected presence in his program, service, facility, school, child care center, or summer camp of ~~children~~ persons who have common symptoms suggesting an epidemic or outbreak situation. Such persons may ~~notify the local health department of~~ report additional information, including individual cases of communicable diseases that occur in their facilities. Any person so reporting shall be

immune from liability as provided by § 32.1-38 of the Code of Virginia.

E. Local health directors. The local health director shall forward any report of a disease or report of evidence of a disease which has been made on a resident of his jurisdiction to the Office of Epidemiology within three days of receipt. This report shall be submitted immediately by ~~telecommunication~~ the most rapid means available if the disease is one requiring rapid communication, as required in 12VAC5-90-80 C. All such rapid reporting shall be confirmed in writing and submitted to the Office of Epidemiology within three days. Furthermore, the local health director shall immediately forward to the appropriate local health director any disease reports on individuals residing in the latter's jurisdiction or to the Office of Epidemiology on individuals residing outside Virginia.

F. Persons in charge of hospitals, nursing facilities or nursing homes, assisted living facilities, and correctional facilities. In accordance with § 32.1-37.1 of the Code of Virginia, any person in charge of a hospital, nursing facility or nursing home, assisted living facility, or correctional facility shall, at the time of transferring custody of any dead body to any person practicing funeral services, notify the person practicing funeral services or his agent if the dead person was known to have had, immediately prior to death, an infectious disease which may be transmitted through exposure to any bodily fluids. These include any of the following infectious diseases:

- Creutzfeldt-Jakob disease
- Human immunodeficiency virus infection
- Hepatitis B
- Hepatitis C
- Monkeypox
- Rabies
- Smallpox
- Syphilis, infectious
- Tuberculosis, active disease
- Vaccinia, disease or adverse event
- Viral hemorrhagic fever

G. Employees, applicants, and persons in charge of food establishments. 12VAC5-421-80 of the Food Regulations requires a food employee or applicant to notify the person in charge of the food establishment when diagnosed with certain diseases that are transmissible through food. 12VAC5-421-120 requires the person in charge of the food establishment to notify the health department. Refer to the appropriate sections of the Virginia Administrative Code for further guidance and clarification regarding these reporting requirements.

Part IV
Control of Disease

12VAC5-90-100. Methods.

The board and commissioner shall use appropriate disease control measures to manage the diseases listed in 12VAC5-90-80 A, including but not limited to those described in the "Methods of Control" sections of the 18th Edition of the Control of Communicable Diseases Manual (2004) published by the American Public Health Association. The board and commissioner reserve the right to use any legal means to control any disease which is a threat to the public health.

When notified about a disease specified in 12VAC5-90-80, the local health director or his designee shall have the authority and responsibility to perform contact tracing/contact services for HIV infection, infectious syphilis, and active tuberculosis disease and may perform contact tracing services for the other diseases if deemed necessary to protect the public health. All contacts of HIV infection shall be afforded the opportunity for appropriate counseling, testing, and individual face-to-face disclosure of their test results. In no case shall names of informants or infected individuals be revealed to contacts by the health department. All information obtained shall be kept strictly confidential.

The local health director or his designee shall review reports of diseases received from his jurisdiction and follow up such reports, when indicated, with an appropriate investigation in order to evaluate the severity of the problem. The local health director or his designee may recommend to any individual or group of individuals appropriate public health control measures, including but not limited to quarantine, isolation, immunization, decontamination, or treatment. He shall determine in consultation with the Office of Epidemiology and the commissioner if further investigation is required and if one or more forms of quarantine and/or isolation will be necessary.

Complete isolation shall apply to situations where an individual is infected with a communicable disease of public health significance (including but not limited to active tuberculosis disease or HIV infection) and is engaging in behavior that places others at risk for infection with the communicable disease of public health significance, in accordance with the provisions of Article 3.01 (§ 32.1-48.02 et seq.) of the Code of Virginia.

Modified isolation shall apply to situations in which the local health director determines that modifications of activity are necessary to prevent disease transmission. Such situations shall include but are not limited to the temporary exclusion of a child with a communicable disease from school, ~~or the temporary prohibition or restriction of any individual or individuals with a communicable disease from engaging in activities that may pose a risk to the health of others, such as using public transportation or performing an occupation such~~

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~~as foodhandling or providing healthcare the temporary exclusion of an individual with a communicable disease from food handling or patient care, the temporary prohibition or restriction of an individual with a communicable disease from using public transportation, the requirement that a person with a communicable disease use certain personal protective equipment, or restrictions of other activities that may pose a risk to the health of others.~~

Protective isolation shall apply to situations such as the exclusion, under § 32.1-47 of the Code of Virginia, of any unimmunized child from a school in which an outbreak, potential epidemic, or epidemic of a vaccine preventable disease has been identified.

To the extent permitted by the Code of Virginia, the local health director may be authorized as the commissioner's designee to implement the forms of isolation described in this section. When these forms of isolation are deemed to be insufficient, the local health director may use the provisions of Article 3.01 (§ 32.1-48.01 et seq.) of the Code of Virginia for the control of communicable diseases of public health significance or, in consultation with the Office of Epidemiology, shall provide sufficient information to enable the commissioner to prepare an order or orders of isolation and/or quarantine under Article 3.02 (§ 32.1-48.05 et seq.) of the Code of Virginia for the control of communicable diseases of public health threat.

12VAC5-90-103. Isolation for communicable disease of public health threat.

A. Application. The commissioner, in his sole discretion, may invoke the provisions of Article 3.02 (§ 32.1-48.05 et seq.) of Chapter 2 of Title 32.1 of the Code of Virginia and may declare the isolation of any individual or individuals upon a determination that:

1. Such individual or individuals are known to have been infected with or are reasonably suspected to have been infected with a communicable disease of public health threat;
2. Exceptional circumstances render the procedures of Article 3.01 (§ 32.1-48.01 et seq.) of Chapter 2 of Title 32.1 of the Code of Virginia to be insufficient, or the individual or individuals have failed or refused to comply voluntarily with the control measures directed by the commissioner in response to a communicable disease of public health threat; and
3. Isolation is the necessary means to contain a communicable disease of public health threat, to ensure that such isolated individual or individuals receive appropriate medical treatment subject to the provisions of § 32.1-44 of the Code of Virginia, or to protect health care providers and others who may come into contact with such infected individual or individuals.

The commissioner, in his sole discretion, may also order the isolation of an affected area if, in addition to the above, the Governor has declared a state of emergency for such affected area of the Commonwealth.

B. Documentation. For isolation for a communicable disease of public health threat, information about the infection or suspected infection, the individual, individuals, and/or affected area, and the nature or suspected nature of the exposure shall be duly recorded by the local health department in consultation with the Office of Epidemiology. This information shall be sufficient to enable documenting a record of findings and to enable the commissioner to prepare the order of isolation, including the information required in § 32.1-48.12 of the Code of Virginia. In addition, sufficient information on individuals shall be maintained by the local health department to enable appropriate follow-up of individuals for health status evaluation and treatment as well as compliance with the order of isolation.

The commissioner shall ensure that the protected health information of any individual or individuals subject to the order of isolation is disclosed only in compliance with state and federal law.

C. Means of isolation. The local health department shall assess the situation, and in consultation with the Office of Epidemiology, identify the least restrictive means of isolation that effectively protects unexposed and susceptible individuals. The place of isolation selected shall allow the most freedom of movement and communication with family members and other contacts without allowing disease transmission to other individuals and shall allow the appropriate level of medical care needed by isolated individuals to the extent practicable. The commissioner, in his sole discretion, may order the isolated individual or individuals to remain in their residences ~~when possible~~, to remain in another place where they are present, or to report to a place or places designated by the commissioner for the duration of their isolation.

The commissioner's order of isolation shall be for a duration consistent with the known period of communicability of the communicable disease of public health threat or, if the course of the disease is unknown or uncertain, for a period anticipated as being consistent with the period of communicability of other similar infectious agents. In the situation where an area is under isolation, the duration of isolation shall take into account the transmission characteristics and known or suspected period of communicability.

D. Delivery. The local health department shall deliver the order of isolation, or ensure its delivery by an appropriate party such as a law-enforcement officer or health department employee, to the affected individual or individuals in person to the extent practicable. If, in the opinion of the commissioner, the scope of the notification would exceed the

capacity of the local health department to ensure individual notification in a timely manner, then print, radio, television, Internet, and/or other available means shall be used to inform those affected.

E. Enforcement. Upon finding that there is probable cause to believe that any individual or individuals who are subject to an order of isolation may fail or refuse to comply with such order, the commissioner in his sole discretion may ~~issue an emergency detention order requiring~~ include in the order a requirement that such individual or individuals are to be taken immediately into custody by law-enforcement agencies and detained for the duration of the order of isolation or until the commissioner determines that the risk of noncompliance is no longer present. For any individual or individuals identified as, or for whom probable cause exists that he may be, in violation of any order of isolation, or for whom probable cause exists that he may fail or refuse to comply with any such order, the enforcement authority directed by the commissioner to law-enforcement agencies shall include but need not be limited to the power to detain or arrest.

Any individual or individuals so detained shall be held in the least restrictive environment that can provide any required health care or other services for such individual. The commissioner shall ensure that law-enforcement personnel responsible for enforcing an order or orders of isolation are informed of appropriate measures to take to protect themselves from contracting the disease of public health threat.

F. Health status monitoring. The local health department shall monitor the health of those under isolation either by regular telephone calls, visits, self-reports, or by reports of caregivers or healthcare providers or by other means.

G. Essential needs. Upon issuance of an order of isolation to an individual or individuals by the commissioner, the local health department shall manage the isolation, in conjunction with local emergency management resources, such that individual essential needs can be met to the extent practicable. Upon issuance of an order of isolation by the commissioner ~~to~~ for an affected area, existing emergency protocols pursuant to Chapter 3.2 (§ 44-146.13 et seq.) of Title 44 of the Code of Virginia shall be utilized for mobilizing appropriate resources to ensure essential needs are met.

H. Appeals. Any individual or individuals subject to an order of isolation or a court-ordered confirmation or extension of any such order may file an appeal of the order of isolation in accordance with the provisions of § 32.1-48.13 of the Code of Virginia. An appeal shall not stay any order of isolation.

I. Release from isolation. Once the commissioner determines that an individual or individuals no longer pose a threat to the public health, the order of isolation has expired,

or the order of isolation has been vacated by the court, the individual or individuals under the order of isolation shall be released immediately. If the risk of an infected individual transmitting the communicable disease of public health threat to other individuals continues to exist, an order of isolation may be developed to extend the restriction prior to release from isolation.

J. Affected area. If the criteria in subsection A of this section are met and an area is known or suspected to have been affected, then the commissioner shall notify the Governor of the situation and the need to order isolation for the affected area during the known or suspected time of exposure. In order for an affected area to be isolated, the Governor must declare a state of emergency for the affected area.

If an order of isolation is issued for an affected area during the known or suspected time of exposure, the commissioner shall cause the order of isolation to be communicated to the individuals residing or located in the affected area. The use of multiple forms of communication, including but not limited to radio, television, internet, and/or other available means, may be required in order to reach the individuals who were in the affected area during the known or suspected time of exposure.

The provisions for documentation, means of isolation, enforcement, health status monitoring, essential needs, and release from ~~isolation/quarantine~~ isolation described above will apply to the isolation of affected areas. Appropriate management of a disease of public health threat for an affected area may require the coordinated use of local, regional, state, and national resources. In specifying one or more affected areas to be placed under isolation, the objective will be to protect as many people as possible using the least restrictive means. As a result, defining the precise boundaries and time frame of the exposure may not be possible, or may change as additional information becomes available. When this occurs, the commissioner shall ensure that the description of the affected area is in congruence with the Governor's declaration of emergency and shall ensure that the latest information is communicated to those in or exposed to the affected area.

12VAC5-90-107. Quarantine.

A. Application. The commissioner, in his sole discretion, may invoke the provisions of Article 3.02 (§ 32.1-48.05 et seq.) of Chapter 2 of Title 32.1 of the Code of Virginia and may order a complete or modified quarantine of any individual or individuals upon a determination that:

1. Such individual or individuals are known to have been exposed to or are reasonably suspected to have been exposed to a communicable disease of public health threat;
2. Exceptional circumstances render the procedures of Article 3.01 (§ 32.1-48.01 et seq.) of Chapter 2 of Title 32.1 of the Code of Virginia to be insufficient, or the

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individual or individuals have failed or refused to comply voluntarily with the control measures directed by the commissioner in response to a communicable disease of public health threat; and

3. Quarantine is the necessary means to contain a communicable disease of public health threat to which an individual or individuals have been or may have been exposed and thus may become infected.

The commissioner, in his sole discretion, may also order the quarantine of an affected area if, in addition to the above, the Governor has declared a state of emergency for such affected area of the Commonwealth.

B. Documentation. For quarantine for a communicable disease of public health threat, information about the infection or suspected infection; the individual, individuals, and/or affected area; and the nature or suspected nature of the exposure shall be duly recorded by the local health department, in consultation with the Office of Epidemiology. This information shall be sufficient to enable documenting a record of findings and enable the commissioner to prepare a written order of quarantine, including the information required in § 32.1-48.09 of the Code of Virginia. In addition, sufficient information on individuals shall be maintained by the local health department to enable appropriate follow-up of individuals for health status evaluation and treatment as well as compliance with the order of quarantine.

The commissioner shall ensure that the protected health information of any individual or individuals subject to the order of quarantine is disclosed only in compliance with state and federal law.

C. Means of quarantine. The local health department shall assess the situation, and in consultation with the Office of Epidemiology, shall recommend to the commissioner the least restrictive means of quarantine that effectively protects unexposed and susceptible individuals. The place of quarantine selected shall allow the most freedom of movement and communication with family members and other contacts without allowing disease transmission to others.

The commissioner, in his sole discretion, may order the quarantined individual or individuals to remain in their residences ~~when possible~~, to remain in another place where they are present, or to report to a place or places designated by the commissioner for the duration of their quarantine.

The commissioner's order of quarantine shall be for a duration consistent with the known incubation period of the communicable disease of public health threat or, if the incubation period is unknown or uncertain, for a period anticipated as being consistent with the incubation period for other similar infectious agents. In the situation where an area is under quarantine, the duration of quarantine shall take into

account the transmission characteristics and known or suspected incubation period.

D. Delivery. The local health department shall deliver the order of quarantine, or ensure its delivery by an appropriate party such as a law-enforcement officer or health department employee, to the affected individual or individuals in person to the extent practicable. If, in the opinion of the commissioner, the scope of the notification would exceed the capacity of the local health department to ensure notification in a timely manner, then print, radio, television, Internet, and/or other available means shall be used to inform those affected.

E. Enforcement. Upon finding that there is probable cause to believe that any individual or individuals who are subject to an order of quarantine may fail or refuse to comply with such order, the commissioner in his sole discretion may ~~issue an emergency detention order requiring~~ include in the order a requirement that such individual or individuals are to be taken immediately into custody by law-enforcement agencies and detained for the duration of the order of quarantine or until the commissioner determines that the risk of and from noncompliance is no longer present. For any individual or individuals identified as, or for whom probable cause exists that he may be, in violation of any order of quarantine, or for whom probable cause exists that he may fail or refuse to comply with any such order, the enforcement authority directed by the commissioner to law-enforcement agencies shall include but need not be limited to the power to detain or arrest.

Any individual or individuals so detained shall be held in the least restrictive environment that can provide any required health care or other services for such individual. The commissioner shall ensure that law-enforcement personnel responsible for enforcing an order or orders of quarantine are informed of appropriate measures to take to protect themselves from contracting the disease of public health threat.

F. Health status monitoring. The local health department shall monitor the health of those under quarantine either by regular telephone calls, visits, self-reports, or by reports of caregivers or healthcare providers or by other means. If an individual or individuals develop symptoms compatible with the communicable disease of public health threat, then 12VAC5-90-103 would apply to the individual or individuals.

G. Essential needs. Upon issuance of an order of quarantine to an individual or individuals by the commissioner, the local health department shall manage the quarantine, in conjunction with local emergency management resources, such that individual essential needs can be met to the extent practicable. Upon issuance of an order of quarantine by the commissioner ~~to~~ for an affected area, existing emergency protocols pursuant to Chapter 3.2 (§ 44-146.13 et seq.) of Title 44 of the Code of Virginia shall be utilized for

mobilizing appropriate resources to ensure essential needs are met.

H. Appeals. Any individual or individuals subject to an order of quarantine or a court-ordered confirmation or extension of any such order may file an appeal of the order of quarantine in accordance with the provisions of § 32.1-48.10 of the Code of Virginia. An appeal shall not stay any order of quarantine.

I. Release from quarantine. Once the commissioner determines that an individual or individuals are ~~determined to~~ no longer be at risk of becoming infected and pose no risk of transmitting the communicable disease of public health threat to other individuals, the order of quarantine has expired, or the order of quarantine has been vacated by the court, the individuals under the order of quarantine shall be released immediately. If the risk of an individual becoming infected and transmitting the communicable disease of public health threat to other individuals continues to exist, an order of quarantine may be developed to extend the restriction prior to release from quarantine.

J. Affected area. If the criteria in subsection A of this section are met and an area is known or suspected to have been affected, then the commissioner shall notify the Governor of the situation and the need to order quarantine for the affected area. In order for an affected area to be quarantined, the Governor must declare a state of emergency for the affected area.

If an order of quarantine is issued for an affected area, the commissioner shall cause the order of quarantine to be communicated to the individuals residing or located in the affected area. The use of multiple forms of communication, including but not limited to radio, television, Internet, and/or other available means, may be required in order to reach the individuals who were in the affected area during the known or suspected time of exposure.

The provisions for documentation, means of ~~isolation quarantine~~, enforcement, health status monitoring, essential needs, and release from quarantine described above will apply to the quarantine of affected areas. Appropriate management of a disease of public health threat for an affected area may require the coordinated use of local, regional, state, and national resources. In specifying one or more affected areas to be placed under quarantine, the objective will be to protect as many people as possible using the least restrictive means. As a result, defining the precise boundaries and time frame of the exposure may not be possible, or may change as additional information becomes available. When this occurs, the commissioner shall ensure that the description of the affected area is in congruence with the Governor's declaration of emergency and shall ensure that the latest information is communicated to those in or exposed to the affected area.

Part V

Immunization of ~~Children~~ Persons Less Than 18 Years of Age

12VAC5-90-110. Dosage and age requirements for immunizations; obtaining immunizations.

A. Every ~~child person~~ in Virginia less than 18 years of age shall be immunized ~~against the following diseases by receiving the specified number of doses of vaccine by the specified ages, unless replaced by a revised schedule of the U.S. Public Health Service; in accordance with the most recent Immunization Schedule developed and published by the Centers for Disease Control and Prevention (CDC), Advisory Committee on Immunization Practices (ACIP), the American Academy of Pediatrics (AAP), and the American Academy of Family Physicians (AAFP). Requirements for school and day care attendance are addressed in 12VAC5-110.~~

1. ~~Diphtheria, Tetanus, and Pertussis Vaccine—three doses by one year of age of toxoids of diphtheria and tetanus, combined with pertussis vaccine with the remaining two doses administered in accordance with the most recent schedule of the American Academy of Pediatrics or the U.S. Public Health Service.~~

2. ~~Poliomyelitis Vaccine, trivalent type—three doses of inactivated poliomyelitis vaccine, preferably by one year of age and no later than 18 months of age. Attenuated (live virus) oral polio vaccine may be used if the attending physician feels it is clinically appropriate for a given patient.~~

3. ~~Measles (Rubeola) Vaccine—one dose of further attenuated (live virus) measles vaccine between 12-15 months of age and no later than two years of age. A second dose shall also be required at the time of initial entry to school. For those children who did not receive a second dose at initial school entry, a second dose shall be required at the time of entry to grade six.~~

4. ~~Rubella Vaccine—one dose of attenuated (live virus) rubella vaccine between 12-15 months of age and no later than two years of age.~~

5. ~~Mumps Vaccine—one dose of attenuated (live virus) mumps vaccine between 12-15 months of age and no later than two years of age.~~

6. ~~Haemophilus influenzae type b (Hib) Vaccine—a maximum of four doses of Hib vaccine for children up to 30 months of age as appropriate for the child's age and in accordance with current recommendations of either the American Academy of Pediatrics or the U.S. Public Health Service.~~

7. ~~Hepatitis B Vaccine—three doses by 12 months of age and no later than 18 months of age. For children not receiving three doses by 18 months of age, three doses will~~

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~~be required at initial school entry for all children born on or after January 1, 1994. Since July 1 2001, all children who have not received a complete series of hepatitis B vaccine are required to receive such immunization prior to entering the sixth grade.~~

~~8. Varicella (Chickenpox) Vaccine — one dose of varicella vaccine between 12-18 months of age. For those children who did not receive a dose of vaccine between 12-18 months of age, a dose will be required at initial school entry.~~

B. The required immunizations may be obtained from a physician licensed to practice medicine or from the local health department.

Part VI Venereal Disease

12VAC5-90-130. Prenatal testing.

Every physician [, physician assistant, or nurse practitioner] attending a pregnant patient during gestation shall examine and test such patient for syphilis, ~~and~~ hepatitis B surface antigen (HBsAg), and any other sexually transmitted disease as clinically indicated within 15 days after beginning such attendance. A second prenatal test for syphilis and HBsAg shall be conducted at the beginning of the third trimester (28 weeks) for patients who are at higher risk for these diseases. Persons at higher risk for syphilis include those who have had multiple sexual partners within the previous year ~~and~~ those with any prior history of a sexually transmitted disease, and those living in communities and populations in which the prevalence of syphilis is high. Persons at higher risk for hepatitis B virus infection include injecting drug users and those with personal contact with a hepatitis B patient, multiple sexual partners, and/or occupational exposure to blood. If the patient first seeks care during the third trimester, only one test shall be required. As a routine component of prenatal care, every licensed practitioner who renders prenatal care, including any holder of a multistate licensure privilege to practice nursing, regardless of the site of such practice, shall ~~advise every pregnant patient of the value of testing for human immunodeficiency virus (HIV) infection and shall request of each pregnant patient consent to such testing~~ inform every pregnant patient that human immunodeficiency virus (HIV) screening is recommended for all pregnant patients and that she will receive an HIV test as part of the routine panel of prenatal tests unless she declines (opt-out screening). The practitioner shall offer the pregnant patient oral or written information that includes an explanation of HIV infection, a description of interventions that can reduce HIV transmission from mother to infant, and the meaning of positive and negative test results. The confidentiality provisions of § 32.1-36.1 of the Code of Virginia, ~~the informed consent stipulations, and the~~ test result disclosure conditions; and appropriate counseling requirements of § 32.1-37.2 of the

Code of Virginia shall apply to any HIV testing conducted pursuant to this section. The Centers for Disease Control and Prevention (CDC) recommends a second HIV test for patients who receive health care in jurisdictions with elevated incidence of HIV or AIDS among women aged 15 through 45 years, which includes Virginia. Practitioners should offer a second HIV test during the third trimester to all pregnant patients. Practitioners shall counsel all pregnant patients with HIV-positive test results about the dangers to the fetus and the advisability of receiving treatment in accordance with the then current Centers for Disease Control and Prevention CDC recommendations for HIV-positive pregnant patients. Any pregnant patient shall have the right to refuse ~~consent to~~ testing for HIV infection and any recommended treatment. Documentation of such refusal shall be maintained in the patient's medical record. ~~Every physician should also examine and test a pregnant patient for any sexually transmitted disease as clinically indicated.~~

Part VII

Prevention of Blindness from Ophthalmia Neonatorum

12VAC5-90-140. Procedure for preventing ophthalmia neonatorum.

The physician [, nurse,] or midwife in charge of the infant's care after delivery of a baby shall ~~install~~ ensure that one of the following is administered in each eye of that newborn baby as soon as possible after birth ~~one of the following:~~ (i) two drops of a 1.0% silver nitrate solution; (ii) ~~two drops of a 1.0% tetracycline ophthalmic solution;~~ (iii) ~~one quarter inch or an excessive amount~~ a 1-cm ribbon of 1.0% tetracycline ophthalmic ointment; or (iv) ~~one quarter inch or an excessive amount~~ (iii) a 1-cm ribbon of 0.5% erythromycin ophthalmic ointment. This treatment shall be recorded in the medical record of the infant.

Part X

Tuberculosis Control

12VAC5-90-225. Additional data to be reported related to persons with active tuberculosis disease (confirmed or suspected).

A. Physicians and directors of medical care facilities are required to submit all of the following:

1. An initial report to be completed when there are reasonable grounds to suspect that a person has active TB disease, but no later than when antituberculosis drug therapy is initiated. The reports must include the following: the affected person's name; age; date of birth; gender; address; pertinent clinical, radiographic, microbiologic and pathologic reports, whether pending or final; such other information as may be needed to locate the patient for follow-up; and name, address, and telephone number of the treating physician.

2. A secondary report to be completed simultaneously or within one to two weeks following the initial report. The report must include: the date and results of tuberculin skin test (TST); the date and results of the initial and any follow-up chest radiographs; the dates and results of bacteriologic or pathologic testing, the antituberculosis drug regimen, including names of the drugs, dosages and frequencies of administration, and start date; the date and results of drug susceptibility testing; HIV status; contact screening information; and name, address, and telephone number of treating physician.

3. Subsequent reports are to be made when updated information is available. Subsequent reports are required when: clinical status changes, the treatment regimen changes; treatment ceases for any reason; or there are any updates to laboratory results, treatment adherence, name, address, and telephone number of current provider, patient location or contact information, or other additional clinical information.

4. Physicians and/or directors of medical care facilities responsible for the care of a patient with active tuberculosis disease are required to develop and maintain a written treatment plan. This plan must be in place no later than the time when antituberculosis drug therapy is initiated. Patient adherence to this treatment plan must be documented. The treatment plan and adherence record are subject to review by the local health director or his designee at any time during the course of treatment.

5. The treatment plan for the following categories of patients must be submitted to the local health director or his designee for approval no later than the time when antituberculosis drug therapy is started or modified:

a. For individuals who are inpatients or incarcerated, the responsible provider or facility must submit the treatment plan for approval prior to discharge or transfer.

b. Individuals, whether inpatient, incarcerated, or outpatient, who also have one of the following conditions:

- (1) HIV infection.
- (2) Known or suspected active TB disease resistant to rifampin, rifabutin, rifapentine or other rifamycin with or without resistance to any other drug.
- (3) A history of prior treated or untreated active TB disease, or a history of relapsed active TB disease.
- (4) A demonstrated history of nonadherence to any medical treatment regimen.

B. Laboratories are required to submit the following:

1. Results of smears that are positive for acid fast bacilli.

2. Results of cultures positive for any member of the ~~M. Mycobacterium~~ tuberculosis complex (i.e., M. tuberculosis, M. bovis, M. africanum) or any other mycobacteria.

3. Results of rapid methodologies, including acid hybridization or nucleic acid amplification, which are indicative of M. tuberculosis complex or any other mycobacteria.

~~4. In order to ensure susceptibility testing, laboratories~~
Results of tests for antimicrobial susceptibility performed on cultures positive for tubercle bacilli.

~~5. Laboratories, whether testing is done in-house or referred to an out-of-state laboratory, shall submit a representative and viable sample of the initial culture positive for any member of the M. tuberculosis complex to the Virginia Division of Consolidated Laboratory Services or other laboratory designated by the board to receive such specimen. This requirement may be fulfilled by the submission of a report of antimicrobial drug susceptibility testing performed on the specimen. The intention to file a written report in lieu of sample submission shall be communicated by the laboratory at the time the finding of a positive culture is initially communicated.~~

~~5. Laboratories that submit a written susceptibility report in lieu of sample submission are still strongly encouraged to submit a viable, representative sample for each patient in whom one or more cultures are positive for any member of the M. tuberculosis complex for additional testing, if needed.~~

Part XIII

Report of Healthcare-Associated Infections

12VAC5-90-370. Reporting of healthcare-associated infections.

~~A. Definitions. The following words and terms when used in this part shall have the following meanings unless the context clearly indicates otherwise:~~

~~"Acute care hospital" means a hospital as defined in § 32.1-123 of the Code of Virginia that provides medical treatment for patients having an acute illness or injury or recovering from surgery.~~

~~"Adult" means a person 18 years of age or more.~~

~~"Central line associated bloodstream infection" means a primary bloodstream infection identified by laboratory tests, with or without clinical signs or symptoms, in a patient with a central line device, and meeting the current Centers for Disease Control and Prevention (CDC) surveillance definition for laboratory-confirmed primary bloodstream infection.~~

~~"Central line device" means a vascular infusion device that terminates at or close to the heart or in one of the greater vessels. The following are considered great vessels for the~~

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~~purpose of reporting central line infections and counting central line days: aorta, pulmonary artery, superior vena cava, inferior vena cava, brachiocephalic veins, internal jugular veins, subclavian veins, external iliac veins, and common femoral veins.~~

~~"Healthcare-associated infection" (or nosocomial infection) means a localized or systemic condition resulting from an adverse reaction to the presence of an infectious agent(s) or its toxin(s) that (i) occurs in a patient in a healthcare setting (e.g., a hospital or outpatient clinic), (ii) was not found to be present or incubating at the time of admission unless the infection was related to a previous admission to the same setting, and (iii) if the setting is a hospital, meets the criteria for a specific infection site as defined by CDC.~~

~~"National Healthcare Safety Network" (NHSN) means a surveillance system created by the CDC for accumulating, exchanging and integrating relevant information on infectious adverse events associated with healthcare delivery.~~

~~B. A.~~ Reportable infections and method and timing of reporting.

1. Acute care hospitals shall collect data on the following healthcare-associated infection in the specified patient population: central line-associated bloodstream infections in adult intensive care units, including the number of central-line days in each population at risk, expressed per 1,000 catheter-days.

2. All acute care hospitals with adult intensive care units shall (i) participate in CDC's National Healthcare Safety Network by July 1, 2008, (ii) submit data on the above named infection to the NHSN according to CDC protocols and ensure that all data from July 1, 2008, to December 31, 2008, are entered into the NHSN by January 31, 2009, and (iii) ~~enter data~~ ensure accurate and complete data are available quarterly thereafter according to a schedule established by the department.

3. All acute care hospitals reporting the information noted above shall authorize the department to have access to hospital-specific data contained in the NHSN database.

~~C. B.~~ Liability protection and data release. Any person making such report as authorized herein shall be immune from liability as provided by § 32.1-38 of the Code of Virginia. Infection rate data may be released to the public by the department upon request. Data shall be aggregated to ensure that no individual patient may be identified.

VA.R. Doc. No. R09-1657; Filed February 2, 2011, 10:30 a.m.

GENERAL NOTICES/ERRATA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice of Intent to Approve Use of Virginia Aquatic Resources Trust Fund as a Form of Compensatory Mitigation Under 9VAC25-210

Pursuant to § 62.1-44.15:20-23 of the Code of Virginia and 9VAC25-210-116 D, the State Water Control Board (board) is giving notice of its intent to sign and approve the new enabling instrument of the Virginia Aquatic Resources Trust Fund (Fund), one of several acceptable forms of compensatory mitigation for permitted impacts to state waters, including wetlands, after considering public comment for a 30-day period starting March 1, 2011. In July 2008, the Army Corps of Engineers (the Corps) and the Environmental Protection Agency (EPA) jointly released the Federal Mitigation Rule, which provides a framework for all types of wetland and stream compensation associated with the Clean Water Act Section 404 and Rivers & Harbors Act Section 10 permits. Currently, The Nature Conservancy (TNC) is the sponsor of the Virginia Aquatic Resources Trust Fund (VARTF), an existing in-lieu fee (ILF) program, which has been in operation in the Commonwealth of Virginia since 1995, in accordance with a Memorandum of Understanding (MOU) between TNC and the Corps, and as amended in 2003. The Department of Environmental Quality has participated on an interagency team with the Corps, EPA, TNC, the U.S. Fish & Wildlife Service (USFWS), and the National Oceanic & Atmospheric Administration (NOAA) to develop a new enabling instrument. The purpose of this new instrument is to establish guidelines, responsibilities, and standards for the establishment, use, operation, and maintenance of the Fund in a way that brings the existing Fund into compliance with the Mitigation Rule (33 CFR Part 332) governing compensatory mitigation for activities authorized by Corps permits and that complies with State Water Control Law and the Virginia Water Protection Permit program.

The new instrument satisfies the requirements set forth in 9VAC25-210 116 D, including: dedication to the achievement of no net loss of wetland acreage and function and stream function; consultation with the board on site selection; provision of annual reports detailing contributions by watershed; and a mechanism to establish fee amounts. The board proposes to approve the Fund enabling instrument, allowing its continued use as a compensatory mitigation option for a five-year period, ending April 30, 2016. DEQ's approval will remain in effect until April 30, 2016 provided that the conditions of the enabling instrument are met. Subsequent approval of the Fund shall be made by letter, following a 30-day public comment period. The draft enabling instrument is available on DEQ's website at <http://www.deq.virginia.gov/wetlands/publicnotices.html> or by calling or emailing David L. Davis, DEQ Office of Wetlands & Water Protection beginning February 28, 2011.

This notice coincides with a similar public notice by the Corps located on their public notice website at <http://www.nao.usace.army.mil/technical%20services/Regulatory%20branch/PN/PN.asp>. Written comments, including those by email, must be received no later than 4 p.m. on March 30, 2011, and should be submitted to David L. Davis at the address given below. Comments to either notice should be copied to both agencies and will considered comments to both public notices. Only those comments received within the comment period will be considered by the board. Written comments shall include the name, address, and telephone number of the writer, and shall contain a complete, concise statement of the factual basis for comments.

Contact Information: David L. Davis, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4105, or email dave.davis@deq.virginia.gov.

Restore Water Quality in Bull Creek, Buchanan County, Virginia

Announcement of an effort to restore water quality in Bull Creek, Buchanan County, Virginia and the South Fork Pound River, Wise County, Virginia.

Public meeting location: Virginia Department of Mines, Minerals, and Energy (DMME), Buchanan Smith Building, 3405 Mountain Empire Road, Big Stone Gap, Virginia, on Tuesday, March 8, 2011, from 7 p.m. to 9 p.m.

Purpose of notice: To seek public comment and announce a public meeting on modifications to water quality improvement studies by the Virginia Department of Environmental Quality (DEQ), the Department of Conservation and Recreation, and DMME for the two coalfield streams.

Meeting description: Public meeting on modifications to studies to restore water quality.

Description of study: DEQ has been working to identify sources of pollutants affecting the aquatic organisms in the waters of Bull Creek and the South Fork Pound River.

Bull Creek is in Buchanan County and flows along Route 609 to Levisa Fork downstream of Grundy, Virginia. The impaired stream segments are estimated to be approximately 16.9 miles including Bull Creek, from the headwaters to the confluence with Levisa Fork, and all tributaries; Belcher Branch, Deel Fork, Burnt Poplar Branch, Big Branch, Starr Branch, Jess Fork, and Convict Hollow. The stream is impaired for failing to meet the aquatic life use based on violations of the general standard for aquatic organisms.

The South Fork Pound River flows along Route 671 and confluences with the North Fork Pound River in the Town of Pound along Business 23. The impaired stream segments are estimated to total approximately 7.64 miles. The stream is

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impaired for failing to meet the aquatic life use based on violations of the general standard for aquatic organisms.

During the studies the pollutants impairing the aquatic community were identified and total maximum daily loads (TMDLs) developed for the impaired waters. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, contamination levels must be reduced to the TMDL amount. Before the TMDL is submitted to EPA for final approval, modifications to the TMDL's pollution allocations are being made to the studies.

How a decision is made: The development of a TMDL includes public meetings and public comment periods once the study report is drafted. After public comments have been considered and addressed, DEQ will submit the TMDL report to the U.S. Environmental Protection Agency for approval.

How to comment: DEQ accepts written comments by email, fax, or postal mail. Written comments should include the name, address, and telephone number of the person commenting and be received by DEQ during the comment period, February 28, 2011, to March 30, 2011. DEQ also accepts written and oral comments at the public meeting announced in this notice.

To review draft TMDL reports: The draft TMDL reports on the impaired waters are available after February 28, 2011 from the contact below or on the DEQ website at www.deq.virginia.gov/tmdl.

Contact for additional information: Allen Newman, Department of Environmental Quality, Southwest Regional Office, 355 Deadmore Street, P.O. Box 1688, Abingdon, VA 24212-1688, telephone (276) 676-4800, FAX (276) 676-4899, or email allen.newman@deq.virginia.gov.

Restore Water Quality in the Little River Watershed

Public meeting: Jessie Peterman Memorial Library in Floyd, Virginia on Wednesday, March 16, 2011, from 6:30 p.m. to 8:30 p.m. Directions: From Route 8 in Floyd, turn on to Rt. 221/West Main Street. The library will be on your left. Address: 321 West Main Street, Floyd, VA 24091.

Purpose of notice: The Virginia Department of Environmental Quality (DEQ) announces a public meeting to discuss a study to restore water quality in the Little River watershed.

Description of study: Virginia agencies are working to identify sources of bacteria, temperature and biological impairment (general standard) in the Little River watershed. The general standard indicates the water quality does not support a natural aquatic invertebrate community.

The following is the impaired stream, the length of the impaired segment, location, and the reason for the impairment: Little River, 42.71 miles, Floyd, Montgomery and Pulaski Counties, bacteria; Little River Reservoir, 60.44

acres, Pulaski and Montgomery Counties, bacteria; Little River, 16.99 miles, Montgomery County, general standard (aquatic invertebrate community); Meadow Creek, 4.49 miles, Montgomery County, bacteria; Mill Creek, Poplar Branch, unnamed tributaries to Mill Creek, 15.25 miles, Montgomery County, bacteria; Brush Creek, 5.76 miles, Montgomery County, bacteria; Little River, 33.55 miles, Floyd County, temperature and bacteria; Meadow Run, 3.70 miles, Floyd County, bacteria and general standard (aquatic invertebrate community); Pine Creek, 3.68 miles, Floyd County, bacteria and temperature; Laurel Creek, 3.26 miles, Floyd County, bacteria; Dodd Creek and West Fork Dodd Creek, 15.41 miles, Floyd County, bacteria; Dodd Creek, 6.28 miles, Floyd County, temperature; West Fork Dodd Creek, 1.17 miles, Floyd County, temperature; Big Indian Creek, 7.56 miles, Floyd County, temperature.

DEQ, in cooperation with the Virginia Department of Conservation and Recreation, Virginia Department of Health, and Skyline Soil and Water Conservation District, developed a total maximum daily load (TMDL) for the impaired waters. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, contamination levels have to be reduced to the TMDL amount.

How to comment: DEQ accepts written comments by email, fax, or postal mail. Written comments should include the name, address, and telephone number of the person commenting and be received by April 15, 2011. DEQ also accepts written and oral comments at the public meeting announced in this notice.

Contact for additional information: Mary Dail, Virginia Department of Environmental Quality, Blue Ridge Regional Office, 3019 Peters Creek Road, Roanoke, VA 24019, telephone (540) 562-6715, FAX (540) 562-6725, or email mary.dail@deq.virginia.gov.

Revised Notice of Bacteria TMDL Modification of James River and Tributaries - Lower Piedmont Region in Goochland, Fluvanna, Louisa, Powhatan, and Cumberland Counties, Virginia

The Department of Environmental Quality (DEQ) seeks public comment from interested persons on proposed minor modifications of the total maximum daily loads (TMDLs) developed for impaired segments: Byrd Creek, Beaverdam Creek Fine Creek, and the James River (segments upper H33R-01 and lower H38R-04).

A total maximum daily load of E. coli was developed to address the bacterial impairments in the waterways and counties mentioned above. This TMDL was approved by the Environmental Protection Agency on June 11, 2008. The report is available at: <http://www.deq.virginia.gov/tmdl/apptmdls/jamesrvr/jmsgrp2.pdf>. DEQ seeks written

comments from interested persons on 27 minor modifications for this TMDL.

Five modifications are proposed for the Byrd Creek TMDL. Modifications one through three are to add domestic dischargers (VAG408275, VAG408281, and VAG408344), which are single family home facilities with a design flow each of 0.001 million gallons per day (MGD). Facility VAG408275 discharges to Byrd Creek Un-named Tributary (UT), and both facilities; VAG408281 and VAG408344 discharge to Phils Creek UT. All three tributaries lie within the Byrd Creek drainage. Based on the design flow at the standard, these permits each should have a waste load allocation (WLA) of $1.74\text{E}+09$ colony forming units per year (cfu/yr) for E. coli in the Byrd Creek TMDL. DEQ proposes to subtract the combined load of these permits from the future growth load. Modifications four and five are to remove the WLAs for domestic dischargers VAG406343 and VAG406346, which both discharge to Venable Creek UT in the Byrd Creek drainage. These two facilities are no longer in operation. DEQ proposes to add the combined load of these two permits, which were each given a WLA of $1.74\text{E}+09$ cfu/year in the Byrd Creek TMDL, to the future growth load. The final revised future growth load as a result of these five modifications will equal $9.40\text{E}+10$ cfu/year. The proposed changes for the Byrd Creek TMDL are equal to $<1.0\%$.

Two modifications are proposed for the Beaverdam Creek TMDL. First, DEQ proposes to remove facility Huguenot Academy (VA0063037), which should not have been given a waste load allocation (WLA) in the Beaverdam Creek TMDL because it lies in the Fine Creek drainage. The WLA of $6.96\text{E}+09$ (cfu/yr) E. coli based on a maximum discharge of 0.004 MGD will be added to the future growth load for the Beaverdam Creek TMDL. Second, DEQ proposes to add a new WLA, Oilville Waste Water Treatment Plant (WWTP) (VA0092428), which is a municipal facility with a maximum discharge of 0.3 MGD, by subtracting from the future growth load of Beaverdam Creek. The WLA to be assigned to this facility based on design flow at the standard is equal to $5.23\text{E}+11$ (cfu/yr) E. coli. The revised future growth load in Beaverdam Creek as a result of both modifications will be $2.20\text{E}+12$ (cfu/yr). The proposed changes for the Beaverdam Creek TMDL are equal to $<1.0\%$.

One modification is proposed for the Fine Creek TMDL, which is to add a WLA for discharger Huguenot Academy (VA0063037), originally allocated to Beaverdam Creek by mistake. A WLA of $6.96\text{E}+09$ (cfu/yr) E. coli will be assigned to the facility from the future growth load of Fine Creek. The revised future growth load in Fine Creek as a result of this modification will be $2.96\text{E}+10$ (cfu/yr). The proposed changes for the Fine Creek TMDL are equal to $<1.0\%$.

Eleven modifications are proposed for the upper James River (H33R-01) segment. The previous total WLA for the James

River upper segment, $3.54\text{E}+11$ cfu/yr E. coli, was an incorrect total. DEQ proposes to change this number to $3.49\text{E}+11$ cfu/yr, which is the correct total WLA for the James River upper segment. The correction of the James River upper segment total WLA affects no other allocations in the TMDL and is equal to $<1.0\%$. The second and third modifications are to remove the WLAs for domestic dischargers VAG406343 and VAG406346, which are no longer operating permits. These two permits were once authorized to discharge to Venable Creek UT (in Byrd Creek drainage). DEQ proposes to add the combined load of these permits, which were each given a WLA of $1.74\text{E}+09$ cfu/year E. coli in the upper James River (H33R-01) segment TMDL, to the future growth load. Modifications four through eleven for the upper James River (H33R-01) segment include the addition of eight domestic dischargers (VAG404226, VAG404262, VAG404276, VAG404277, VAG406347, VAG408275, VAG408281, and VAG408344) with a maximum discharge of 0.001 MGD each. VAG404226 discharges to Maple Swamp Creek UT in the upper James River segment drainage, both VAG404262 and VAG404276 discharge to Stegers Creek UT in the upper James River segment drainage, VAG404277 discharges to Horsepen Branch UT in the upper James River segment drainage, VAG406347 discharges to the Venable Creek UT in the Byrd Creek drainage, VAG408275 discharges to Byrd Creek UT in the Byrd Creek drainage, and both VAG408281 and VAG408344 discharge to Phils Creek UT in the Byrd Creek drainage. Based on the design flow at the standard, these permits each should have a WLA of $1.74\text{E}+09$ (cfu/yr) for E. coli in the upper James River (H33R-01) segment TMDL. DEQ proposes a WLA of $1.74\text{E}+09$ (cfu/yr) be assigned to each discharger, subtracted from the future growth for the James River upper segment. The revised future growth as a result of these eleven modifications will be $2.72\text{E}+11$ (cfu/yr). The proposed changes for the upper James River (H33R-01) TMDL are equal to $<1.0\%$.

Eight modifications are proposed for the lower James River (H38R-04) TMDL. The first and second modifications are to remove the WLAs for domestic dischargers VAG406343 and VAG406346, which are no longer operating permits. These two permits were once authorized to discharge to Venable Creek UT (in Byrd Creek drainage). DEQ proposes to add the combined load of these permits, which were each given a WLA of $1.74\text{E}+09$ cfu/year E. coli in the lower James River (H38R-04) TMDL, to the future growth load. Modifications three through eight for the lower James River (H38R-04) segment include the addition of six domestic dischargers (VAG404262, VAG404276, VAG404277, VAG408275, VAG408281, and VAG408344) with a maximum discharge of 0.001 MGD each. Based on the design flow at the standard, these permits each should have a WLA of $1.74\text{E}+09$ (cfu/yr) for E. coli in the TMDL. DEQ proposes a WLA of $1.74\text{E}+09$ (cfu/yr) be assigned to each discharger, subtracted from the future growth load for the James River lower

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segment. The revised future growth as a result of these eight modifications will be 6.53E+12 (cfu/yr) for the lower James River segment. The proposed changes for the lower James River (H38R-04) TMDL are equal to <1.0%.

The proposed WLA changes above will neither cause nor contribute to the nonattainment of the James River basin. **The public comment period for these modifications will end on March 30, 2011.** Please send comments to Margaret Smigo, Department of Environmental Quality, Piedmont Regional Office, 4969-A Cox Road, Glen Allen, VA 23060, by email at margaret.smigo@deq.virginia.gov, or by FAX (Attn: Margaret Smigo) at (804) 527-5106. Following the comment period, a modification letter and any comments received will be sent to EPA for approval.

Total Maximum Daily Loads for Banister River, Bearskin Creek, Cherrystone Creek, Polecat Creek, Stinking River, Sandy Creek, and Whitethorn Creek

The Department of Environmental Quality (DEQ) and the Department of Conservation and Recreation (DCR) seek written and oral comments from interested persons on the development of an implementation plan (IP) for bacteria total maximum daily loads (TMDLs) on a 11.67 mile stream segment of the Upper Banister River, 9.31 mile segment of Bearskin Creek, 8.44 mile segment of Cherrystone Creek, 8.99 mile segment of Stinking Creek, and 0.82 mile segment of Whitethorn Creek all tributaries to the Bannister River in the Roanoke River Basin, Pittsylvania County. The TMDL study for these stream impairments were completed in September 2007 and can be found in the bacteria TMDLs for Banister River, Bearskin Creek, Cherrystone Creek, Polecat Creek, Stinking River, Sandy Creek, and Whitethorn Creek Watersheds study report on DEQ's website at <http://www.deq.virginia.gov/tmdl/apptmdls/roankvr/banister.pdf>.

Section 62.1-44.19:7 C of the Code of Virginia requires the development of an IP for approved TMDLs. The IP should provide measurable goals and the date of expected achievement of water quality objectives. The IP should also include the corrective actions needed and their associated costs, benefits, and environmental impacts.

The first public meetings to discuss the development of the IP for the bacteria TMDLs will be held on Thursday, March 3, 2011, at 7 p.m. at the Chatham Middle School at 11650 U.S. Highway 29 North, in Chatham, Virginia. At this meeting, development of the implementation plan will be discussed and citizens will learn how they can be part of the public participation process.

The 30-day public comment period on the information presented at the meeting will end on April 2, 2011. A fact sheet on the development of the IP is available upon request. Questions or information requests should be addressed to Charles Lunsford with the Virginia Department of

Conservation and Recreation. Written comments and inquiries should include the name, address, and telephone number of the person submitting the comments and should be sent to Charles Lunsford, Department of Conservation and Recreation, 203 Governor Street, Richmond, VA 23219, email address: charles.lunsford@dcr.virginia.gov, telephone (804) 786-3199.

Total Maximum Daily Load for Upper Onancock Creek

Purpose of notice: To seek public comment on an amendment for the Upper Onancock Creek total maximum daily load (TMDL), Accomack County, Virginia from the Department of Environmental Quality.

First Public Notice Issue Date: February 28, 2011.

Amendment to Onancock Creek TMDL: Total maximum daily loads (TMDLs) have been developed for bacteria to address recreational uses in Upper Onancock Creek. This TMDL was approved by the Environmental Protection Agency on August 2, 2006, and can be found at the following website:

<http://www.deq.virginia.gov/tmdl/apptmdls/shellfish/onancock.pdf>. DEQ proposes to revise the TMDL to accommodate an error that was found in the original TMDL accounting used to calculate Onancock Creek's water quality TMDL allocations. The revised TMDL will be changed to accommodate a flow tier of 750,000 gallons per day for the previously permitted facility, Town of Onancock WWTP VA0021253, which as a higher number reflects the correct permitted inputs into the stream. Updating the allocations and stated sections in the Onancock Creek bacteria TMDL in accordance with this memo will protect and preserve water quality because they will replace the original and incorrect TMDL. Downstream TMDLs will not be affected because they were calculated assuming all input tributaries were achieving water quality standards.

How to comment and/or request a public meeting: DEQ accepts comments and requests for public meeting by email, FAX, or postal mail. All comments and requests must be in writing and be received by DEQ during the comment period. Submittals must include the names, mailing addresses, and telephone numbers of the commenter/requester and of all persons represented by the commenter/requester. If there is a request for public meeting, it must also include: 1) The reason why a public meeting is requested. 2) A brief, informal statement regarding the nature and extent of the interest of the requester or of those represented by the requester, including how and to what extent such interest would be directly and adversely affected by the permit. 3) Specific references, where possible, to terms and conditions of the permit with suggested revisions. DEQ may hold a public meeting, including another comment period, if public response is significant and there are substantial, disputed issues relevant

to the TMDL. This public comment period will conclude 30 days following the first public notice issue date, on March 30, 2011.

Contact for public comments, document requests, and additional information: Jennifer Howell, Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Blvd., Virginia Beach, VA 23462, telephone (757) 518-2111, FAX (757) 518-2009, or email jennifer.howell@deq.virginia.gov.

STATE BOARD OF HEALTH

Notice of Periodic Review

Pursuant to Executive Order (EO) 14 (2010), the Virginia Department of Health (VDH), on behalf of the State Board of Health (board), will review **12VAC5-71, Regulations Governing the Newborn Screening and Treatment Program**. The purpose of the review is 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 EO 14. 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.

VDH 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 EO 14. EO 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.

The comment period begins on February 28, 2011, and ends on March 22, 2011. Comments on the regulations are welcome and will be accepted until the close of the comment period. Comments should be sent to Nancy Ford, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7691, or email at nancy.ford@vdh.virginia.gov. Please include your full name and mailing address in any email.

STATE LOTTERY DEPARTMENT

Director's Orders

The following Director's Order of the State Lottery Department was filed with the Virginia Registrar of Regulations on February 2, 2011.

Director's Order Number Fourteen (11)

Certain Virginia Instant Game Lotteries; End of Games.

In accordance with the authority granted by §§ 2.2-4002 B 15 and 58.1-4006 A of the Code of Virginia, I hereby give notice that the following Virginia Lottery instant games will officially end at midnight on February 4, 2011.

| | |
|-----------|------------------------------|
| Game 1088 | Blazing Red Hot Cash (TOP) |
| Game 1103 | Face Cards (TOP) |
| Game 1108 | Bonus Word Crossword |
| Game 1130 | Cherry Doubler (TOP) |
| Game 1139 | Fuzzy Dice |
| Game 1141 | Dollars & Diamonds (TOP) |
| Game 1142 | \$200,000 Gold Rush (TOP) |
| Game 1152 | Jumbo Bucks (TOP) |
| Game 1162 | Casino Doubler |
| Game 1166 | VA's \$250,000 Jackpot (TOP) |
| Game 1168 | Smokin' Hot Cash (TOP) |
| Game 1176 | Lucky 7's |
| Game 1178 | Super Blackjack |
| Game 1179 | Winner's Circle (TOP) |
| Game 1190 | 7/11/21 |
| Game 1191 | Gimme 5! (TOP) |
| Game 1193 | Lucky 8's |
| Game 1195 | Cash To Go |
| Game 1196 | Monopoly |
| Game 1197 | Cash Crop (TOP) |
| Game 1205 | 'Tis The Season |
| Game 1207 | Season's Delight |
| Game 1208 | Red Hot Bucks |
| Game 1209 | Holiday Cash |

The last day for lottery retailers to return for credit unsold tickets from any of these games will be March 11, 2011. The last day to redeem winning tickets for any of these games will be August 3, 2011, 180 days from the declared official end of the game. Claims for winning tickets from any of these games will not be accepted after that date. Claims that are mailed and received in an envelope bearing a postmark of the United States Postal Service or another sovereign nation of August 3, 2011, or earlier, will be deemed to have been received on time. This notice amplifies and conforms to the duly adopted

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State Lottery Board regulations for the conduct of lottery games.

This order is available for inspection and copying during normal business hours at the Virginia Lottery headquarters, 900 East Main Street, Richmond, Virginia; and at any Virginia Lottery regional office. A copy may be requested by mail by writing to Director's Office, Virginia Lottery, 900 East Main Street, Richmond, Virginia 23219.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ Paula I. Otto
Executive Director
February 2, 2011

STATE WATER CONTROL BOARD

Proposed Enforcement Action for Chesapeake Grain Company, Inc.

An enforcement action has been proposed for Chesapeake Grain Company, Inc., for alleged violations of Virginia Pollutant Discharge Elimination System General Permit VAR05 at its grain handling and storage facility at 5500 Bainbridge Boulevard, Chesapeake. A description of the proposed action is available at the Department of Environmental Quality 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 February 28, 2011, to March 30, 2011.

Proposed Enforcement Action for Courtland USA, LLC

An enforcement action has been proposed for Courtland USA, LLC, for alleged violations of Virginia Pollutant Discharge Elimination System General Permit VAR05 at its automobile salvage yard at 28265 Southampton Parkway, Courtland, Southampton County. A description of the proposed action is available at the Department of Environmental Quality 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 February 28, 2011, to March 30, 2011.

Proposed Enforcement Action for the Virginia Peninsulas Public Service Authority

An enforcement action has been proposed for the Virginia Peninsulas Public Service Authority for alleged violations of the State Water Control Law at the VPPSA Compost Facility in York County concerning the unauthorized discharge of pollutants to state waters. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Mr. Robin Schuhmann will accept comments by email at robin.schuhmann@deq.virginia.gov, FAX (757) 518-2009, or postal mail Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Blvd., Virginia Beach, VA 23462, from February 28, 2011, to March 30, 2011.

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

STATE BOARD OF SOCIAL SERVICES

Title of Regulation: **22VAC40-131. Standards for Licensed Child-Placing Agencies.**

Publication: 27:11 VA.R. 1203-1248 January 31, 2011.

Corrections to Proposed Regulation:

Page 1222, column 1, 22VAC40-131-200 E, line 2, change "license" to "licensee"

Page 1224, column 1, 22VAC40131-230 E 8, line 5, change "requirements" to "required"

Page 1224, column 2, 22VAC40131-230 I 4 b, line 1, after "result," insert "of"

Page 1225-1227, column 2, 22VAC40-131-250, reletter subsection designators "C" through "U" to "B" through "T"

Page 1225, column 2, 22VAC40-131-250 A 6, line 5, change "local social services agency" to "local department of social services"

Page 1227, column 1, 22VAC40-131-250 P, line 7, change "22VAC40-131-250 H" to "22VAC40-131-250 G"

Page 1238, column 1, 22VAC40-131-380 C 5 b, line 2, change "psychical" to "physical"

Page 1242, column 1, 22VAC40-131-460, reletter subsection designators "D" through "H" to "C" through "G"

VA.R. Doc. No. R10-2036, Filed February 3, 2011

