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

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

PUBLICATION SCHEDULE AND DEADLINES

This schedule is available on the *Register*'s Internet home page (http://register.dls.virginia.gov).

July 2011 through August 2012

Volume: Issue	Material Submitted By Noon*	Will Be Published On
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
28:15	March 7, 2012	March 26, 2012
28:16	March 21, 2012	April 9, 2012
28:17	April 4, 2012	April 23, 2012
28:18	April 18, 2012	May 7, 2012
28:19	May 2, 2012	May 21, 2012
28:20	May 16, 2012	June 4, 2012
28:21	May 30, 2012	June 18, 2012
28:22	June 13, 2012	July 2, 2012
28:23	June 27, 2012	July 16, 2012
28:24	July 11, 2012	July 30, 2012
28:25	July 25, 2012	August 13, 2012
28:26	August 8, 2012	August 27, 2012

*Filing deadlines are Wednesdays unless otherwise specified.

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Initial Agency Notice

Title of Regulation: **None specified.**

Statutory Authority: § 10.1-1308 of the Code of Virginia.

Name of Petitioner: Emma Serrels, Alec Loorz, and Victoria Loorz (Kids vs. Global Warming).

Nature of Petitioner's Request: The petitioner is requesting the State Air Pollution Control Board to adopt regulations to:

1. Ensure that carbon dioxide emissions from fossil fuels peak in the year 2012;

2. Adopt a carbon dioxide emissions reduction plan that, consistent with the best available science, reduces statewide fossil fuel carbon dioxide emissions by at least 6.0% annually until at least 2050 and expands Virginia's capacity for carbon sequestration;

3. Establish a statewide greenhouse gas emissions accounting, verification and inventory and issue annual progress reports so that the public has access to accurate data regarding the effectiveness of Virginia's efforts to reduce fossil fuel carbon dioxide emissions; and

4. Adopt any necessary policies or regulations to implement the greenhouse gas emissions reduction plan, as detailed in 1 and 2 above.

Agency's Plan for Disposition of Request: The State Air Pollution Control Board received the petition on June 10, 2011. In accordance with the Administrative Process Act, the board will receive comments from the public on whether or not to initiate a rulemaking for 21 days after publication of the notice of receipt of the petition is published in the Virginia Register of Regulations. The notice will be published in the July 4, 2011 issue of the Register and the public comment period will run from July 4, 2011, through July 25, 2011. A copy of the petition is available on the Department of Environmental Quality's website, www.deq.virginia.gov, under Air Public Notices.

In addition, staff has been asked to provide, when the petition is presented to the board for a decision, information, to the extent practicable, on the following:

• What are the impacts on the regulated community?

• What is the feasibility of the requested action?

• How would it be enforced?

• Is a state-by-state approach appropriate?

• How would a determination be made that any regulation adopted had achieved the stated purpose of the regulation?

• Would the reduction of fossil fuel carbon dioxide emissions, given current and foreseeable technologies, be expected to be accompanied by:

a. Reductions of other emissions such as sulfur oxides, nitrogen oxides, and mercury or other beneficial environmental consequences?

b. Increases of other emissions or other adverse environmental consequences?

• What are the benefits of reducing carbon dioxide emissions, including any co-benefits resulting from the reduction of other emissions or other beneficial environmental consequences? Quantify with respect to such items as premature deaths, emergency room visits, asthma attacks, lost workdays, and lost productivity; and estimated dollar benefit to society.

• What are the harms of any identified increased emissions or adverse environmental consequences resulting from carbon dioxide emission reductions? Quantify with respect to such items as increases in premature deaths, emergency room visits, asthma attacks, lost workdays, and lost productivity; and estimated dollar harm to society.

Public comment on these items will also be accepted from July 4, 2011, through July 25, 2011.

Public Comment Deadline: July 25, 2011.

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

VA.R. Doc. No. R11-47; Filed June 15, 2011, 8:37 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD FOR GEOLOGY

Withdrawal of 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 Geology has WITHDRAWN the Notice of Intended Regulatory Action for **18VAC70-20, Board for Geology Regulations,** which was published in 18:24 VA.R. 3188 August 12, 2002.

Contact: Mark N. Courtney, Deputy Director for Licensing and Regulation, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8537, FAX (804) 527-4403, or email mark.courtney@dpor.virginia.gov.

VA.R. Doc. No. R11-2875; Filed June 7, 2011, 2:00 p.m.

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TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

COMMONWEALTH TRANSPORTATION BOARD

Withdrawal of Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Commonwealth Transportation Board has WITHDRAWN the Notice of Intended Regulatory Action for **24VAC30-20, General Rules and Regulations of the Commonwealth Transportation Board,** which was published in 13:18 VA.R. 2097 May 26, 1997.

Contact: Keith M. Martin, Agency Regulatory Coordinator, Department of Transportation, Policy Division, 11th Floor, 1401 E. Broad Street, Richmond, VA 23219, telephone (804) 786-1830, FAX (804) 225-4700, or email keithm.martin@vdot.virginia.gov.

VA.R. Doc. No. R11-2878; Filed June 8, 2011, 11:00 a.m.

Withdrawal of Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Commonwealth Transportation Board has WITHDRAWN the Notice of Intended Regulatory Action for **24VAC30-215, Utility Accommodation Policy,** which was published in 13:18 VA.R. 2097 May 26, 1997.

Contact: Keith M. Martin, Agency Regulatory Coordinator, Department of Transportation, Policy Division, 11th Floor, 1401 E. Broad Street, Richmond, VA 23219, telephone (804) 786-1830, FAX (804) 225-4700, or email keithm.martin@vdot.virginia.gov.

VA.R. Doc. No. R11-2879; Filed June 8, 2011, 11:50 a.m.

Withdrawal of Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Commonwealth Transportation Board has WITHDRAWN the Notice of Intended Regulatory Action for **24VAC30-125, Regulations for Landscape Recognition and Identification Signs and Structures,** which was published in 16:10 VA.R. 1213 January 31, 2000.

Contact: Keith M. Martin, Agency Regulatory Coordinator, Department of Transportation, Policy Division, 11th Floor, 1401 E. Broad Street, Richmond, VA 23219, telephone (804) 786-1830, FAX (804) 225-4700, or email keithm.martin@vdot.virginia.gov.

VA.R. Doc. No. R11-2880; Filed June 8, 2011, 12:38 p.m.

Withdrawal of Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Commonwealth Transportation Board has WITHDRAWN the Notice of Intended Regulatory Action for **24VAC30-65, State Owned Urban Tunnel Safety Regulation,** which was published in 16:10 VA.R. 1212 January 31, 2000.

Contact: Keith M. Martin, Agency Regulatory Coordinator, Department of Transportation, Policy Division, 11th Floor, 1401 E. Broad Street, Richmond, VA 23219, telephone (804) 786-1830, FAX (804) 225-4700, or email keithm.martin@vdot.virginia.gov.

VA.R. Doc. No. R11-2881; Filed June 8, 2011, 12:53 p.m.

REGULATIONS

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

Symbol Key

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

TITLE 1. ADMINISTRATION

STATE BOARD OF ELECTIONS

Forms

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

Title of Regulation: **1VAC20-60. Election Administration.**

Agency Contact: Peter J. Goldin, Policy Analyst, Virginia State Board of Elections, 1100 Bank Street, Richmond, VA 23219, (804) 864-8930, peter.goldin@sbe.virginia.gov.

FORMS (1VAC20-60)

~~Commonwealth of Virginia Petition of Qualified Voters For Referendum, SBE-684.1(1) (rev. 11/09).~~

Commonwealth of Virginia Petition of Qualified Voters For Referendum, SBE-684.1(1) (rev. 5/11).

VA.R. Doc. No. R11-2871; Filed June 2, 2011, 10:24 a.m.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

BOARD OF GAME AND INLAND FISHERIES

REGISTRAR'S NOTICE: The Board of Game and Inland Fisheries is exempt from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife. The department is required by § 2.2-4031 of the Code of Virginia to publish all proposed and final wildlife management regulations, including length of seasons and bag limits allowed on the wildlife resources within the Commonwealth of Virginia.

Proposed Regulation

Title of Regulation: **4VAC15-50. Game: Bear (amending 4VAC15-50-70, 4VAC15-50-71, 4VAC15-50-110).**

Statutory Authority: §§ 29.1-501, 29.1-502, and 29.1-516.1 of the Code of Virginia.

Public Hearing Information:

July 12, 2011 - 9 a.m. - Department of Game and Inland Fisheries, 4000 West Broad Street, Richmond, VA

Public Comment Deadline: June 24, 2011.

Agency Contact: Phil Smith, Regulatory Coordinator, 4016 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341, or email phil.smith@dgif.virginia.gov.

Summary:

The proposal makes it lawful to use leashed tracking dogs to find wounded or dead bear while hunting bears in Virginia, including during the bear archery hunting and bear muzzleloading hunting seasons.

4VAC15-50-70. Bow and arrow hunting.

A. It shall be lawful to hunt bear during the special archery season with bow and arrow from the first Saturday in October through the Friday prior to the third Monday in November, both dates inclusive.

B. It shall be unlawful to carry firearms while hunting with bow and arrow during the special archery seasons, except that a muzzleloading gun, as defined in 4VAC15-50-71, may be in the possession of a properly licensed muzzleloading gun hunter when and where the early special archery bear season overlaps the early special muzzleloading bear season.

C. Arrows used for hunting big game must have a minimum width head of 7/8 of an inch and the bow used for such hunting must be capable of casting a broadhead arrow a minimum of 125 yards.

D. It shall be unlawful to use dogs when hunting with bow and arrow from the second Saturday in October through the Saturday prior to the second Monday in November, both dates inclusive, except that tracking dogs as defined in § 29.1-516.1 of the Code of Virginia may be used.

E. It shall be lawful for persons with permanent physical disabilities, who are in full compliance with the requirements of 4VAC15-40-20 B, to hunt bear subject to the provisions of subsections A through D of this section. For the purpose of the application of subsections A through D to this subsection the phrase "bow and arrow" includes crossbow.

4VAC15-50-71. Muzzleloading gun hunting.

A. Except as otherwise provided by specific exceptions in this chapter, it shall be lawful to hunt bear during the special muzzleloading season with muzzleloading guns from the Saturday prior to the second Monday in November through

the Friday prior to the third Monday in November, both dates inclusive, except in Bland, Buchanan, Carroll, Craig, Dickenson, Floyd, Giles, Grayson, Lee, Montgomery, Pulaski, Russell, Scott, Smyth, Tazewell, Washington, Wise and Wythe counties and in the cities of Chesapeake, Suffolk and Virginia Beach.

B. It shall be lawful to hunt bear during the special muzzleloading season with muzzleloading guns from the Saturday prior to the first Monday in November through the Friday prior to the third Monday in November, both dates inclusive, in the counties (including the cities and towns within) of Accomack, Caroline, Charles City, Chesterfield, Culpeper, Essex, Fauquier, Fairfax, Fluvanna, Gloucester, Goochland, Hanover, Henrico, James City, King George, King William, King and Queen, Lancaster, Loudoun, Louisa, New Kent, Northampton, Northumberland, Orange, Powhatan, Prince William, Richmond, Spotsylvania, Stafford, Mathews, Middlesex, Westmoreland, and York and in the cities of Hampton, Newport News, Norfolk, and Portsmouth.

C. It shall be unlawful to hunt bear with dogs during any special season for hunting with muzzleloading guns, except that tracking dogs as defined in § 29.1-516.1 of the Code of Virginia may be used.

D. A muzzleloading gun, for the purpose of this section, means a single shot weapon, excluding muzzleloading pistols, .45 caliber or larger, firing a single projectile or sabot (with a .38 caliber or larger projectile) of the same caliber loaded from the muzzle of the weapon and propelled by at least 50 grains of black powder (or black powder equivalent or smokeless powder).

E. It shall be unlawful to have in immediate possession any firearm other than a muzzleloading gun while hunting with a muzzleloading gun in a special muzzleloading season.

4VAC15-50-110. Use of dogs in hunting bear.

A. It shall be unlawful to use dogs for the hunting of bear during the open season for hunting deer in the counties west of the Blue Ridge Mountains and in the counties of Amherst (west of U.S. Route 29), Bedford, and Nelson (west of Route 151); and within the boundaries of the national forests, except that tracking dogs as defined in § 29.1-516.1 of the Code of Virginia may be used.

B. It shall be unlawful to use dogs for the hunting of bear during the first 12 hunting days of the open season for hunting deer in the counties of Greene and Madison, except that tracking dogs as defined in § 29.1-516.1 of the Code of Virginia may be used.

C. It shall be unlawful to use dogs for the hunting of bear in the counties of Campbell (west of Norfolk Southern Railroad), Carroll (east of the New River), Fairfax, Floyd, Franklin, Grayson (east of the New River), Henry, Loudoun, Montgomery (south of Interstate 81), Patrick, Pittsylvania (west of Norfolk Southern Railroad), Pulaski (south of Interstate 81), Roanoke (south of Interstate 81), Wythe (southeast of the New River or that part bounded by Route 21 on the west, Interstate 81 on the north, the county line on the east, the New River on the southeast and Cripple Creek on the south); in the city of Lynchburg; and on Amelia, Chester F. Phelps, G. Richard Thompson, and Pettigrew wildlife management areas, except that tracking dogs as defined in § 29.1-516.1 of the Code of Virginia may be used.

VA.R. Doc. No. R11-2890; Filed June 15, 2011, 0:46 a.m.

Proposed Regulation

Title of Regulation: **4VAC15-90. Game: Deer (amending 4VAC15-90-23, 4VAC15-90-70, 4VAC15-90-80, 4VAC15-90-260).**

Statutory Authority: §§ 29.1-501, 29.1-502, and 29.1-516.1 of the Code of Virginia.

Public Hearing Information:

July 12, 2011 - 9 a.m. - Department of Game and Inland Fisheries, 4000 West Broad Street, Richmond, VA

Public Comment Deadline: June 24, 2011.

Agency Contact: Phil Smith, Regulatory Coordinator, 4016 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341, or email phil.smith@dgif.virginia.gov.

Summary:

The proposal makes it lawful to use leashed tracking dogs to find wounded or dead deer while hunting deer in Virginia, including during the archery, muzzleloader, and firearms deer hunting seasons and the youth deer hunting day.

4VAC15-90-23. Youth deer hunting day.

It shall be lawful for deer hunters 15 years of age and under, when in compliance with all applicable laws and license requirements, to hunt deer on the last Saturday in September when accompanied and directly supervised by an adult who has a valid Virginia hunting license on his person or is exempt from purchasing a hunting license except in Fairfax, Loudoun, and Prince William counties. Deer of either-sex may be taken on this special youth deer hunting day. Adult hunters accompanying youth deer hunters on this day may not carry or discharge weapons. Blaze orange is required for all persons hunting any species or any person accompanying a hunter on this day unless otherwise exempted by state law. Deer hunting with dogs is prohibited, except that tracking dogs as defined in § 29.1-516.1 of the Code of Virginia may be used.

4VAC15-90-70. Bow and arrow hunting.

A. It shall be lawful to hunt deer during the early special archery season with bow and arrow from the first Saturday in

October through the Friday prior to the third Monday in November, both dates inclusive.

B. In addition to the season provided in subsection A of this section, it shall be lawful to hunt deer during the late special archery season with bow and arrow from the Monday following the close of the general firearms season on deer through the first Saturday in January, both dates inclusive, in all cities, towns, and counties west of the Blue Ridge Mountains (except Clarke County and on non-national forest lands in Frederick County) and in the counties (including the cities and towns within) of Amherst (west of U.S. Route 29), Bedford, Campbell (west of Norfolk Southern Railroad), Franklin, Henry, Nelson (west of Route 151), Patrick and on the Chester F. Phelps Wildlife Management Area and on national forest lands in Frederick County and from December 1 through the first Saturday in January, both dates inclusive, in the cities of Chesapeake, Suffolk (east of the Dismal Swamp line) and Virginia Beach.

C. Deer of either sex may be taken full season during the special archery seasons as provided in subsections A and B of this section (except on PALS (Public Access Lands) in Dickenson County where it shall be unlawful to take antlerless deer during the special archery seasons provided for in subsections A and B of this section).

D. It shall be unlawful to carry firearms while hunting with bow and arrow during the special archery seasons, except that a muzzleloading gun, as defined in 4VAC15-90-80, may be in the possession of a properly licensed muzzleloading gun hunter when and where a special archery deer season overlaps a special muzzleloading deer season.

E. Arrows used for hunting big game must have a minimum width head of 7/8 of an inch and the bow used for such hunting must be capable of casting a broadhead arrow a minimum of 125 yards.

F. It shall be unlawful to use dogs when hunting with bow and arrow during any special archery season, except that tracking dogs as defined in § 29.1-516.1 of the Code of Virginia may be used.

G. For the purpose of the application of subsections A through I to this section, the phrase "bow and arrow" includes crossbows.

H. It shall be lawful to hunt antlerless deer during the special urban archery season with bow and arrow from the first Saturday in September through the Friday prior to the first Saturday in October, both dates inclusive, and from the Monday following the first Saturday in January through the last Saturday in March, both dates inclusive, within the incorporated limits of any city or town in the Commonwealth (except in the cities of Chesapeake, Suffolk, and Virginia Beach) and the counties of Fairfax and York provided that its governing body submits by certified letter to the department prior to April 1, its intent to participate in the special urban archery season. Any city, town, or county no longer participating in this season shall submit by certified letter to the department prior to April 1 notice of its intent not to participate in the special urban archery season.

I. It shall be lawful to hunt antlerless deer during the special antlerless archery season with bow and arrow from the first Saturday in September through the Friday prior to the first Saturday in October, both dates inclusive, in Loudoun and Prince William counties, except on department-owned lands.

4VAC15-90-80. Muzzleloading gun hunting.

A. It shall be lawful to hunt deer during the early special muzzleloading season with muzzleloading guns from the Saturday prior to the first Monday in November through the Friday prior to the third Monday in November, both dates inclusive, in all cities, towns, and counties where deer hunting with a rifle or muzzleloading gun is permitted, except in the cities of Chesapeake, Suffolk (east of the Dismal Swamp Line) and Virginia Beach.

B. It shall be lawful to hunt deer during the late special muzzleloading season with muzzleloading guns starting 18 consecutive hunting days immediately prior to and inclusive of the first Saturday in January, in all cities, towns, and counties west of the Blue Ridge Mountains (except Clarke County and on non-national forest lands in Frederick County), and east of the Blue Ridge Mountains in the counties (including the cities and towns within) of Amherst (west of U.S. Route 29), Bedford, Campbell (west of Norfolk Southern Railroad), Franklin, Henry, Nelson (west of Route 151), Patrick and on national forest lands in Frederick County and in the cities of Chesapeake, Suffolk (east of the Dismal Swamp line), and Virginia Beach.

C. Deer of either sex may be taken during the entire early special muzzleloading season east of the Blue Ridge Mountains unless otherwise noted below:

- Deer of either sex may be taken on the second Saturday only of the early special muzzleloading season on state forest lands, state park lands (except Occoneechee State Park), department-owned lands and Philpott Reservoir.

- Antlered bucks only—no either sex deer hunting days during the early special muzzleloading season on national forest lands in Amherst, Bedford, and Nelson counties.

D. Deer of either sex may be taken on the second Saturday only during the early special muzzleloading season west of the Blue Ridge Mountains unless otherwise noted below:

- Deer of either sex may be taken during the entire early special muzzleloading season in Clarke and Floyd counties and on private lands in Carroll, Frederick, Grayson, Montgomery, Roanoke, and Warren counties.

- Antlered bucks only—no either sex deer hunting days during the early special muzzleloading season in

Buchanan, Dickenson, Lee, Russell, Smyth, Tazewell, Washington, and Wise counties and on national forest lands in Alleghany, Botetourt, Frederick, Grayson, Page, Rockingham, Scott, Shenandoah, Warren, and on national forest and department-owned lands in Augusta, Bath, Highland, and Rockbridge counties and on Grayson Highlands State Park and on private lands west of Routes 613 and 731 in Rockingham County.

E. Deer of either sex may be taken during the last six days of the late special muzzleloading season unless otherwise listed below:

- Deer of either sex may be taken full season during the entire late special muzzleloading season in the counties (including the cities and towns within) of Amherst (west of U.S. Route 29 except on national forest lands), Bedford (except on national forest lands), Campbell (west of Norfolk Southern Railroad), Floyd, Franklin, Henry, Nelson (west of Route 151, except on national forest lands), and Patrick and on private lands in Carroll, Grayson, Montgomery, Roanoke and Warren counties.

- Deer of either sex may be taken the last day only during the late special muzzleloading season in Dickenson (north of Route 83), Lee, Russell, Scott, Smyth, Tazewell, Washington, and Wise counties and on national forest lands in Alleghany, Amherst, Bedford, Botetourt, Frederick, Grayson, Nelson, Page, Rockingham, Shenandoah, and Warren counties, and on national forest and department-owned lands in Augusta, Bath, Highland, and Rockbridge counties and on private lands west of Routes 613 and 731 in Rockingham County and Grayson Highlands State Park.

- Antlered bucks only—no either-sex deer hunting days during the late special muzzleloading season in Buchanan and Dickenson (south of Route 83).

F. Deer of either sex may be taken full season during the special muzzleloading seasons within the incorporated limits of any city or town in the Commonwealth that allows deer hunting except in the counties of Buchanan, Dickenson, and Wise and in the cities of Chesapeake, Suffolk, and Virginia Beach.

G. It shall be unlawful to hunt deer with dogs during any special season for hunting with muzzleloading guns, except that tracking dogs as defined in § 29.1-516.1 of the Code of Virginia may be used.

H. A muzzleloading gun, for the purpose of this section, means a single shot weapon, excluding muzzleloading pistols,.45 caliber or larger, firing a single projectile or sabot (with a .38 caliber or larger projectile) of the same caliber loaded from the muzzle of the weapon and propelled by at least 50 grains of black powder (or black powder equivalent or smokeless powder).

I. It shall be unlawful to have in immediate possession any firearm other than a muzzleloading gun while hunting with a muzzleloading gun in a special muzzleloading season.

4VAC15-90-260. Hunting with dogs prohibited in certain counties and areas.

A. Generally. It shall be unlawful to hunt deer with dogs in the counties of Amherst (west of U.S. Route 29), Bedford, Campbell (west of Norfolk Southern Railroad, and in the City of Lynchburg), Fairfax, Franklin, Henry, Loudoun, Nelson (west of Route 151), Northampton, Patrick and Pittsylvania (west of Norfolk Southern Railroad); and on the Amelia, Chester F. Phelps, G. Richard Thompson and Pettigrew Wildlife Management Areas, except that tracking dogs as defined in § 29.1-516.1 of the Code of Virginia may be used.

B. Special provision for Greene and Madison counties. It shall be unlawful to hunt deer with dogs during the first 12 hunting days in the counties of Greene and Madison, except that tracking dogs as defined in § 29.1-516.1 of the Code of Virginia may be used.

VA.R. Doc. No. R11-2891; Filed June 15, 2011, 1:39 a.m.

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

BOARD OF CORRECTIONS

Final Regulation

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

Title of Regulation: **6VAC15-50. Community Diversion Program Standards (repealing 6VAC15-50-10 through 6VAC15-50-650).**

Statutory Authority: § 53.1-182 (repealed) of the Code of Virginia.

Effective Date: August 4, 2011.

Agency Contact: Jim Bruce, Agency Regulatory Coordinator, Department of Corrections, 6900 Atmore Drive, P.O. Box 26963, Richmond, VA 23261-6963, telephone (804) 674-3303 ext. 1130, FAX (804) 674-3017, or email james.bruce@vadoc.virginia.gov.

Summary:

This action repeals 6VAC15-50, Community Diversion Program Standards, which is obsolete due to the transfer of the responsibility for the Community Diversion Program to the Department of Criminal Justice Services and subsequent repeal of § 53.1-182 of the Code of Virginia.

VA.R. Doc. No. R11-2877; Filed June 8, 2011, 10:54 a.m.

TITLE 8. EDUCATION

STATE BOARD OF EDUCATION

Final Regulation

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

Title of Regulation: **8VAC20-131. Regulations Establishing Standards for Accrediting Public Schools in Virginia (amending 8VAC20-131-350).**

Statutory Authority: § 22.1-253.13:3 of the Code of Virginia.

Effective Date: August 3, 2011.

Agency Contact: Anne Wescott, Assistant Superintendent, Policy and Communications, Department of Education, P.O. Box 2120, Richmond, VA 23218-2120, telephone (804) 225-2403, FAX (804) 225-2524, or email anne.wescott@doe.virginia.gov.

Summary:

The amendment adds a provision that permits a waiver of some of the mandatory graduation requirements for individual students under certain circumstances. The amendment addresses Chapter 313 of the 2010 Acts of Assembly (HB 1199), requiring the Board of Education to provide for the waiver of certain graduation requirements, which may be granted only for good cause and on a case-by-case basis.

8VAC20-131-350. Waivers.

Waivers of some of the requirements of these regulations may be granted by the Board of Education based on submission of a request from the division superintendent and chairman of the local school board. The request shall include documentation of the need for the waiver. In no event shall waivers be granted to the requirements of Part III (8VAC20-131-30 et seq.) of these regulations except that the Board of Education may provide for the waiver of certain graduation requirements in 8VAC20-131-50 (i) upon the board's initiative or (ii) at the request of a local school board on a case-by-case basis. The board shall develop guidelines for implementing these requirements.

VA.R. Doc. No. R11-2745; Filed June 8, 2011, 4:00 p.m.

TITLE 9. ENVIRONMENT

VIRGINIA WASTE MANAGEMENT BOARD

Final Regulation

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

Titles of Regulations: **9VAC20-60. Virginia Hazardous Waste Management Regulations (amending 9VAC20-60-261).**

9VAC20-70. Financial Assurance Regulations for Solid Waste Disposal, Transfer and Treatment Facilities (amending 9VAC20-70-10, 9VAC20-70-50, 9VAC20-70-70, 9VAC20-70-75, 9VAC20-70-90, 9VAC20-70-113, 9VAC20-70-210, 9VAC20-70-290).

9VAC20-81. Solid Waste Management Regulations (amending 9VAC20-81-10, 9VAC20-81-35, 9VAC20-81-95, 9VAC20-81-140, 9VAC20-81-160, 9VAC20-81-250, 9VAC20-81-260, 9VAC20-81-300, 9VAC20-81-397, 9VAC20-81-470, 9VAC20-81-485, 9VAC20-81-490, 9VAC20-81-530, 9VAC20-81-600).

9VAC20-85. Coal Combustion Byproduct Regulations (amending 9VAC20-85-10, 9VAC20-85-40, 9VAC20-85-50, 9VAC20-85-60, 9VAC20-85-90, 9VAC20-85-150, 9VAC20-85-180).

9VAC20-120. Regulated Medical Waste Management Regulations (amending 9VAC20-120-10, 9VAC20-120-70, 9VAC20-120-100, 9VAC20-120-300, 9VAC20-120-540, 9VAC20-120-810).

9VAC20-130. Solid Waste Planning and Recycling Regulations (amending 9VAC20-130-10, 9VAC20-130-60, 9VAC20-130-120).

9VAC20-140. Regulations for the Certification of Recycling Machinery and Equipment for Tax Exemption Purposes (amending 9VAC20-140-10).

9VAC20-150. Waste Tire End User Reimbursement Regulation (amending 9VAC20-150-10, 9VAC20-150-20, 9VAC20-150-40).

9VAC20-160. Voluntary Remediation Regulations (amending 9VAC20-160-10, 9VAC20-160-30).

9VAC20-170. Transportation of Solid and Medical Wastes on State Waters (amending 9VAC20-170-30, 9VAC20-170-40).

Statutory Authority: §§ 10.1-1232, 10.1-1402, 10.1-1410, 10.1-1411, 10.1-1422.3, 10.1-1422.4, and 58.1-3661 of the Code of Virginia.

Effective Date: August 3, 2011.

Agency Contact: Debra Miller, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4206, FAX (804) 698-4346, or email debra.miller@deq.virginia.gov.

Summary:

Amendment 7 to the Solid Waste Management Regulations amended and recodified these regulations creating 9VAC20-81, which became effective March 16, 2011. This regulatory action makes necessary style and form changes and technical corrections to that chapter and, as a secondary action, makes the appropriate citations changes in other waste management regulations.

9VAC20-60-261. Adoption of 40 CFR Part 261 by reference.

A. Except as otherwise provided, the regulations of the United States Environmental Protection Agency set forth in 40 CFR Part 261 are hereby incorporated as part of the Virginia Hazardous Waste Management Regulations. Except as otherwise provided, all material definitions, reference materials and other ancillaries that are a part of 40 CFR Part 261 are also hereby incorporated as part of the Virginia Hazardous Waste Management Regulations.

B. In all locations in these regulations where 40 CFR Part 261 is incorporated by reference, the following additions, modifications and exceptions shall amend the incorporated text for the purpose of its incorporation into these regulations:

1. Any agreements required by 40 CFR 261.4(b)(11)(ii) shall be sent to the United States Environmental Protection Agency at the address shown and to the Department of Environmental Quality, P.O. Box 1105, Richmond, Virginia 23218.

2. In 40 CFR 261.4(e)(3)(iii), the text "in the Region where the sample is collected" shall be deleted.

3. In 40 CFR 261.4(f)(1), the term "Regional Administrator" shall mean the regional administrator of Region III of the United States Environmental Protection Agency or his designee.

4. In 40 CFR 261.6(a)(2), recyclable materials shall be subject to the requirements of 9VAC20-60-270 and Part XII (9VAC20-60-1260 et seq.) of this chapter.

5. No hazardous waste from a conditionally exempt small quantity generator shall be managed as described in 40 CFR 261.5(g)(3)(iv) or 40 CFR 261.5(g)(3)(v) unless such waste management is in full compliance with all requirements of the Solid Waste Management Regulations ~~(9VAC20-80)~~ (9VAC20-81).

6. In 40 CFR 261.9 and wherever elsewhere in Title 40 of the Code of Federal Regulations there is a listing of universal wastes or a listing of hazardous wastes that are the subject of provisions set out in 40 CFR Part 273 as universal wastes, it shall be amended by addition of the following sentence: "In addition to the hazardous wastes listed herein, the term "universal waste" and all lists of universal waste or waste subject to provisions of 40 CFR Part 273 shall include those hazardous wastes listed in Part XVI (9VAC20-60-1495 et seq.) of the Virginia Hazardous Waste Management Regulations as universal wastes, under such terms and requirements as shall therein be ascribed."

7. In Subparts B and D of 40 CFR Part 261, the term "Administrator" shall mean the administrator of the United States Environmental Protection Agency, and the term "Director" shall not supplant "Administrator" throughout Subparts B and D.

8. Regardless of the provisions of 9VAC20-60-18, the revisions to 40 CFR Part 261 as promulgated by U.S. EPA on October 30, 2008, (73 FR 64757 - 64788) (definition of solid waste rule) are not adopted herein.

Part I
Definitions

9VAC20-70-10. Definitions.

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

"Abandoned facility" means any inactive solid waste management facility that has not met closure and post-closure care requirements.

"Active life" means the period of operation beginning with the initial receipt of solid waste and ending at the completion of closure activities required by ~~9VAC20-80-10 et seq~~ the Solid Waste Management Regulations (9VAC20-81). Active life does not include the post-closure care monitoring period.

"Anniversary date" means the date of issuance of a financial mechanism.

"Assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity.

"Authority" means an authority created under the provisions of the Virginia Water and Waste Authorities Act, Chapter 51 (§ 15.2-5100 et seq.) of Title 15.2 of the Code of Virginia, or, if any such authority shall be abolished, the board, body, or commission succeeding to the principal functions thereof or to whom the powers given by the Virginia Water and Waste Authorities Act to such authority shall be given by law.

"Board" means the Virginia Waste Management Board.

"Cash plus marketable securities" means all the cash plus marketable securities held on the last day of a fiscal year, excluding cash and marketable securities designed to satisfy past obligations such as pensions.

"Closed facility" means a solid waste management facility that has been properly secured in accordance with the requirements of ~~9VAC20-80-10 et seq., 9VAC20-101-10 et seq., 9VAC20-120-10 et seq., or 9VAC20-170-10 et seq.~~ the Solid Waste Management Regulations (9VAC20-81), the Regulated Medical Waste Management Regulations (9VAC20-120), or the Transportation of Solid and Medical Wastes on State Waters Regulations (9VAC20-170). A closed facility may be undergoing post-closure care.

"Closure" means the act of securing a solid waste management facility pursuant to the requirements of this chapter and any other applicable solid waste management standards.

"Commercial transporter" means any person who transports for the purpose of commercial carriage of solid wastes or regulated medical wastes as cargo.

"Corrective action" means all actions necessary to mitigate the public health or environmental threat from a release to the environment of solid waste or constituents of solid waste from an operating, abandoned, or closed solid waste management facility and to restore the environmental conditions as required.

"Current annual inflation factor" means the annual inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the U.S. Department of Commerce in its Survey of Current Business.

"Current assets" means cash or other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.

"Current closure cost estimate" means the most recent of the estimates prepared in accordance with the requirements of 9VAC20-70-111.

"Current dollars" means the figure represented by the total of the cost estimate multiplied by the current annual inflation factor.

"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.

"Current post-closure cost estimate" means the most recent of the estimates prepared in accordance with the requirements of 9VAC20-70-112.

"Current year expenses for closure" means expenditures documented by the facility during the previous fiscal year for construction-related activities associated with closing the facility. Expenses for closure must be detailed and identified in an approved closure plan.

"Debt service" means the amount of principal and interest due on a loan in a given time period, typically the current year.

"Deficit" means total annual revenues less total annual expenditures.

"Department" means the Virginia Department of Environmental Quality.

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

"Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste into or on any land or water so that such solid waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters.

"Facility" means any solid waste management facility unless the context clearly indicates otherwise. The term "facility" includes transfer stations.

"Federal agency" means any department, agency, or other instrumentality of the federal government, any independent agency, or establishment of the federal government including any government corporation and the Government Printing Office.

"Governmental unit" means any department, institution or commission of the Commonwealth and any public corporate instrumentality thereof, and any district, and shall include local governments.

"Groundwater" means any water, except capillary moisture or unsaturated zone moisture, beneath the land surface in the zone of saturation or beneath the bed of any stream, lake, reservoir or other body of surface water within the boundaries of this Commonwealth, whatever may be the subsurface geologic structure in which such water stands, flows, percolates or otherwise occurs.

"Hazardous waste" means a "hazardous waste" as defined by the Virginia Hazardous Waste Management Regulations ~~(9VAC20-60-12 et seq.)~~ (9VAC20-60).

"Landfill" means a sanitary landfill, an industrial waste landfill, or a construction/demolition/debris landfill as

defined by the Solid Waste Management Regulations ~~(9VAC20-80-10 et seq.)~~ (9VAC20-81).

"Leachate" means a liquid that has passed through or emerged from solid waste and that contains soluble, suspended, or miscible materials from such waste. Leachate and any material with which it is mixed is solid waste; except that leachate that is pumped from a collection tank for transportation for disposal in an off-site facility is regulated as septage, and leachate discharged into a wastewater collection system is regulated as industrial wastewater.

"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.

"Operator" means the person responsible for the overall operation and site management of a solid waste management facility.

"Owner" means a person who owns a solid waste management facility or part of a solid waste management facility. For the purposes of this chapter, all individuals, corporations, companies, partnerships, societies or associations, and any federal agency or governmental unit of the Commonwealth having any title or interest in any solid waste management facility or the services or facilities to be rendered thereby shall be considered an owner.

"Parent corporation" means a corporation that directly owns at least 50% of the voting stock of the corporation that is the facility owner or operator; the latter corporation is deemed a "subsidiary" of the parent corporation.

"Permit" means the written permission of the director to own, operate, modify, or construct a solid waste management facility.

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

"Post-closure care" means the requirements placed upon an owner or operator of a solid waste disposal facility after closure to ensure environmental and public health and safety are protected for a specified number of years after closure.

"Receiving facility" means a facility, vessel or operation that receives solid wastes or regulated medical wastes transported, loaded or unloaded upon the navigable waters of the Commonwealth, to the extent allowable under state law, by a commercial transporter. A receiving facility is considered as a solid waste management facility. A facility that receives solid waste from a ship, barge or other vessel and is regulated under § 10.1-1454.1 of the Code of Virginia shall be considered a transfer facility for purposes of this chapter.

"Regulated medical waste" means solid waste so defined by the Regulated Medical Waste Management Regulations ~~(9VAC20-120-10 et seq.)~~ (9VAC20-120) as promulgated by the Virginia Waste Management Board.

"Sanitary landfill" means an engineered land burial facility for the disposal of solid waste which is so located, designed, constructed and operated to contain and isolate the solid waste so that it does not pose a substantial present or potential hazard to human health or the environment.

"Signature" means the name of a person written with his own hand.

"Site" means all land and structures, other appurtenances, and improvements thereon used for treating, storing, and disposing of solid waste. This term includes adjacent land within the property boundary used for utility systems such as repair, storage, shipping or processing areas, or other areas incident to the management of solid waste.

"Solid waste" means any of those materials defined as "solid waste" in the Virginia Waste Management Act and the ~~Virginia~~ Solid Waste Management Regulations ~~(9VAC20-80-10 et seq.)~~ (9VAC20-81).

"Solid waste disposal facility" means a solid waste management facility at which solid waste will remain after closure.

"Solid waste management facility (SWMF)" means a site used for planned treating, storing, or disposing of solid waste. A facility may consist of several treatment, storage, or disposal units.

"Storage" means the holding of waste, at the end of which the waste is treated, disposed, or stored elsewhere.

"Substantial business relationship" means the extent of a business relationship necessary under applicable Virginia law to make a guarantee contract incident to that relationship valid and enforceable. A "substantial business relationship" shall arise from a pattern of recent and on-going business transactions, in addition to the guarantee itself, such that a currently existing business relationship between the guarantor and the owner or operator is demonstrated to the satisfaction of the director.

"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.

"Total expenditures" means all expenditures excluding capital outlays and debt repayment.

"Total revenue" means revenue from all taxes and fees but does not include the proceeds from borrowing or asset sales, excluding revenue from funds managed on behalf of a specific third party.

"Transfer station" means any solid waste storage or collection facility at which solid waste is transferred from collection vehicles to haulage vehicles for transportation to a central solid waste management facility for disposal, incineration or resource recovery.

"Treatment" means any method, technique, or process, including incineration or neutralization, designed to change the physical, chemical, or biological character or composition of any waste to neutralize it or render it less hazardous or nonhazardous, safer for transport, or more amenable to use, reuse, reclamation or recovery.

"Unit" means a discrete area of land used for the management of solid waste.

9VAC20-70-50. Applicability of chapter.

A. This chapter applies to all persons who own, operate, or allow the following permitted or unpermitted facilities to be operated on their property:

1. Solid waste treatment, transfer and disposal facilities regulated under the Virginia Solid Waste Management Regulations ~~(9VAC20-80-10 et seq.)~~ (9VAC20-81);

2. ~~Facilities~~ Vegetative waste management facilities regulated under the ~~Vegetative Waste Management and Yard Waste Composting Regulations (9VAC20-101-10 et seq.)~~ Solid Waste Management Regulations (9VAC20-81);

3. Medical waste treatment, transfer or disposal facilities regulated under the Regulated Medical Waste Management Regulations ~~(9VAC20-120-10 et seq.)~~ (9VAC20-120); or

4. Receiving facilities as defined herein.

B. Exemptions.

1. Owners or operators of facilities who are federal or state government entities whose debts and liabilities are the debts or liabilities of the United States or the Commonwealth, are exempt from this chapter;

2. Owners and operators of facilities conditionally exempt under ~~9VAC20-80-60 D~~ 9VAC20-81-95 of the ~~Virginia~~ Solid Waste Management Regulations are exempt from this chapter so long as they meet the conditions of the exemption;

3. Owners and operators of facilities that manage solely wastes excluded ~~under 9VAC20-80-150~~ or conditionally exempt under ~~9VAC20-80-160~~ 9VAC20-81-95 of the ~~Virginia~~ Solid Waste Management Regulations are exempt from this chapter;

4. Owners or operators of facilities exempt under 9VAC20-120-120 or excluded under 9VAC20-120-130 of the ~~Virginia~~ Regulated Medical Waste Management Regulations ~~(9VAC20-120-10 et seq.)~~ (9VAC20-120) are exempt from this chapter;

5. Owners and operators of yard waste composting facilities exempt under ~~9VAC20-101-60 and 9VAC20-101-70 of the Vegetative Waste Management and Yard Waste Composting Regulations~~ 9VAC20-81-95 of the Solid Waste Management Regulations are exempt from this chapter; and

6. Owners and operators of hazardous waste management units regulated under the Virginia Hazardous Waste Management Regulations ~~(9VAC20-60-12 et seq.)~~ (9VAC20-60) are exempt from this chapter as far as such units are concerned.

C. Owners and operators of facilities or units that treat or dispose of wastes which are exempted from the Virginia Hazardous Waste Management Regulations ~~(9VAC20-60-12 et seq.)~~ (9VAC20-60) are subject to these regulations unless also exempted herein.

D. Facilities with separate ownership and operation. If separate, nonexempt persons own and operate a facility subject to this chapter, the owner and operator shall be jointly and severally liable for meeting the requirements of this chapter. If either the owner or operator is exempt, as provided in 9VAC20-70-50 B, then the other person shall be liable for meeting the requirements of this chapter. If both the owner and the operator are exempt, as provided in 9VAC20-70-50 B, then the requirements of this chapter are not applicable to that facility.

E. Exemptions for facilities owned and operated by local governments.

1. Closed facilities. Owners and operators of facilities who are local governmental entities or regional authorities that have completed closure by October 9, 1994, are exempt from all the requirements of this chapter, provided they:

a. Have (i) disposed of less than 100 tons per day of solid waste during a representative period prior to October 9, 1993; (ii) disposed of less than 100 tons per day of solid waste each month between October 9, 1993, and April 9, 1994; (iii) ceased to accept solid waste prior to April 9, 1994; and (iv) whose units are not on the National Priority List as found in Appendix B to 40 CFR Part 300; or

b. Have (i) disposed of more than 100 tons per day of solid waste prior to October 9, 1993, and (ii) ceased to accept solid waste prior to that date.

2. All other facilities. Owners and operators of facilities who are local governmental entities or regional authorities

that are not exempt under subdivision 1 of this subsection are subject to the requirements of this chapter.

9VAC20-70-70. Suspensions and revocations.

The director may revoke, suspend, or amend any permit for cause as set in § 10.1-1409 of the Code of Virginia and as provided for in ~~9VAC20-80-600~~ 9VAC20-81-570 and ~~9VAC20-80-620~~ 9VAC20-81-600 of the ~~Virginia~~ Solid Waste Management Regulations, 9VAC20-120-790 and 9VAC20-120-810 of the Regulated Medical Waste Management Regulations, ~~9VAC20-101-200 of the Vegetative Waste Management and Yard Waste Composting Regulations,~~ and any other applicable regulations. Failure to provide or maintain adequate financial assurance in accordance with these regulations shall be a basis for revocation of such facility permit. Failure to provide or maintain adequate financial assurance in accordance with this chapter, taken with other relevant facts and circumstances, may be a basis for summary suspension of such facility permit pending a hearing to amend or revoke the permit, or to issue any other appropriate order.

9VAC20-70-75. Forfeitures.

Forfeiture of any financial obligation imposed pursuant to this chapter shall not relieve any owner or operator of a solid waste management facility from any obligations to comply with provisions of the Solid Waste Management Regulations ~~(9VAC20-80-10 et seq.)~~ (9VAC20-81) or the Regulated Medical Waste Management Regulations ~~(9VAC20-120-10 et seq.), the Vegetative Waste Management and Yard Waste Composting Regulations (9VAC20-101-10 et seq.)~~ (9VAC20-120), and any other applicable regulations or any other legal obligations for the consequences of abandonment of any facility.

Article 2
Closure, Post-Closure Care and Corrective Action Requirements

9VAC20-70-90. Closure, post-closure care and corrective action requirements.

A. The owner or operator shall close his facility in a manner that minimizes the need for further maintenance; and controls, minimizes or eliminates, to the extent necessary to protect human health and the environment, the post-closure escape of uncontrolled leachate, surface runoff, or waste decomposition products to the groundwater, surface water, or to the atmosphere. The owner or operator shall close his facility in accordance with all applicable regulations.

The closure standards applicable to the solid waste management facilities are described in ~~9VAC20-80-210 B, 9VAC20-80-210 B 2, 9VAC20-80-250 E, 9VAC20-80-260 E, 9VAC20-80-270 E, 9VAC20-80-330 E, 9VAC20-80-340 E, 9VAC20-80-360 E, 9VAC20-80-370 E, 9VAC20-80-380 B, and 9VAC20-80-470 E~~ 9VAC20-81-160, 9VAC20-81-360, and 9VAC20-81-370 of the Solid Waste Management Regulations. The closure requirements applicable to the regulated medical waste facilities are specified in 9VAC20-120-290 of the Regulated Medical Waste Management Regulations. ~~The closure requirements for vegetative waste management and yard waste composting facilities are specified in 9VAC20-101-150 of the Vegetative Waste Management and Yard Waste Composting Regulations.~~

B. Following closure of each solid waste disposal unit, the owner or operator shall conduct post-closure care in accordance with the requirements of ~~9VAC20-80-250 F, 9VAC20-80-260 F, or 9VAC20-80-270 F~~ 9VAC20-81-170 of the Solid Waste Management Regulations, as applicable.

C. The owner or operator shall institute a corrective action program when required to do so by ~~9VAC20-80-190, 9VAC20-80-210 B 2, or 9VAC20-80-310~~ 9VAC20-81-45 or 9VAC20-81-260 of the Solid Waste Management Regulations, as applicable.

D. During any re-examination of a determination of the amount of financial assurance required, the owner or operator of a landfill facility not closed in accordance with ~~9VAC20-80-10 et seq.~~ 9VAC20-81 shall demonstrate financial assurance by using one or more of the approved mechanisms listed in Article 4 (9VAC20-70-140 et seq.) of this part for the lesser of the following:

1. The amount requested by the director; or

2. The following default amounts:

a. $200,000 per acre of fill for sanitary landfills; or

b. $150,000 per acre of fill for construction demolition debris landfills and industrial landfills.

9VAC20-70-113. Financial assurance for corrective action.

A. Within 120 days of a facility's finding or the director's determining (whichever first occurs) that Groundwater Protection Standards established as required by ~~9VAC20-80-250 D 6, or Appendix 5.6 D of 9VAC20-80-10 et seq. as applicable~~ 9VAC20-81-250 have been statistically exceeded, an owner or operator of a landfill or other unit subject to groundwater monitoring shall provide additional financial assurance in the amount of $1 million to the department using the mechanisms listed under Article 4 (9VAC20-70-140 et seq.) of this part. The director shall release the owner or operator from this requirement after the director has determined:

1. The owner or operator is providing financial assurance for a corrective action program using one or more mechanisms listed under Article 4 (9VAC20-70-140 et seq.) of this part, as required under 9VAC20-70-90 C and subsections B and C of this section; or

2. The owner of operator has achieved compliance with Groundwater Protection Standards by demonstrating that concentrations of ~~APPENDIX 5.1 constituents of 9VAC20-80-10 et seq.~~ Table 3.1, Column B of 9VAC20-81-250 have not exceeded the Groundwater Protection Standards for a period of three consecutive years using the appropriate statistical procedures and performance standards.

B. An owner or operator of a solid waste management unit required to undertake a corrective action program under 9VAC20-70-90 C shall prepare and submit to the director a detailed written estimate, in current dollars, of the cost of hiring a third party to perform the corrective action. The corrective action cost estimate shall account for the total costs of corrective action activities as described in the corrective action plan for the entire corrective action period. The owner or operator shall notify the director that the estimate has been placed in the operating record unless corrective action is proceeding under ~~Part IV of the Solid Waste Management Regulations (9VAC20-80-10 et seq.)~~ 9VAC20-81-45. In the latter case, the new corrective action cost estimate shall be submitted to the director within 30 days of its preparation. The corrective action cost estimate shall be approved by the director.

1. The owner or operator shall adjust the estimate annually for inflation within 60 days prior to the anniversary date of the establishment of the financial mechanism used to comply with this part until the corrective action program is completed. For owners or operators using the financial test or guarantee, the corrective action cost estimate shall be updated for inflation within 30 days after the close of the owner's or operator's fiscal year. The adjustment process to be used is described in 9VAC20-70-111 B.

2. The owner or operator shall increase the corrective action cost estimate and the amount of financial assurance provided under this subsection no later than 30 days after revisions to the corrective action program or where a change in the solid waste management unit conditions increase the maximum costs of corrective action.

3. The owner or operator may request a reduction in the amount of the corrective action cost estimate and the amount of financial assurance provided under this subsection if the cost estimate exceeds the maximum remaining costs of corrective action. The owner or operator shall submit a revised cost estimate with the justification for the reduction to the director when requesting a reduction in the amount of the corrective action cost estimate and the amount of financial assurance provided. The justification shall include an itemization of all corrective action costs. No reduction request shall be reviewed until a complete cost estimate acceptable to the department has been submitted. A request for a reduction in the corrective action cost estimate shall be reviewed in a timely manner.

C. The owner or operator of each solid waste management unit required to undertake a corrective action program under 9VAC20-70-90 C shall establish financial assurance in the amount specified by the most recently approved cost estimate for the selected remedy in accordance with 9VAC20-70-140. The owner or operator shall provide continuous coverage for corrective action until released from financial assurance requirements for corrective action by the director.

9VAC20-70-210. Local government financial test.

An owner or operator that satisfies the requirements of subdivisions 1 through 3 of this section may demonstrate financial assurance using the local government financial test up to the amount specified in subdivision 4 of this section.

1. Financial component.

a. The owner or operator shall satisfy the provisions of subdivision 1 a of this section, as applicable:

(1) If the owner or operator 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 director with documentation demonstrating that the owner or operator 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 owner or operator does not have outstanding, rated general obligation bonds, he shall satisfy each of the following financial ratios based on the owner's or operator's most recent audited annual financial statement:

(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.

b. The owner or operator shall prepare his financial statements in conformity with Generally Accepted Accounting Principles for governments and have its financial statements audited by an independent certified public accountant or by the Auditor of Public Accounts.

c. An owner or operator 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 its financial statement as required under subdivision 1 b of this section. However, the director may evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the director deems the qualification insufficient to warrant disallowance of the test.

2. Public notice component. The local government owner or operator shall place a reference to the closure, post-closure care, or corrective action costs assured through the financial test into the next comprehensive annual financial report (CAFR) after January 7, 1998, or prior to the initial receipt of waste at the facility, whichever is later. Disclosure shall include the nature and source of closure and post-closure requirements, the reported liability at the balance sheet date, the estimated total closure and post-closure care cost remaining to be recognized, the percentage of landfill capacity used to date, and the estimated landfill life in years. A reference to corrective action cost shall be placed in CAFR no later than 120 days after the corrective action remedy has been selected in accordance with ~~9VAC20-80-310~~ 9VAC20-81-260. For the first year the financial test is used to assure costs at a particular facility, the reference may instead be placed in the operating record until issuance of the next available CAFR if timing does not permit the reference to be incorporated into the most recently issued CAFR or budget. For closure and post-closure care costs, conformance with Government Accounting Standards Board Statement 18 assures compliance with this public notice component.

3. Recordkeeping and reporting requirements.

a. The local government owner or operator must submit to the department the following items and place copies of the items in the facility's operating record:

(1) An original letter signed by the local government's chief financial officer worded as specified in 9VAC20-70-290 G;

(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 to the local government from the local government's independent certified public accountant (CPA) or the Auditor of Public Accounts based on performing an agreed upon procedures engagement relative to the financial ratios required by subdivision 1 a (3) of this section, if applicable, and the requirements of subdivisions 1 b, 1 c (3) and 1 c (4) of this section. The CPA or state agency's report shall state the procedures performed and the CPA or state agency's findings;

(4) A copy of the comprehensive annual financial report (CAFR) used to comply with subdivision 2 of this section or certification that the requirements of General Accounting Standards Board Statement 18 have been met;

(5) A certification from the local government's chief executive officer stating in detail the method selected by the local government for funding closure and post-closure costs. If the method selected by the local government is a trust fund, escrow account or similar mechanism, there shall be included a certification from the local government's chief financial officer indicating the current reserve obligated to closure and post-closure care cost. If the method selected by local governments is the use of annual operating budget and Capital Investment Funds, there shall be a certification from the local government's chief financial officer so indicating. Nothing herein shall be construed to prohibit the local government from revising its plan for funding closure and post-closure care costs if such revision provides economic benefit to the local government and if such revision provides adequate means for funding closure and post-closure care cost. This certification shall be worded as specified in 9VAC20-70-290 H; and

(6) If the local government is required under this section to fund a restricted sinking fund, escrow account, or to obtain an irrevocable letter of credit, an original letter signed by the local government's chief financial officer and worded as specified in 9VAC20-70-290 I must be submitted.

b. The items required in subdivision 3 a of this section shall be submitted to the department and placed in the facility operating record as follows:

(1) In the case of closure and post-closure care, either before January 7, 1998, or prior to the initial receipt of waste at the facility, whichever is later; or

(2) In the case of corrective action, not later than 120 days after the corrective action remedy is selected in accordance with the requirements of ~~9VAC20-80-310~~ 9VAC20-81-260.

c. After the initial submission of the items, the local government owner or operator must update the information, place a copy of the updated information in the operating record, and submit the updated documentation described in subdivisions 3 a (1) through (6) of this section to the department within 180 days following the close of the owner or operator's fiscal year.

d. The local government owner or operator is no longer required to meet the requirements of subdivision 3 of this section when:

(1) The owner or operator substitutes alternate financial assurance as specified in this section; or

(2) The owner or operator is released from the requirements of this section in accordance with 9VAC20-70-111 E, 9VAC20-70-112 B, or 9VAC20-70-113 C.

e. A local government shall satisfy the requirements of the financial test at the close of each fiscal year. If the local government owner or operator no longer meets the requirements of the local government financial test it must, within 210 days following the close of the owner or operator's fiscal year, obtain alternative financial assurance that meets the requirements of this section, place a copy of the financial assurance mechanism in the operating record, and submit the original financial assurance mechanism to the director.

f. The director, based on a reasonable belief that the local government owner or operator may no longer meet the requirements of the local government financial test, may require additional reports of financial condition from the local government at any time. If the director finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of the local government financial test, the local government shall provide alternate financial assurance in accordance with this article.

4. Calculation of costs to be assured. The portion of the closure, post-closure, and corrective action costs for which an owner or operator can assure under subdivision 1 of this section is determined as follows:

a. If the local government owner or operator does not assure other environmental obligations through a financial test, it may assure closure, post-closure, and corrective action costs that equal up to 43% of the local government's total annual revenue or the sum of total revenues of constituent governments in the case of regional authorities. If the local government assures closure, post-closure, and corrective action costs that exceed 20% (but do not exceed 43%) of the local government's total annual revenue or the sum of the revenue of constituent governments in the case of regional authorities, the locality must also establish one of the following:

(1) A restricted sinking fund for the purpose of funding closure of the facility;

(2) An escrow account managed by a third party escrow agent for the purpose of funding closure of the facility; or

(3) A letter of credit for the purpose of funding closure of the facility.

The funding of the restricted sinking fund, escrow account, or letter of credit shall be determined by the following formula:

((CE*CD)-E) where CE is the current closure cost estimate, CD is the percent of the landfill capacity used to date, and E is the current year expenses for closure.

b. If the local government assures other environmental obligations through a financial test, including those associated with UIC facilities under 40 CFR 144.62, petroleum underground storage tank facilities under 9VAC25-590-10 et seq., PCB storage facilities under 40 CFR Part 761, and hazardous waste treatment, storage, and disposal facilities under Part IX or X of the Virginia Hazardous Waste Management Regulations ~~(9VAC20-60-12 et seq.)~~ (9VAC20-60), it shall add those costs to the closure, post-closure, and corrective action costs it seeks to assure under subdivision 1 of this section. The total shall not exceed 43% of the local government's total annual revenue. If the local government's total environmental liabilities assured through financial tests exceed 20% (but do not exceed 43%) of the local government's total annual revenue or the sum of the revenue of constituent governments in the case of regional authorities, the locality must also establish one of the following:

(1) A restricted sinking fund for the purpose of funding closure of the facility;

(2) An escrow account managed by a third party escrow agent for the purpose of funding closure of the facility; or

(3) A letter of credit for the purpose of funding closure of the facility.

The funding of the restricted sinking fund, escrow account, or letter of credit shall be determined by the following formula:

((CE*CD)-E) where CE is the current closure cost estimate, CD is the percent of the landfill capacity used to date, and E is the current year expenses for closure.

c. The owner or operator shall obtain an alternate financial assurance mechanism for those costs that exceed the limits set in subdivisions 4 a and 4 b of this section.

9VAC20-70-290. Wording of financial mechanisms.

A. Wording of trust agreements.

(NOTE: Instructions in parentheses are to be replaced with the relevant information and the parentheses deleted.)

TRUST AGREEMENT

Trust agreement, the "Agreement," entered into as of (date) by and between (name of the owner or operator), a (State) (corporation, partnership, association, proprietorship), the

"Grantor," and (name of corporate trustee), a (State corporation) (national bank), the "Trustee."

Whereas, the Virginia Waste Management Board has established certain regulations applicable to the Grantor, requiring that the owner or operator of a (solid) (regulated medical) (yard) waste (transfer station) (receiving) (management) facility must provide assurance that funds will be available when needed for (closure, post-closure care, or corrective action) of the facility,

Whereas, the Grantor has elected to establish a trust to provide (all or part of) such financial assurance for the facility identified herein,

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee,

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

A. The term "fiduciary" means any person who exercises any power of control, management, or disposition or renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of this trust fund, or has any authority or responsibility to do so, or who has any authority or responsibility in the administration of this trust fund.

B. The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

C. The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of Facility and Cost Estimates. This Agreement pertains to facility(ies) and cost estimates identified on attached Schedule A.

(NOTE: On Schedule A, for each facility list, as applicable, the permit number, name, address, and the current closure, post-closure, corrective action cost estimates, or portions thereof, for which financial assurance is demonstrated by this Agreement.)

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the Department of Environmental Quality, Commonwealth of Virginia. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as property consisting of cash or securities, which are acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund will be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee undertakes no responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments to discharge any liabilities of the Grantor established by the Commonwealth of Virginia's Department of Environmental Quality.

Section 4. Payment for (Closure, Post-Closure Care, or Corrective Action). The Trustee will make such payments from the Fund as the Department of Environmental Quality, Commonwealth of Virginia will direct, in writing, to provide for the payment of the costs of (closure, post-closure care, corrective action) of the facility covered by this Agreement. The Trustee will reimburse the Grantor or other persons as specified by the Department of Environmental Quality, Commonwealth of Virginia, from the Fund for (closure, post-closure care, corrective action) expenditures in such amounts as the Department of Environmental Quality will direct, in writing. In addition, the Trustee will refund to the Grantor such amounts as the Department of Environmental Quality specifies in writing. Upon refund, such funds will no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the fund will consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee will invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with investment guidelines and objectives communicated in writing to the Trustee from time to time by the Grantor, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling and managing the Fund, the Trustee or any other fiduciary will discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of any enterprise of a like character and with like aims; except that:

A. Securities or other obligations of the Grantor, or any other owner or operator of the facility, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 USC § 80a-2(a), will not be acquired or held, unless they are securities or other obligations of the federal or a state government;

B. The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and

C. The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

A. To transfer from time to time any or all of the assets of the Fund to any common, commingled or collective trust fund created by the Trustee in which the Fund is eligible to participate subject to all of the provisions thereof, to be commingled with the assets of other trusts participating herein. To the extent of the equitable share of the Fund in any such commingled trust, such commingled trust will be part of the Fund; and

B. To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 USC § 80a-1 et seq., of one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustees may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

A. To sell, exchange, convey, transfer or otherwise dispose of any property held by it, by private contract or at public auction. No person dealing with the Trustee will be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other dispositions;

B. To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

C. To register any securities held in the fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United State government, or any agency or instrumentality thereof with a Federal Reserve Bank, but the books and records of the Trustee will at all times show that all such securities are part of the Fund;

D. To deposit any cash in the fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

E. To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund will be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee will be paid from the Fund.

Section 10. Annual Valuation. The Trustee will annually, at the end of the month coincident with or preceding the anniversary date of establishment of the Fund, furnish the Grantor and to the director of the Department of Environmental Quality, Commonwealth of Virginia, a statement confirming the value of the Trust. Any securities in the Fund will be valued at market value as of no more than 30 days prior to the date of the statement. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the director of the Department of Environmental Quality, Commonwealth of Virginia will constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee will be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee will be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon acceptance of the appointment by the successor trustee, the Trustee will assign, transfer and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee and the date on which he assumes administration of the trust will be specified in writing and sent to the Grantor, the director of the Department of Environmental Quality, Commonwealth of Virginia, and the present trustees by certified mail 10 days before such change

becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this section will be paid as provided in Part IX.

Section 14. Instructions to the Trustee. All orders, requests and instructions by the Grantor to the Trustee will be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the grantor may designate by amendment to Exhibit A. The Trustee will be fully protected in acting without inquiry in accordance with the Grantor's orders, requests and instructions. All orders, requests, and instructions by the Director of the Department of Environmental Quality, Commonwealth of Virginia, to the Trustee will be in writing, signed by the Director and the Trustee will act and will be fully protected in acting in accordance with such orders, requests and instructions. The Trustee will have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the Commonwealth of Virginia's Department of Environmental Quality hereunder has occurred. The Trustee will have no duty to act in the absence of such orders, requests and instructions from the Grantor and/or the Commonwealth of Virginia's Department of Environmental Quality, except as provided for herein.

Section 15. Notice of Nonpayment. The Trustee will notify the Grantor and the Director of the Department of Environmental Quality, Commonwealth of Virginia, by certified mail within 10 days following the expiration of the 30-day period after the anniversary of the establishment of the Trust, if no payment is received from the Grantor during that period. After the pay-in period is completed, the Trustee is not required to send a notice of nonpayment.

Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the Director of the Department of Environmental Quality, Commonwealth of Virginia, or by the Trustee and the Director of the Department of Environmental Quality, Commonwealth of Virginia, if the Grantor ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust will be irrevocable and will continue until terminated at the written agreement of the Grantor, the Trustee, and the Director of the Department of Environmental Quality, Commonwealth of Virginia, or by the Trustee and the Director if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, will be delivered to the Grantor.

Section 18. Immunity and Indemnification. The Trustee will not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the Director of the Department of Environmental Quality, Commonwealth of Virginia, issued in accordance with this Agreement. The Trustee will be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law. This Agreement will be administered, construed and enforced according to the laws of the Commonwealth of Virginia.

Section 20. Interpretation. As used in the Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement will not affect the interpretation of the legal efficacy of this Agreement.

In witness whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in 9VAC20-70-290 A of the Financial Assurance Regulations for Solid Waste Disposal, Transfer and Treatment Facilities, as such regulations were constituted on the date shown immediately below.

(Signature of Grantor)

By: (Title) (Date)

Attest:

(Title) (Date)

(Seal)

(Signature of Trustee)

By

Attest:

(Title)

(Seal) (Date)

Certification of Acknowledgment:

COMMONWEALTH OF VIRGINIA

STATE OF _____

CITY/COUNTY OF _____

On this date, before me personally came (owner or operator) to me known, who being by me duly sworn, did depose and say that she/he resides at (address), that she/he is (title) of (corporation), the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the

Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

(Signature of Notary Public)

B. Wording of surety bond guaranteeing performance or payment.

(NOTE: instructions in parentheses are to be replaced with the relevant information and the parentheses deleted.)

PERFORMANCE OR PAYMENT BOND

Date bond executed: _____

Effective date: _____

Principal: (legal name and business address) _____

Type of organization: (insert "individual," "joint venture," "partnership," or "corporation") _____

State of incorporation: _____

Surety: (name and business address) _____

Name, address, permit number, if any, and (closure, post-closure care, or corrective action) cost estimate for the facility: _____

Penal sum of bond: $_____

Surety's bond number: _____

Know all men by these present, That we, the Principal and Surety hereto are firmly bound to the Department of Environmental Quality, Commonwealth of Virginia, (hereinafter called the Department) in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of each sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas, said Principal is required to have a permit from the Department of Environmental Quality, Commonwealth of Virginia, in order to own or operate the (solid, regulated medical, yard) waste management facility identified above, and

Whereas, said Principal is required to provide financial assurance for (closure, post-closure care, corrective action) of the facility as a condition of the permit or an order issued by the department,

Now, therefore the conditions of this obligation are such that if the Principal shall faithfully perform (closure, post-closure care, corrective action), whenever required to do so, of the facility identified above in accordance with the order or the (closure, post-closure care, corrective action) plan submitted to receive said permit and other requirements of said permit as such plan and permit may be amended or renewed pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended,

Or, if the Principal shall faithfully perform (closure, post-closure care, corrective action) following an order to begin (closure, post-closure care, corrective action) issued by the Commonwealth of Virginia's Department of Environmental Quality or by a court, or following a notice of termination of the permit,

Or, if the Principal shall provide alternate financial assurance as specified in the Department's regulations and obtain the director's written approval of such assurance, within 90 days of the date notice of cancellation is received by the Director of the Department of Environmental Quality from the Surety, then this obligation will be null and void, otherwise it is to remain in full force and effect for the life of the management facility identified above.

The Surety shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the Director of the Department of Environmental Quality, Commonwealth of Virginia, that the Principal has been found in violation of the requirements of the Department's regulations, the Surety must either perform (closure, post-closure care, corrective action) in accordance with the approved plan and other permit requirements or forfeit the (closure, post-closure care, corrective action) amount guaranteed for the facility to the Commonwealth of Virginia.

Upon notification by the Director of the Department of Environmental Quality, Commonwealth of Virginia, that the Principal has been found in violation of an order to begin (closure, post-closure care, corrective action), the Surety must either perform (closure, post-closure care, corrective action) in accordance with the order or forfeit the amount of the (closure, post-closure care, corrective action) guaranteed for the facility to the Commonwealth of Virginia.

The Surety hereby waives notification of amendments to the (closure, post-closure care, corrective action) plans, orders, permit, applicable laws, statutes, rules, and regulations and agrees that such amendments shall in no way alleviate its obligation on this bond.

For purposes of this bond, (closure, post-closure care, corrective action) shall be deemed to have been completed when the Director of the Department of Environmental Quality, Commonwealth of Virginia, determines that the conditions of the approved plan have been met.

The liability of the Surety shall not be discharged by any payment or succession of payments hereunder, unless and

until such payment or payments shall amount in the aggregate to the penal sum of the bond, but the obligation of the Surety hereunder shall not exceed the amount of said penal sum unless the Director of the Department of Environmental Quality, Commonwealth of Virginia, should prevail in an action to enforce the terms of this bond. In this event, the Surety shall pay, in addition to the penal sum due under the terms of the bond, all interest accrued from the date the Director of the Department of Environmental Quality, Commonwealth of Virginia, first ordered the Surety to perform. The accrued interest shall be calculated at the judgment rate of interest pursuant to § ~~6.1-330.54~~ 6.2-302 of the Code of Virginia.

The Surety may cancel the bond by sending written notice of cancellation to the owner or operator and to the Director of the Department of Environmental Quality, Commonwealth of Virginia, provided, however, that cancellation cannot occur (1) during the 120 days beginning on the date of receipt of the notice of cancellation by the director as shown on the signed return receipt; or (2) while an enforcement action is pending.

The Principal may terminate this bond by sending written notice to the Surety, provided, however, that no such notice shall become effective until the Surety receives written authorization for termination of the bond by the Director of the Department of Environmental Quality, Commonwealth of Virginia.

In witness whereof, the Principal and Surety have executed this Performance Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety and I hereby certify that the wording of this surety bond is identical to the wording specified in 9VAC20-70-290 B of the Financial Assurance Regulations for Solid Waste Disposal, Transfer, and Treatment Facilities as such regulations were constituted on the date shown immediately below.

Principal

Signature(s): _____

Name(s) and Title(s): (typed)_____

Corporate Surety

Name and Address: _____

State of Incorporation: _____

Liability Limit: $___

Signature(s): _____

Name(s) and Title(s): (typed)_____

Corporate Seal:

C. Wording of irrevocable standby letter of credit.

(NOTE: Instructions in parentheses are to be replaced with the relevant information and the parentheses deleted.)

IRREVOCABLE STANDBY LETTER OF CREDIT

Director

Department of Environmental Quality

P.O. Box 10009

Richmond, Virginia 23240-0009

Dear (Sir or Madam):

We hereby establish our Irrevocable Letter of Credit No..... in your favor at the request and for the account of (owner's or operator's name and address) up to the aggregate amount of (in words) U.S. dollars $____, available upon presentation of

1. Your sight draft, bearing reference to this letter of credit No ____ together with

2. Your signed statement declaring that the amount of the draft is payable pursuant to regulations issued under the authority of the Department of Environmental Quality, Commonwealth of Virginia.

The following amounts are included in the amount of this letter of credit: (Insert the facility permit number, if any, name and address, and the closure, post-closure care, corrective action cost estimate, or portions thereof, for which financial assurance is demonstrated by this letter of credit.)

This letter of credit is effective as of (date) and will expire on (date at least one year later), but such expiration date will be automatically extended for a period of (at least one year) on (date) and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify you and (owner or operator's name) by certified mail that we decide not to extend the Letter of Credit beyond the current expiration date. In the event you are so notified, unused portion of the credit will be available upon presentation of your sight draft for 120 days after the date of receipt by you as shown on the signed return receipt or while a compliance procedure is pending, whichever is later.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we will duly honor such draft upon presentation to us, and we will pay to you the amount of the draft promptly and directly.

I hereby certify that I am authorized to execute this letter of credit on behalf of (issuing institution) and I hereby certify that the wording of this letter of credit is identical to the wording specified in 9VAC20-70-290 C of the Financial Assurance Regulations for Solid Waste Disposal, Transfer, and Treatment Facilities as such regulations were constituted on the date shown immediately below.

Attest:

(Print name and title of official of issuing institution) (Date)

(Signature) (Date)

This credit is subject to (insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce," of "the Uniform Commercial Code.")

D. Assignment of certificate of deposit account.

City _____ _____, 20___

FOR VALUE RECEIVED, the undersigned assigns all right, title and interest to the Virginia Department of Environmental Quality, Commonwealth of Virginia, and its successors and assigns the Virginia Department of Environmental Quality the principal amount of the instrument, including all monies deposited now or in the future to that instrument, indicated below:

( ) If checked here, this assignment includes all interest now and hereafter accrued.

Certificate of Deposit Account No. _____

This assignment is given as security to the Virginia Department of Environmental Quality in the amount of _____ Dollars ($_____).

Continuing Assignment. This assignment shall continue to remain in effect for all subsequent terms of the automatically renewable certificate of deposit.

Assignment of Document. The undersigned also assigns any certificate or other document evidencing ownership to the Virginia Department of Environmental Quality.

Additional Security. This assignment shall secure the payment of any financial obligation of the (name of owner/operator) to the Virginia Department of Environmental Quality for ("closure" "post closure care" "corrective action") at the (facility name and permit number) located (physical address)

Application of Funds. The undersigned agrees that all or any part of the funds of the indicated account or instrument may be applied to the payment of any and all financial assurance obligations of (name of owner/operator) to the Virginia Department of Environmental Quality for ("closure" "post closure care" "corrective action") at the (facility name and address). The undersigned authorizes the Virginia Department of Environmental Quality to withdraw any principal amount on deposit in the indicated account or instrument including any interest, if indicated, and to apply it in the Virginia Department of Environmental Quality's discretion to fund ("closure" "post closure care" "corrective action") at the (facility name) or in the event of (owner or operator's) failure to comply with the Virginia Financial Assurance Regulations for Solid Waste Disposal, Transfer, and Treatment Facilities, ~~9VAC20-70-10 et seq~~ 9VAC20-70. The undersigned agrees that the Virginia Department of Environmental Quality may withdraw any principal and/or interest from the indicated account or instrument without demand or notice. (The undersigned) agrees to assume any and all loss of penalty due to federal regulations concerning the early withdrawal of funds. Any partial withdrawal of principal or interest shall not release this assignment.

The party or parties to this Assignment set their hand or seals, or if corporate, has caused this assignment to be signed in its corporate name by its duly authorized officers and its seal to be affixed by authority of its Board of Directors the day and year above written.

_____ SEAL

(Owner)

_____

(print owner's name)

_____ SEAL

(Owner)

_____

(print owner's name)

THE FOLLOWING SECTION IS TO BE COMPLETED BY THE BRANCH OR LENDING OFFICE:

The signature(s) as shown above compare correctly with the name(s) as shown on record as owner(s) of the Certificate of Deposit indicated above. The above assignment has been properly recorded by placing a hold in the amount of $ _____ for the benefit of the Department of Environmental Quality.

( ) If checked here, the accrued interest on the Certificate of Deposit indicated above has been maintained to capitalize versus being mailed by check or transferred to a deposit account.

_____ _____

(Signature) (Date)

_____

(print name)

_____

(Title)

E. Wording of certificate of insurance.

(NOTE: Instructions in parentheses are to be replaced with the relevant information and the parentheses deleted.)

CERTIFICATE OF INSURANCE

Name and Address of Insurer (herein called the "Insurer"):

_____

_____

Name and Address of Insured (herein called the "Insured"):

_____

_____

_____

Facilities Covered: (List for each facility: Permit number (if applicable), name, address and the amount of insurance for closure, post-closure care, or corrective action. (These amounts for all facilities covered shall total the face amount shown below.))

Face Amount: $___

Policy Number: _____

Effective Date: _____

The Insurer hereby certifies that it has issued to the Insured the policy of insurance identified above to provide financial assurance for (insert "closure," "post-closure care," "corrective action") for the facilities identified above. The Insurer further warrants that such policy conforms in all respects with the requirements of 9VAC20-70-190 of the Financial Assurance Regulations for Solid Waste Disposal, Transfer, and Treatment Facilities ("Regulations") ~~(9VAC20-70-10 et seq.)~~ (9VAC20-70), as such regulations were constituted on the date shown immediately below. It is agreed that any provision of the policy inconsistent with such regulations is hereby amended to eliminate such inconsistency.

Whenever requested by the Director, the Insurer agrees to furnish to the Director a duplicate original of the policy listed above, including all endorsements thereon.

I hereby certify that the wording of this certificate is identical to the wording specified in 9VAC20-70-290 E of the Financial Assurance Regulations for Solid Waste Disposal, Transfer, and Treatment Facilities as such regulations were constituted on the date shown immediately below.

(Authorized signature for Insurer)

(Name of person signing)

(Title of person signing)

Signature of witness or notary:

(Date)

F. Wording of letter from chief financial officer.

(NOTE: Instructions in parentheses are to be replaced with the relevant information and the parentheses removed.)

Director
Department of Environmental Quality
P.O. Box 10009
Richmond, Virginia 23240-0009

Dear (Sir, Madam):

I am the chief financial officer of (name and address of firm). This letter is in support of this firm's use of the financial test to demonstrate financial assurance, as specified in 9VAC20-70-200 of the Financial Assurance Regulations for Solid Waste Disposal, Transfer, and Treatment Facilities ~~(9VAC20-70-10 et seq.)~~ (9VAC20-70) ("Regulations").

(Fill out the following four paragraphs regarding solid waste, regulated medical waste, yard waste composting, hazardous waste, underground injection (regulated under the federal program in 40 CFR Part 144, or its equivalent in other states), petroleum underground storage ~~(9VAC25-590-10 et seq.)~~ (9VAC25-590), above ground storage facilities ~~(9VAC25-640-10 et seq.)~~ (9VAC25-640) and PCB storage (regulated under 40 CFR Part 761) facilities and associated cost estimates. If your firm has no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its name, address, permit number, if any, and current closure, post-closure care, corrective action or any other environmental obligation cost estimates. Identify each cost estimate as to whether it is for closure, post-closure care, corrective action or other environmental obligation.)

1. This firm is the owner or operator of the following facilities for which financial assurance is demonstrated through the corporate test specified in 9VAC20-70-200 or its equivalent in other applicable regulations. The current cost estimates covered by the test are shown for each facility:

2. This firm guarantees, through the corporate guarantee specified in 9VAC20-70-220, the financial assurance for the following facilities owned or operated by subsidiaries of this firm. The current cost estimates so guaranteed are shown for each facility:

3. This firm, as owner or operator or guarantor, is demonstrating financial assurance for the following facilities through the use of a financial test. The current cost estimates covered by such a test are shown for each facility:

4. This firm is the owner or operator of the following waste management facilities for which financial assurance is not demonstrated through the financial test or any other financial assurance mechanism. The current cost estimates for the facilities which are not covered by such financial assurance are shown for each facility:

This firm (insert "is required" or "is not required") to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on (month, day). The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended (date).

1) Sum of current closure, post-closure care, corrective action or other environmental obligations cost estimates (total of all cost estimates shown in the four paragraphs above.)	$_____
2) Tangible net worth*	$_____
3) Total assets located in the United States*	$_____

	YES	NO
Line 2 exceeds line 1 by at least $10 million?	____	____
Line 3 exceeds line 1 by at least $10 million?	____	____

(Fill in Alternative I if the criteria of 9VAC20-70-200 1 a (1) are used. Fill in Alternative II if the criteria of 9VAC20-70-200 1 a (2) are used. Fill in Alternative III if the criteria of 9VAC20-70-200 1 a (3) are used.)

ALTERNATIVE I

Current bond rating of this firm's senior unsubordinated debt and name of rating service

Date of issuance of bond

Date of maturity of bond

ALTERNATIVE II

4) Total liabilities* (if any portion of the closure, post-closure care, corrective action or other environmental obligations cost estimates is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to line 5.)	$_____
5) Net worth*	$_____

	YES	NO
Is line 4 divided by line 5 less than 1.5?		

ALTERNATIVE III

6) Total liabilities*	$_____
7) The sum of net income plus depreciation, depletion, and amortization minus $10 million*	$_____

	YES	NO
Is line 7 divided by line 6 less than 0.1?		

I hereby certify that the wording of this letter is identical to the wording in 9VAC20-70-290 F of the Financial Assurance Regulations for Solid Waste Disposal, Transfer, and Treatment Facilities as such regulations were constituted on the date shown immediately below.

(Signature)

(Name)

(Title)

(Date)

G. Wording of the local government letter from chief financial officer.

(NOTE: Instructions in parentheses are to be replaced with the relevant information and the parentheses deleted.)

LETTER FROM CHIEF FINANCIAL OFFICER

I am the chief financial officer of (insert: name and address of local government owner or operator, or guarantor). This letter is in support of the use of the financial test to demonstrate financial responsibility for ("closure care" "post-closure care" "corrective action costs") arising from operating a solid waste management facility.

The following facilities are assured by this financial test: (List for each facility: the name and address of the facility, the permit number, the closure, post-closure and/or corrective action costs, whichever applicable, for each facility covered by this instrument).

This owner's or operator's financial statements were prepared in conformity with Generally Accepted Accounting Principles for governments and have been audited by ("an independent certified public accountant" "Auditor of Public Accounts"). The owner or operator has not received an adverse opinion or a disclaimer of opinion from ("an independent certified public accountant" "Auditor of Public Accounts") on its financial statements for the latest completed fiscal year.

This owner or operator is not currently in default on any outstanding general obligation bond. Any outstanding issues of general obligation, if rated, have a Moody's rating of Aaa,

Aa, A, or Baa or a Standard and Poor's rating of AAA, AA, A or BBB; if rated by both firms, the bonds have a Moody's rating of Aaa, Aa, A or Baa and a Standard and Poor's rating of AAA, AA, A, or BBB.

The fiscal year of this owner or operator ends on (month, day). The figures for the following items marked with the asterisk are derived from this owner's or operator's independently audited, year-end financial statements for the latest completed fiscal year ended (date).

(Please complete Alternative I or Alternative II.)

(Fill in Alternative I if the criteria in 9VAC20-70-210 1 a (1) are used. Fill in Alternative II if the criteria of 9VAC20-70-210 1 a (2) are used.)

ALTERNATIVE I—BOND RATING TEST

The details of the issue date, maturity, outstanding amount, bond rating, and bond rating agency of all outstanding general obligation bond issues that are being used by (name of local government owner or operator, or guarantor) to demonstrate financial responsibility are as follows: (complete table):

Issue Date	Maturity Date	Outstanding Amount	Bond Rating	Rating Agency
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Any outstanding issues of general obligation bonds, if rated, have a Moody's rating of Aaa, Aa, A, or Baa or a Standard and Poor's rating of AAA, AA, A or BBB; if rated by both firms, the bonds have a Moody's rating of Aaa, Aa, A or Baa and a Standard and Poor's rating of AAA, AA, A or BBB.

1) Sum of current closure, post-closure and corrective action cost estimates (total of all cost estimates listed above) $_____

*2) Operating Deficit

(a) latest completed fiscal year (insert year) $_____

(b) previous fiscal year (insert year) $_____

*3) Total Revenue

(a) latest completed fiscal year (insert year) $_____

(b) previous fiscal year (insert year) $_____

4) Other self-insured environmental costs

(a) Amount of aggregate underground injection control systems financial assurance insured by a financial test under 40 CFR 144.62 $_____

(b) Amount of annual underground storage tank aggregate coverage insured by a financial test under 40 CFR Part 280 and ~~9VAC25-590-10 et seq.~~ 9VAC25-590 $_____

(c) Amount of aggregate costs associated with PCB storage facilities insured by a financial test under 40 CFR Part 761 $_____

(d) Amount of annual aggregate hazardous waste financial assurance insured by a financial test under 40 CFR Parts 264 and 265 and ~~9VAC20-60-12 et seq.~~ 9VAC20-60 $_____

(e) Total of lines 4(a) through 4(d) $_____

	YES	NO
5) Is (line 2a / line 3a) < 0.05?	____	____
6) Is (line 2b / line 3b) < 0.05?	____	____
7) Is (line 1 + line 4e) <= (line 3a x 0.43)?	____	____
8) Is (line 1 + line 4e) <= (line 3a x 0.20)?	____	____

If the answer to line 7 is yes and the answer to line 8 is no, please attach documentation from the agent/trustee /issuing institution stating the current balance of the account/fund /irrevocable letter of credit as of the latest fiscal reporting year to this form as required by 9VAC20-70-210.

ALTERNATIVE II—FINANCIAL RATIO TEST

1) Sum of current closure, post-closure and corrective action cost estimates $_____

*2) Operating Deficit

(a) latest completed fiscal year (insert year) $_____

(b) previous fiscal year (insert year) $_____

*3) Total Revenue

(a) latest completed fiscal year (insert year) $_____

(b) previous fiscal year (insert year) $_____

4) Other self-insured environmental costs

(a) Amount of aggregate underground injection control systems financial assurance insured by a financial test under 40 CFR 144.62 $_____

(b) Amount of annual underground storage tank aggregate coverage insured by a financial test under 40 CFR Part 280 and ~~9VAC25-590-10 et seq.~~ 9VAC25-590 $_____

(c) Amount of aggregate costs associated with PCB storage facilities insured by a financial test under 40 CFR Part 761 $_____

(d) Amount of annual aggregate hazardous waste financial assurance insured by a financial test under 40 CFR Parts 264 and 265 and ~~9VAC20-60-12 et seq.~~ 9VAC20-60 $_____

(e) Total of lines 4(a) through 4(d) $_____

*5) Cash plus marketable securities $_____

*6) Total Expenditures $_____

*7) Annual Debt Service $_____

	YES	NO
8) Is (line 2a / line 3a) < 0.05?	____	____
9) Is (line 2b / line 3b) < 0.05?	____	____
10) Is (line 1 + line 4e) <= (line 3a x 0.43)?	____	____
11) Is (line 5 / line 6) >= 0.05?	____	____
12) Is (line 7 / line 6) <= 0.20?	____	____
13) Is (line 1 + line 4e) <= (line 3a x.20)	____	____

If the answer to line 13 is no, please attach documentation from the agent/trustee/issuing institution stating the current balance of the account/fund/irrevocable letter of credit as of the latest fiscal reporting year to this form as required by 9VAC20-70-210.

I hereby certify that the wording of this letter is identical to the wording in 9VAC20-70-290 G of the Financial Assurance Regulations for Solid Waste Disposal, Transfer, and Treatment Facilities as such regulations were constituted on the date shown immediately below.

(Signature)

(Name of person signing)

(Title of person signing)

(Date)

H. Certification of funding.

CERTIFICATION OF FUNDING

I certify the following information details the current plan for funding closure and post closure at the solid waste management facilities listed below.

Facility Permit #	Source for funding closure and post closure

Name of Locality or Corporation:

_____

Signature	Printed Name	Date

Title

I. Certification of escrow/sinking fund /irrevocable letter of credit balance.

CERTIFICATION OF ESCROW/SINKING FUND BALANCE OR AMOUNT OF IRREVOCABLE LETTER OF CREDIT

I am the Chief Financial Officer of (name of locality) and hereby certify that as of (date) the current balance in the restricted sinking (type of fund) fund or the escrow account or the amount of the irrevocable letter of credit restricted to landfill closure costs is $_____

The calculation used to determine the amount required to be funded is as follows:

(Show the values that were used in the following formula:

(CE * CD) - E

Where CE is the current closure cost estimate, CD is the percentage of landfill capacity used to date, and E is current year expenses for closure.)

Therefore, this account has been funded or an irrevocable letter of credit has been obtained in accordance with the Financial Assurance Regulations for Solid Waste Disposal, Transfer and Treatment Facilities, ~~9VAC20-70-10 et seq~~ 9VAC20-70.

(Signature)

(Name of person signing)

(Title of person signing)

(Date)

J. Wording of corporate guarantee.

(NOTE: Instructions in parentheses are to be replaced with the relevant information and the parentheses removed.)

CORPORATE GUARANTEE

Guarantee made this (date) by (name of guaranteeing entity), a business corporation organized under the laws of the state of (insert name of state), herein referred to as guarantor. This guarantee is made on behalf of the (owner or operator) of (business address), which is (one of the following: "our subsidiary"; "a subsidiary of (name and address of common parent corporation) of which guarantor is a subsidiary"; or "an entity with which the guarantor has a substantial business relationship, as defined in Part I of the Virginia Financial Assurance Regulations for Solid Waste Disposal, Transfer, and Treatment Facilities ~~(9VAC20-70-10 et seq.)~~ (9VAC20-70)") to the Virginia Department of Environmental Quality ("Department"), obligee, on behalf of our subsidiary (owner or operator) of (business address).

Recitals

1. Guarantor meets or exceeds the financial test criteria in 9VAC20-70-200 and agrees to comply with the reporting requirements for guarantors as specified in 9VAC20-70-220 of the Financial Assurance Regulations for Solid Waste Disposal, Transfer, and Treatment Facilities ("Regulations").

2. (Owner or operator) owns or operates the following (solid, regulated medical, yard) waste management facility(ies) covered by this guarantee: (List for each facility: name, address, and permit number, if any. Indicate for each whether guarantee is for closure, post-closure care, corrective action or other environmental obligations.)

3. "Closure plans", "post-closure care plans" and "corrective action plans" as used below refer to the plans maintained as required by the Solid Waste Management Regulations ~~(9VAC20-80-10 et seq.),~~ (9VAC20-81), or the Regulated Medical Waste Management Regulations ~~(9VAC20-120-10 et seq.),~~ (9VAC20-120) ~~or Vegetative Waste Management and Yard Waste Composting Regulations (9VAC20-101-10 et seq.)~~.

4. For value received from (owner or operator), guarantor guarantees to the Department that in the event that (owner or operator) fails to perform (insert "closure," "post-closure care," or "corrective action") of the above facility(ies) in accordance with the closure or post-closure care plans and other (requirements of the) permit or (the order) whenever required to do so, the guarantor shall do so or establish a trust fund as specified in 9VAC20-70-140 in the name of (owner or operator) in the amount of the current cost estimates.

5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the director and to (owner or operator) that he intends to provide alternate financial assurance as specified in Article 4 of Part III of the Regulations, in the name of (owner or operator). Within 120 days after the end of such fiscal year, the guarantor shall establish such financial assurance unless (owner or operator) has done so.

6. The guarantor agrees to notify the director by certified mail, of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

7. Guarantor agrees that within 30 days after being notified by the director of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor of closure, post-closure care, or corrective action, he shall establish alternate financial assurance as specified in Article 4 of Part III of the Regulations, in the name of (owner or operator) unless (owner or operator) has done so.

8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the closure, post-closure or corrective action plan, amendment or modification of the permit,

amendment or modification of the order, the extension or reduction of the time of performance of closure, post-closure, or corrective action or any other modification or alteration of an obligation of the owner or operator pursuant to the ~~(Virginia Solid or Regulated Medical Waste Management or Vegetative Waste Management and Yard Waste Composting Regulations or § 10.1-1454.1 of the Code of Virginia)~~ (Solid Waste Management Regulations or Regulated Medical Waste Management Regulations or § 10.1-1454.1 of the Code of Virginia).

9. Guarantor agrees to remain bound under this guarantee for so long as (owner or operator) shall comply with the applicable financial assurance requirements of Article 4 of Part III of the Regulations for the above-listed facilities, except as provided in paragraph 10 of this agreement.

10. (Insert the following language if the guarantor is (a) a direct or higher-tier corporate parent, or (b) a firm whose parent corporation is also the parent corporation of the owner or operator:) Guarantor may terminate this guarantee by sending notice by certified mail to the Director of the Department of Environmental Quality and to the (owner or operator), provided that this guarantee may not be terminated unless and until (the owner or operator) obtains and the director approves, alternate (closure, post-closure, corrective action) coverage complying with the requirements of ~~9VAC20-70-10 et seq~~ 9VAC20-70. (Insert the following language if the guarantor is a firm qualifying as a guarantor due to its "substantial business relationship" with the owner or operator:) Guarantor may terminate this guarantee 120 days following the receipt of notification, through certified mail, by the director and by (the owner or operator).

11. Guarantor agrees that if (owner or operator) fails to provide alternate financial assurance as specified in Article 4 of Part III of the Regulations, and obtain written approval of such assurance from the director within 90 days after a notice of cancellation by the guarantor is received by the director from guarantor, guarantor shall provide such alternate financial assurance in the name of (owner or operator).

12. Guarantor expressly waives notice of acceptance of this guarantee by the Department or by (owner or operator). Guarantor also expressly waives notice of amendments or modifications of the closure and/or post-closure plan and of amendments or modifications of the facility permit(s).

I hereby certify that the wording of this guarantee is identical to the wording in 9VAC20-70-290 J of the Financial Assurance Regulations for Solid Waste Disposal, Transfer, and Treatment Facilities as such regulations were constituted on the date shown immediately below.

(Name of guarantor)

Effective date: _____

(Authorized signature for guarantor) _____

(Name of person signing) _____

(Title of person signing) _____

Signature of witness or notary: _____

K. Wording of local government guarantee.

(NOTE: Instructions in parentheses are to be replaced with the relevant information and the parentheses removed.)

LOCAL GOVERNMENT GUARANTEE

Guarantee made this (date) by (name of guaranteeing entity), a local government created under the laws of the state of Virginia, herein referred to as guarantor. This guarantee is made on behalf of the (owner or operator) of (address), to the Virginia Department of Environmental Quality ("Department"), obligee.

Recitals

1. Guarantor meets or exceeds the financial test criteria in 9VAC20-70-210 and agrees to comply with the reporting requirements for guarantors as specified in 9VAC20-70-230 of the Financial Assurance Regulations for Solid Waste Disposal, Treatment and Transfer Facilities ("Regulations").

2. (Owner or operator) owns or operates the following (solid, regulated medical, yard) waste management facility(ies) covered by this guarantee: (List for each facility: name, address, and permit number, if any. Indicate for each whether guarantee is for closure, post-closure care, corrective action or other environmental obligations.)

3. "Closure plans" and "post-closure care plans" as used below refer to the plans maintained as required by the Solid Waste Management Regulations ~~(9VAC20-80-10 et seq.), or Vegetative Waste Management and Yard Waste Composting Regulations (9VAC20-101-10 et seq.)~~ (9VAC20-81).

4. For value received from (owner or operator), guarantor guarantees to the Department that in the event that (owner or operator) fails to perform (insert "closure," "post-closure care," or "corrective action") of the above facility(ies) in accordance with the closure or post-closure care plans and other (requirements of the) permit or (the order) whenever required to do so, the guarantor shall do so or establish a trust fund as specified in 9VAC20-70-150 in the name of (owner or operator) in the amount of the current cost estimates.

5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the director and to (owner or operator) that he intends to provide alternate financial assurance as specified in Article 4 of Part III of

the Regulations, in the name of (owner or operator). Within 120 days after the end of such fiscal year, the guarantor shall establish such financial assurance unless (owner or operator) has done so.

6. The guarantor agrees to notify the director by certified mail, of a voluntary or involuntary proceeding under Title 11 (bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

7. Guarantor agrees that within 30 days after being notified by the director of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor of closure, post-closure care, or corrective action, he shall establish alternate financial assurance as specified in Article 4 of Part III of the Regulations in the name of (owner or operator) unless (owner or operator) has done so.

8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the closure or post-closure plan, amendment or modification of the closure or post-closure plan, amendment or modification of the permit, amendment or modification of the order, the extension or reduction of the time of performance of the closure or post-closure, or any other modification or alteration of an obligation of the owner or operator pursuant to the Virginia (Solid Waste Management or Regulated Medical Waste Management) ~~or Vegetative Waste Management and Yard Waste Composting)~~ Regulations.

9. Guarantor agrees to remain bound under this guarantee for so long as (owner or operator) shall comply with the applicable financial assurance requirements of Article 4 of Part III of the Regulations for the above-listed facilities, except as provided in paragraph 10 of this agreement.

10. Guarantor may terminate this guarantee by sending notice by certified mail to the Director of the Department of Environmental Quality and to the (owner or operator), provided that this guarantee may not be terminated unless and until (the owner or operator) obtains and the director approves, alternate (closure, post-closure, corrective action,) coverage complying with the requirements of ~~9VAC20-70-10 et seq~~ 9VAC20-70.

11. Guarantor agrees that if (owner or operator) fails to provide alternate financial assurance as specified in Article 4 of Part III of the Regulations, and obtain written approval of such assurance from the director with 90 days after a notice of cancellation by the guarantor is received by the director from guarantor, guarantor shall provide such alternate financial assurance in the name of (owner or operator).

12. Guarantor expressly waives notice of acceptance of this guarantee by the Department or by (owner or operator). Guarantor also expressly waives notice of amendments or modifications of the closure and/or post-closure plan and of amendments or modifications of the facility permit(s).

I hereby certify that the wording of this guarantee is identical to the wording specified in 9VAC20-70-290 K of the Financial Assurance Regulations for Solid Waste Disposal, Transfer and Treatment Facilities as such regulations were constituted on the date shown immediately below.

(Name of guarantor) _____

Effective date: _____

(Authorized signature for guarantor) _____

(Name of person signing) _____

(Title of person signing) _____

Signature of witness or notary: _____

Part I
Definitions

9VAC20-81-10. Definitions.

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

"Active life" means the period of operation beginning with the initial receipt of solid waste and ending at completion of closure activities required by this chapter.

"Active portion" means that part of a facility or unit that has received or is receiving wastes and that has not been closed in accordance with this chapter.

"Agricultural waste" means all solid waste produced from farming operations.

"Airport" means, for the purpose of this chapter, a military airfield or a public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.

"Aquifer" means a geologic formation, group of formations, or a portion of a formation capable of yielding significant quantities of groundwater to wells or springs.

"Ash" means the fly ash or bottom ash residual waste material produced from incineration or burning of solid waste or from any fuel combustion.

"Base flood" see "Hundred-year flood."

"Bedrock" means the rock that underlies soil or other unconsolidated, superficial material at a site.

"Benchmark" means a permanent monument constructed of concrete and set in the ground surface below the frostline with identifying information clearly affixed to it. Identifying information will include the designation of the benchmark as

well as the elevation and coordinates on the local or Virginia state grid system.

"Beneficial use" means a use that is of benefit as a substitute for natural or commercial products and does not contribute to adverse effects on health or environment.

"Bioremediation" means remediation of contaminated media by the manipulation of biological organisms to enhance the degradation of contaminants.

"Bird hazard" means an increase in the likelihood of bird/aircraft collisions that may cause damage to the aircraft or injury to its occupants.

"Board" means the Virginia Waste Management Board.

"Bottom ash" means ash or slag that has been discharged from the bottom of the combustion unit after combustion.

"Capacity" means the maximum permitted volume of solid waste, inclusive of daily and intermediate cover, that can be disposed in a landfill. This volume is measured in cubic yards.

"Captive industrial landfill" means an industrial landfill that is located on property owned or controlled by the generator of the waste disposed of in that landfill.

"Clean wood" means solid waste consisting of untreated wood pieces and particles that do not contain paint, laminate, bonding agents, or chemical preservatives or are otherwise unadulterated.

"Closed facility" means a solid waste management facility that has been properly secured in accordance with the requirements of this chapter.

"Closure" means that point in time when a permitted landfill has been capped, certified as properly closed by a professional engineer, inspected by the department, and closure notification is performed by the department in accordance with 9VAC20-81-160 D.

"Coal combustion byproducts" or "CCB" means residuals, including fly ash, bottom ash, boiler slag, and flue gas emission control waste produced by burning coal.

"Combustion unit" means an incinerator, waste heat recovery unit, or boiler.

"Commercial waste" means all solid waste generated by establishments engaged in business operations other than manufacturing or construction. This category includes, but is not limited to, solid waste resulting from the operation of stores, markets, office buildings, restaurants, and shopping centers.

"Compliance schedule" means a time schedule for measures to be employed on a solid waste management facility that will ultimately upgrade it to conform to this chapter.

"Compost" means a stabilized organic product produced by a controlled aerobic decomposition process in such a manner that the product can be handled, stored, and/or applied to the land without adversely affecting public health or the environment.

"Composting" means the manipulation of the natural process of decomposition of organic materials to increase the rate of decomposition.

"Conditionally exempt small quantity generator" means a generator of hazardous waste who has been so defined in 40 CFR 261.5, as amended. That section applies to the persons who generate in that calendar month no more than 100 kilograms of hazardous waste or one kilogram of acutely hazardous waste.

"Construction" means the initiation of permanent physical change at a property with the intent of establishing a solid waste management unit. This does not include land-clearing activities, excavation for borrow purposes, activities intended for infrastructure purposes, or activities necessary to obtain Part A siting approval (i.e., advancing of exploratory borings, digging of test pits, groundwater monitoring well installation, etc.).

"Construction/demolition/debris landfill" or "CDD landfill" means a land burial facility engineered, constructed and operated to contain and isolate construction waste, demolition waste, debris waste, split tires, and white goods or combinations of the above solid wastes.

"Construction waste" means solid waste that is produced or generated during construction, remodeling, or repair of pavements, houses, commercial buildings, and other structures. Construction wastes include, but are not limited to lumber, wire, sheetrock, broken brick, shingles, glass, pipes, concrete, paving materials, and metal and plastics if the metal or plastics are a part of the materials of construction or empty containers for such materials. Paints, coatings, solvents, asbestos, any liquid, compressed gases or semi-liquids and garbage are not construction wastes.

"Contaminated soil" means, for the purposes of this chapter, a soil that, as a result of a release or human usage, has absorbed or adsorbed physical, chemical, or radiological substances at concentrations above those consistent with nearby undisturbed soil or natural earth materials.

"Container" means any portable device in which a material is stored, transported, treated, or otherwise handled and includes transport vehicles that are containers themselves (e.g., tank trucks) and containers placed on or in a transport vehicle.

"Containment structure" means a closed vessel such as a tank or cylinder.

"Convenience center" means a collection point for the temporary storage of solid waste provided for individual solid

waste generators who choose to transport solid waste generated on their own premises to an established centralized point, rather than directly to a disposal facility. To be classified as a convenience center, the collection point may not receive waste from collection vehicles that have collected waste from more than one real property owner. A convenience center shall be on a system of regularly scheduled collections.

"Cover material" means compactable soil or other approved material that is used to blanket solid waste in a landfill.

"Daily disposal limit" means the amount of solid waste that is permitted to be disposed at the facility and shall be computed on the amount of waste disposed during any operating day.

"Debris waste" means wastes resulting from land-clearing operations. Debris wastes include, but are not limited to stumps, wood, brush, leaves, soil, and road spoils.

"Decomposed vegetative waste" means a stabilized organic product produced from vegetative waste by a controlled natural decay process in such a manner that the product can be handled, stored, or applied to the land without adversely affecting public health or the environment.

"Demolition waste" means that solid waste that is produced by the destruction of structures and their foundations and includes the same materials as construction wastes.

"Department" means the Virginia Department of Environmental Quality.

"Director" means the Director of the Department of Environmental Quality. For purposes of submissions to the director as specified in the Waste Management Act, submissions may be made to the department.

"Discard" means to abandon, dispose of, burn, incinerate, accumulate, store, or treat before or instead of being abandoned, disposed of, burned, or incinerated.

"Discarded material" means a material that is:

1. Abandoned by being:

   a. Disposed of;

   b. Burned or incinerated; or

   c. Accumulated, stored, or treated (but not used, reused, or reclaimed) before or in lieu of being abandoned by being disposed of, burned, or incinerated; or

2. Recycled used, reused, or reclaimed material as defined in this part.

"Disclosure statement" means a sworn statement or affirmation as required by § 10.1-1400 of the Code of Virginia. (see DEQ Form DISC-01 and 02 (Disclosure Statement)).

"Displacement" means the relative movement of any two sides of a fault measured in any direction.

"Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land or water so that such solid waste or any constituent of it may enter the environment or be emitted into the air or discharged into any waters.

"Disposal unit boundary" or "DUB" means the vertical plane located at the edge of the waste disposal unit. This vertical plane extends down into the uppermost aquifer. The DUB must be positioned within or coincident to the waste management boundary.

"EPA" means the United States Environmental Protection Agency.

"Exempt management facility" means a site used for activities that are conditionally exempt from management as a solid waste under this chapter. The facility remains exempt from solid waste management requirements provided it complies with the applicable conditions set forth in Parts II (9VAC20-81-20 et seq.) and IV (9VAC20-81-300 et seq.) of this chapter.

"Expansion" means a horizontal expansion of the waste management boundary as identified in the Part A application. If a facility's permit was issued prior to the establishment of the Part A process, an expansion is a horizontal expansion of the disposal unit boundary.

"Facility" means solid waste management facility unless the context clearly indicates otherwise.

"Facility boundary" means the boundary of the solid waste management facility. For landfills, this boundary encompasses the waste management boundary and all ancillary activities including, but not limited to scales, groundwater monitoring wells, gas monitoring probes, and maintenance facilities as identified in the facility's permit application. For facilities with a permit-by-rule (PBR) the facility boundary is the boundary of the property where the permit-by-rule activity occurs. For unpermitted solid waste management facilities, the facility boundary is the boundary of the property line where the solid waste is located.

"Facility structure" means any building, shed, or utility or drainage line on the facility.

"Fault" means a fracture or a zone of fractures in any material along which strata on one side have been displaced with respect to that on the other side.

"Floodplain" means the lowland and relatively flat areas adjoining inland and coastal waters, including low-lying areas of offshore islands where flooding occurs.

"Fly ash" means ash particulate collected from air pollution attenuation devices on combustion units.

"Food-chain crops" means crops grown for human consumption, tobacco, and crops grown for pasture and forage or feed for animals whose products are consumed by humans.

"Fossil fuel combustion products" means coal combustion byproducts as defined in this regulation, coal combustion byproducts generated at facilities with fluidized bed combustion technology, petroleum coke combustion byproducts, byproducts from the combustion of oil, byproducts from the combustion of natural gas, and byproducts from the combustion of mixtures of coal and "other fuels" (i.e., co-burning of coal with "other fuels" where coal is at least 50% of the total fuel). For purposes of this definition, "other fuels" means waste-derived fuel product, auto shredder fluff, wood wastes, coal mill rejects, peat, tall oil, tire-derived fuel, deionizer resins, and used oil.

"Free liquids" means liquids that readily separate from the solid portion of a waste under ambient temperature and pressure as determined by the Paint Filter Liquids Test, Method 9095, U.S. Environmental Protection Agency, Publication SW-846.

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

"Gas condensate" means the liquid generated as a result of gas control or recovery processes at the solid waste management facility.

"Governmental unit" means any department, institution, or commission of the Commonwealth and any public corporate instrumentality thereof, and any district, and shall include local governments.

"Ground rubber" means material processed from waste tires that is no larger than 1/4 inch in any dimension. This includes crumb rubber that is measured in mesh sizes.

"Groundwater" means water below the land surface in a zone of saturation.

"Hazardous constituent" means a constituent of solid waste found listed in Appendix VIII of 9VAC20-60-261.

"Hazardous waste" means a "hazardous waste" as described by the Virginia Hazardous Waste Management Regulations (9VAC20-60).

"Holocene" means the most recent epoch of the Quaternary period, extending from the end of the Pleistocene Epoch to the present.

"Home use" means the use of compost for growing plants that is produced and used on a privately owned residential site.

"Host agreement" means any lease, contract, agreement, or land use permit entered into or issued by the locality in which the landfill is situated that includes terms or conditions governing the operation of the landfill.

"Household hazardous waste" means any waste material derived from households (including single and multiple residences, hotels, motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas) which, except for the fact that it is derived from a household, would otherwise be classified as a hazardous waste in accordance with 9VAC20-60.

"Household waste" means any waste material, including garbage, trash, and refuse, derived from households. Households include single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas. Household wastes do not include sanitary waste in septic tanks (septage) that is regulated by other state agencies.

"Hundred-year flood" means a flood that has a 1.0% or greater chance of recurring in any given year or a flood of magnitude equaled or exceeded on the average only once in a hundred years on the average over a significantly long period.

"Incineration" means the controlled combustion of solid waste for disposal.

"Incinerator" means a facility or device designed for the treatment of solid waste by combustion.

"Industrial waste" means any solid waste generated by manufacturing or industrial process that is not a regulated hazardous waste. Such waste may include, but is not limited to, waste resulting from the following manufacturing processes: electric power generation; fertilizer/agricultural chemicals; food and related products/byproducts; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.

"Industrial waste landfill" means a solid waste landfill used primarily for the disposal of a specific industrial waste or a waste that is a byproduct of a production process.

"Injection well" means, for the purposes of this chapter, a well or bore hole into which fluids are injected into selected geological horizons.

"Institutional waste" means all solid waste emanating from institutions such as, but not limited to, hospitals, nursing homes, orphanages, and public or private schools. It can include regulated medical waste from health care facilities and research facilities that must be managed as a regulated medical waste.

"Interim cover systems" means temporary cover systems applied to a landfill area when landfilling operations will be temporarily suspended for an extended period (typically, longer than one year). At the conclusion of the interim period, the interim cover system may be removed and landfilling operations resume or final cover is installed.

"Karst topography" means areas where karst terrane, with its characteristic surface and subterranean features, is developed as the result of dissolution of limestone, dolomite, or other soluble rock. Characteristic physiographic features present in karst terranes include, but are not limited to, sinkholes, sinking streams, caves, large springs, and blind valleys.

"Key personnel" means the applicant itself and any person employed by the applicant in a managerial capacity, or empowered to make discretionary decisions, with respect to the solid waste or hazardous waste operations of the applicant in Virginia, but shall not include employees exclusively engaged in the physical or mechanical collection, transportation, treatment, storage, or disposal of solid or hazardous waste and such other employees as the director may designate by regulation. If the applicant has not previously conducted solid waste or hazardous waste operations in Virginia, the term also includes any officer, director, partner of the applicant, or any holder of 5.0% or more of the equity or debt of the applicant. If any holder of 5.0% or more of the equity or debt of the applicant or of any key personnel is not a natural person, the term includes all key personnel of that entity, provided that where such entity is a chartered lending institution or a reporting company under the Federal Security and Exchange Act of 1934, the term does not include key personnel of such entity. Provided further that the term means the chief executive officer of any agency of the United States or of any agency or political subdivision of the Commonwealth, and all key personnel of any person, other than a natural person, that operates a landfill or other facility for the disposal, treatment, or storage of nonhazardous solid waste under contract with or for one of those governmental entities.

"Lagoon" means a body of water or surface impoundment designed to manage or treat waste water.

"Land-clearing activities" means the removal of flora from a parcel of land.

"Land-clearing debris" means vegetative waste resulting from land-clearing activities.

"Landfill" means a sanitary landfill, an industrial waste landfill, or a construction/demolition/debris landfill.

"Landfill gas" means gas generated as a byproduct of the decomposition of organic materials in a landfill. Landfill gas consists primarily of methane and carbon dioxide.

"Landfill mining" means the process of excavating solid waste from an existing landfill.

"Leachate" means a liquid that has passed through or emerged from solid waste and contains soluble, suspended, or miscible materials from such waste. Leachate and any material with which it is mixed is solid waste; except that leachate that is pumped from a collection tank for transportation to disposal in an off-site facility is regulated as septage, leachate discharged into a waste water collection system is regulated as industrial waste water and leachate that has contaminated groundwater is regulated as contaminated groundwater.

"Lead acid battery" means, for the purposes of this chapter, any wet cell battery.

"Lift" means the daily landfill layer of compacted solid waste plus the cover material.

"Liquid waste" means any waste material that is determined to contain "free liquids" as defined by this chapter.

"Lithified earth material" means all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock, that formed by crystallization of magma or by induration of loose sediments. This term does not include manmade materials, such as fill, concrete, and asphalt, or unconsolidated earth materials, soil, or regolith lying at or near the earth's surface.

"Litter" means, for purposes of this chapter, any solid waste that is discarded or scattered about a solid waste management facility outside the immediate working area.

"Lower explosive limit" means the lowest concentration by volume of a mixture of explosive gases in air that will propagate a flame at 25°C and at atmospheric pressure.

"Materials recovery facility" means a solid waste management facility for the collection, processing, and recovery of material such as metals from solid waste or for the production of a fuel from solid waste. This does not include the production of a waste-derived fuel product.

"Maximum horizontal acceleration in lithified earth material" means the maximum expected horizontal acceleration depicted on a seismic hazard map, with a 90% or greater probability that the acceleration will not be exceeded in 250 years, or the maximum expected horizontal acceleration based on a site-specific seismic risk assessment.

"Monitoring" means all methods, procedures, and techniques used to systematically analyze, inspect, and collect data on operational parameters of the facility or on the quality of air, groundwater, surface water, and soils.

"Monitoring well" means a well point below the ground surface for the purpose of obtaining periodic water samples from groundwater for quantitative and qualitative analysis.

"Mulch" means woody waste consisting of stumps, trees, limbs, branches, bark, leaves and other clean wood waste that has undergone size reduction by grinding, shredding, or

chipping, and is distributed to the general public for landscaping purposes or other horticultural uses except composting as defined and regulated under this chapter.

"Municipal solid waste" means that waste that is normally composed of residential, commercial, and institutional solid waste and residues derived from combustion of these wastes.

"New solid waste management facility" means a facility or a portion of a facility that was not included in a previous determination of site suitability (Part A approval).

"Nuisance" means an activity that unreasonably interferes with an individual's or the public's comfort, convenience or enjoyment such that it interferes with the rights of others by causing damage, annoyance, or inconvenience.

"Offsite" means any site that does not meet the definition of onsite as defined in this part.

"Onsite" means the same or geographically contiguous property, which may be divided by public or private right-of-way, provided the entrance and exit to the facility are controlled by the owner or the operator of the facility. Noncontiguous properties owned by the same person, but connected by a right-of-way that he controls and to which the public does not have access, are also considered onsite property.

"Open burning" means the combustion of solid waste without:

1. Control of combustion air to maintain adequate temperature for efficient combustion;

2. Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

3. Control of the combustion products' emission.

"Open dump" means a site on which any solid waste is placed, discharged, deposited, injected, dumped, or spilled so as to present a threat of a release of harmful substances into the environment or present a hazard to human health. Such a site is subject to the Open Dump Criteria in 9VAC20-81-45.

"Operating record" means records required to be maintained in accordance with the facility permit or this part (see 9VAC20-81-530).

"Operation" means all waste management activities at a solid waste management facility beginning with the initial receipt of solid waste for treatment, storage, disposal, or transfer and ceasing with the initiation of final closure activities at the solid waste management facility subsequent to the final receipt of waste.

"Operator" means the person responsible for the overall operation and site management of a solid waste management facility.

"Owner" means the person who owns a solid waste management facility or part of a solid waste management facility.

"PCB" means any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of substances that contain such substance (see 40 CFR 761.3, as amended).

"Perennial stream" means a well-defined channel that contains water year round during a year of normal rainfall. Generally, the water table is located above the streambed for most of the year and groundwater is the primary source for stream flow. A perennial stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.

"Permit" means the written permission of the director to own, operate, or construct a solid waste management facility.

"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, vessel, or other floating craft, from which pollutants are or may be discharged. Return flows from irrigated agriculture are not included.

"Pollutant" means any substance that causes or contributes to, or may cause or contribute to, environmental degradation when discharged into the environment.

"Poor foundation conditions" means those areas where features exist that indicate that a natural or man-induced event may result in inadequate foundation support for the structural components of a solid waste management facility.

"Postclosure" means the requirements placed upon solid waste disposal facilities after closure to ensure environmental and public health safety for a specified number of years after closure.

"Process rate" means the maximum rate of waste acceptance that a solid waste management facility can process for ~~a~~ treatment and/or storage. This rate is limited by the capabilities of equipment, personnel, and infrastructure.

"Processing" means preparation, treatment, or conversion of waste by a series of actions, changes, or functions that bring about a desired end result.

"Professional engineer" means an engineer licensed to practice engineering in the Commonwealth as defined by the rules and regulations set forth by the Board of Architects, Professional Engineers, Land Surveyors, and Landscape Architects (18VAC10-20).

"Professional geologist" means a geologist licensed to practice geology in the Commonwealth as defined by the rules and regulations set forth by the Board for Geology (18VAC70-20).

"Progressive cover" means cover material placed over the working face of a solid waste disposal facility advancing over the deposited waste as new wastes are added keeping the exposed area to a minimum.

"Putrescible waste" means solid waste that contains organic material capable of being decomposed by micro-organisms and cause odors.

"Qualified groundwater scientist" means a scientist or engineer who has received a baccalaureate or postgraduate degree in the natural sciences or engineering and has sufficient training and experience in groundwater hydrology and related fields as may be demonstrated by professional certifications, or completion of accredited university programs that enable that individual to make sound professional judgments regarding groundwater monitoring, contaminant fate and transport, and corrective action.

"RCRA" means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 USC § 6901 et seq.), the Hazardous and Solid Waste Amendments of 1984, and any other applicable amendments to these laws.

"Reclaimed material" means a material that is processed or reprocessed to recover a usable product or is regenerated to a usable form.

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

"Refuse-derived fuel (RDF)" means a type of municipal solid waste produced by processing municipal solid waste through shredding and size classification. This includes all classes of refuse-derived fuel including low-density fluff refuse-derived fuel through densified refuse-derived fuel and pelletized refuse-derived fuel.

"Regulated hazardous waste" means a solid waste that is a hazardous waste, as defined in the Virginia Hazardous Waste Management Regulations (9VAC20-60), that is not excluded from those regulations as a hazardous waste.

"Regulated medical waste" means solid wastes so defined by the Regulated Medical Waste Management Regulations (9VAC20-120) as promulgated by the Virginia Waste Management Board.

"Release" means, for the purpose of this chapter, any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injection, escaping, leaching, dumping, or disposing into the environment solid wastes or hazardous constituents of solid wastes (including the abandonment or discarding of barrels, containers, and other closed receptacles containing solid waste). This definition does not include any release that results in exposure to persons solely within a workplace; release of source, byproduct, or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954 (68 Stat. 923); and the normal application of fertilizer. For the purpose of this chapter, release also means substantial threat of release.

"Remediation waste" means all solid waste, including all media (groundwater, surface water, soils, and sediments) and debris, that are managed for the purpose of remediating a site in accordance with 9VAC20-81-45 or Part III (9VAC20-81-100 et seq.) of this chapter or under the Voluntary Remediation Regulations (9VAC20-160) or other regulated remediation program under DEQ oversight. For a given facility, remediation wastes may originate only from within the boundary of that facility, and may include wastes managed as a result of remediation beyond the boundary of the facility. Hazardous wastes as defined in 9VAC20-60, as well as "new" or "as generated" wastes, are excluded from this definition.

"Remediation waste management unit" or "RWMU" means an area within a facility that is designated by the director for the purpose of implementing remedial activities required under this chapter or otherwise approved by the director. An RWMU shall only be used for the management of remediation wastes pursuant to implementing such remedial activities at the facility.

"Responsible official" means one of the following:

1. For a business entity, such as a corporation, association, limited liability company, or cooperative: a duly authorized representative of such business entity if the representative is responsible for the overall operation of one or more operating facilities applying for or subject to a permit. The authority to sign documents must be assigned or delegated to such representative in accordance with procedures of the business entity;

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

3. For a municipality, state, federal, or other public agency: a duly authorized representative of the locality if the representative is responsible for the overall operation of one or more operating facilities applying for or subject to a permit. The authority to sign documents must be assigned or delegated to such representative in accordance with procedures of the locality.

"Rubbish" means combustible or slowly putrescible discarded materials that include but are not limited to trees, wood, leaves, trimmings from shrubs or trees, printed matter, plastic and paper products, grass, rags and other combustible

or slowly putrescible materials not included under the term "garbage."

"Runoff" means any rainwater, leachate, or other liquid that drains over land from any part of a solid waste management facility.

"Run-on" means any rainwater, wastewater, leachate, or other liquid that drains over land onto any part of the solid waste management facility.

"Salvage" means the authorized, controlled removal of waste materials from a solid waste management facility.

"Sanitary landfill" means an engineered land burial facility for the disposal of household waste that is so located, designed, constructed, and operated to contain and isolate the waste so that it does not pose a substantial present or potential hazard to human health or the environment. A sanitary landfill also may receive other types of solid wastes, such as commercial solid waste, nonhazardous sludge, hazardous waste from conditionally exempt small quantity generators, construction demolition debris, and nonhazardous industrial solid waste.

"Saturated zone" means that part of the earth's crust in which all voids are filled with water.

"Scavenging" means the unauthorized or uncontrolled removal of waste materials from a solid waste management facility.

"Scrap metal" means metal parts such as bars, rods, wire, empty containers, or metal pieces that are discarded material and can be used, reused, or reclaimed.

"Secondary containment" means an enclosure into which a container or tank is placed for the purpose of preventing discharge of wastes to the environment.

"Seismic impact zone" means an area with a 10% or greater probability that the maximum horizontal acceleration in lithified earth material, expressed as a percentage of the earth's gravitational pull (g), will exceed 0.10g in 250 years.

"Semiannual" means an interval corresponding to approximately 180 days. For the purposes of scheduling monitoring activities, sampling within 30 days of the 180-day interval will be considered semiannual.

"Site" means all land and structures, other appurtenances, and improvements on them used for treating, storing, and disposing of solid waste. This term includes adjacent land within the facility boundary used for the utility systems such as repair, storage, shipping or processing areas, or other areas incident to the management of solid waste.

"Sludge" means any solid, semi-solid or liquid waste generated from a municipal, commercial or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of treated effluent from a wastewater treatment plant.

"Small landfill" means a landfill that disposed of 100 tons/day or less of solid waste during a representative period prior to October 9, 1993, and did not dispose of more than an average of 100 tons/day of solid waste each month between October 9, 1993, and April 9, 1994.

"Solid waste" means any of those materials defined as "solid waste" in 9VAC20-81-95.

"Solid waste disposal facility" means a solid waste management facility at which solid waste will remain after closure.

"Solid waste management facility" or "SWMF" means a site used for planned treating, storing, or disposing of solid waste. A facility may consist of several treatment, storage, or disposal units.

"Special wastes" means solid wastes that are difficult to handle, require special precautions because of hazardous properties, or the nature of the waste creates waste management problems in normal operations. (See Part VI (9VAC20-81-610 et seq.) of this chapter.)

"Speculatively accumulated material" means any material that is accumulated before being used, reused, or reclaimed or in anticipation of potential use, reuse, or reclamation. Materials are not being accumulated speculatively when they can be used, reused, or reclaimed, have a feasible means of use, reuse, or reclamation available and 75% of the materials accumulated are being removed from the facility annually.

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

"Storage" means the holding of waste, at the end of which the waste is treated, disposed, or stored elsewhere.

"Structural fill" means an engineered fill with a projected beneficial end use, constructed using soil or fossil fuel combustion products spread and compacted with proper equipment and covered with a vegetated soil cap.

"Sudden event" means a one-time, single event such as a sudden collapse or a sudden, quick release of contaminants to the environment. An example would be the sudden loss of leachate from an impoundment into a surface stream caused by failure of a containment structure.

"Surface impoundment or impoundment" means a facility or part of a facility that is a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials (although it may be lined with manmade materials), that is designed to hold an accumulation of liquid wastes or wastes containing free liquids and that is not an injection well.

"Surface waters" means all state waters that are not groundwater as defined in § 62.1-255 of the Code of Virginia.

"SW-846" means Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, EPA Publication SW-846, Second Edition, 1982 as amended by Update I (April, 1984), and Update II (April, 1985) and the third edition, November, 1986, as amended.

"Tank" means a stationary device, designed to contain an accumulation of liquid or semi-liquid components of solid waste that is constructed primarily of nonearthen materials that provide structural support.

"TEF" or "Toxicity Equivalency Factor" means a factor developed to account for different toxicities of structural isomers of polychlorinated dibenzodioxins and dibenzofurans and to relate them to the toxicity of 2,3,7,8-tetrachloro dibenzo-p-dioxin.

"Terminal" means the location of transportation facilities such as classification yards, docks, airports, management offices, storage sheds, and freight or passenger stations, where solid waste that is being transported may be loaded, unloaded, transferred, or temporarily stored.

"Thermal treatment" means the treatment of solid waste in a device that uses elevated temperature as the primary means to change the chemical, physical, or biological character, or composition of the solid waste.

"Tire chip" means a material processed from waste tires that is a nominal two square inches in size, and ranges from 1/4 inch to four inches in any dimension. Tire chips contain no wire protruding more than 1/4 inch.

"Tire shred" means a material processed from waste tires that is a nominal 40 square inches in size, and ranges from 4 inches to 10 inches in any dimension.

"Transfer station" means any solid waste storage or collection facility at which solid waste is transferred from collection vehicles to haulage vehicles for transportation to a central solid waste management facility for disposal, incineration, or resource recovery.

"Trash" means combustible and noncombustible discarded materials and is used interchangeably with the term rubbish.

"Treatment" means, for the purpose of this chapter, any method, technique, or process, including but not limited to incineration, designed to change the physical, chemical, or biological character or composition of any waste to render it more stable, safer for transport, or more amenable to use, reuse, reclamation, recovery, or disposal.

"Underground source of drinking water" means an aquifer or its portion:

1. Which contains water suitable for human consumption; or

2. In which the groundwater contains less than 10,000 mg/liter total dissolved solids.

"Unit" means a discrete area of land used for the disposal of solid waste.

"Unstable area" means a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all of the landfill structural components responsible for preventing releases from a landfill. Unstable areas can include poor foundation conditions, areas susceptible to mass movements, and karst terranes.

"Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as, lower aquifers that are hydraulically interconnected with this aquifer within the facility boundary.

"Used or reused material" means a material that is either:

1. Employed as an ingredient (including use as an intermediate) in a process to make a product, excepting those materials possessing distinct components that are recovered as separate end products; or

2. Employed in a particular function or application as an effective substitute for a commercial product or natural resources.

"Vector" means a living animal, insect, or other arthropod that transmits an infectious disease from one organism to another.

"Vegetative waste" means decomposable materials generated by yard and lawn care or land-clearing activities and includes, but is not limited to, leaves, grass trimmings, woody wastes such as shrub and tree prunings, bark, limbs, roots, and stumps.

"Vermicomposting" means the controlled and managed process by which live worms convert organic residues into fertile excrement.

"Vertical design capacity" means the maximum design elevation specified in the facility's permit or if none is specified in the permit, the maximum elevation based on a 3:1 slope from the waste disposal unit boundary.

"VPDES" (Virginia Pollutant Discharge Elimination System) means the Virginia system for the issuance of permits pursuant to the Permit Regulation (9VAC25-31), the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia), and § 402 of the Clean Water Act (33 USC § 1251 et seq.).

"Washout" means carrying away of solid waste by waters of the base flood.

"Waste-derived fuel product" means a solid waste or combination of solid wastes that have been treated (altered physically, chemically, or biologically) to produce a fuel

product with a minimum heating value of 5,000 BTU/lb. Solid wastes used to produce a waste-derived fuel product must have a heating value, or act as binders, and may not be added to the fuel for the purpose of disposal. Waste ingredients may not be listed or characteristic hazardous wastes. The fuel product must be stable at ambient temperature, and not degraded by exposure to the elements. This material may not be "refuse derived fuel (RDF)" as defined in 9VAC5-40-890.

"Waste management boundary" means the vertical plane located at the boundary line of the area approved in the Part A application for the disposal of solid waste and storage of leachate. This vertical plane extends down into the uppermost aquifer and is within the facility boundary.

"Waste pile" means any noncontainerized accumulation of nonflowing, solid waste that is used for treatment or storage.

"Waste tire" means a tire that has been discarded because it is no longer suitable for its original intended purpose because of wear, damage or defect. (See 9VAC20-150 for other definitions dealing with the waste tire program.)

"Wastewaters" means, for the purpose of this chapter, wastes that contain less than 1.0% by weight total organic carbon (TOC) and less than 1.0% by weight total suspended solids (TSS).

"Water pollution" means such alteration of the physical, chemical, or biological properties of any state water as will or is likely to create a nuisance or render such waters:

1. Harmful or detrimental or injurious to the public health, safety, or welfare, or to the health of animals, fish, or aquatic life or plants;

2. Unsuitable, with reasonable treatment, for use as present or possible future sources of public water supply; or

3. Unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that:

a. An alteration of the physical, chemical, or biological properties of state waters or a discharge or deposit of sewage, industrial wastes, or other wastes to state waters by any owner that by itself is not sufficient to cause pollution but which in combination with such alteration or discharge or deposit to state waters by other persons is sufficient to cause pollution;

b. The discharge of untreated sewage by any person into state waters; and

c. The contribution to the degradation of water quality standards duly established by the State Water Control Board, are "pollution" for the terms and purposes of this chapter.

"Water table" means the upper surface of the zone of saturation in groundwaters in which the hydrostatic pressure is equal to the atmospheric pressure.

"Waters of the United States" or "waters of the U.S." 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), mud flats, sand flats, "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:

a. Any such waters that are or could be used by interstate or foreign travelers for recreational or other purposes;

b. Any such waters from which fish or shellfish are or could be taken and sold in interstate or foreign commerce;

c. Any such waters that are used or could be used for industrial purposes by industries in interstate commerce;

d. All impoundments of waters otherwise defined as waters of the United States under this definition;

e. Tributaries of waters identified in subdivisions 3 a through d of this definition;

f. The territorial sea; and

g. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in subdivisions 3 a through f of this definition.

"Wetlands" means those areas that are defined by the federal regulations under 33 CFR Part 328, as amended.

"White goods" means any stoves, washers, hot water heaters, and other large appliances.

"Working face" means that area within a landfill that is actively receiving solid waste for compaction and cover.

"Yard waste" means a subset of vegetative waste and means decomposable waste materials generated by yard and lawn care and includes leaves, grass trimmings, brush, wood chips, and shrub and tree trimmings. Yard waste shall not include roots or stumps that exceed 12 inches in diameter.

9VAC20-81-35. Applicability of chapter.

A. This chapter applies to all persons who treat, store, dispose, or otherwise manage solid wastes as defined in ~~Part III (9VAC20-81-100 et seq.) of this chapter~~ 9VAC20-81-95.

B. All facilities that were permitted prior to March 15, 1993, and upon which solid waste has been disposed of prior to October 9, 1993, may continue to receive solid waste until they have reached their vertical design capacity or until the closure date established pursuant to § 10.1-1413.2 of the Code of Virginia, in Table 2.1 provided:

1. The facility is in compliance with the requirements for liners and leachate control in effect at the time of permit issuance.

2. On or before October 9, 1993, the owner or operator of the solid waste management facility submitted to the director:

a. An acknowledgment that the owner or operator is familiar with state and federal law and regulations pertaining to solid waste management facilities operating after October 9, 1993, including postclosure care, corrective action, and financial responsibility requirements;

b. A statement signed by a professional engineer that he has reviewed the regulations established by the department for solid waste management facilities, including the open dump criteria contained therein, that he has inspected the facility and examined the monitoring data compiled for the facility in accordance with applicable regulations and that, on the basis of his inspection and review, he has concluded:

(1) That the facility is not an open dump;

(2) That the facility does not pose a substantial present or potential hazard to human health and the environment; and

(3) That the leachate or residues from the facility do not pose a threat of contamination or pollution of the air, surface water, or groundwater in a manner constituting an open dump or resulting in a substantial present or potential hazard to human health or the environment; and

c. A statement signed by the owner or operator:

(1) That the facility complies with applicable financial assurance regulations; and

(2) Estimating when the facility will reach its vertical design capacity.

3. Enlargement or closure of these facilities shall conform with the following subconditions:

a. The facility may not be enlarged prematurely to avoid compliance with this chapter when such enlargement is not consistent with past operating practices, the permit, or modified operating practices to ensure good management.

b. The facility shall not dispose of solid waste in any portion of a landfill disposal area that has received final cover or has not received waste for a period of one year, in accordance with 9VAC20-81-160 C. The facility shall notify the department, in writing, within 30 days, when an area has received final cover or has not received waste for a one-year period, in accordance with 9VAC20-81-160 C. However, a facility may apply for a permit, and if approved, can construct and operate a new cell that overlays ("piggybacks") over a closed area in accordance with the permit requirements of this chapter.

c. The facilities subject to the restrictions in this subsection are listed in Table 2.1. The closure dates were established in*:* Final Prioritization and Closure Schedule for HB 1205 Disposal Areas (DEQ, September 2001). The publication of these tables is for the convenience of the regulated community and does not change established dates. Any facility, including, but not limited to those listed in Table 2.1, must cease operation if that facility meets any of the open dump criteria listed in 9VAC20-81-45 A 1.

d. Those facilities assigned a closure date in accordance with § 10.1-1413.2 of the Code of Virginia shall designate on a map, plat, diagram, or other engineered drawing, areas in which waste will be disposed of in accordance with Table 2.1 until the latest cessation of waste acceptance date as listed in Table 2.1 is achieved. This map or plat shall be placed in the operating record and a copy shall be submitted upon request to the department in order to track the progress of closure of these facilities. If the facility already has provided this information under 9VAC20-81-160, then the facility may refer to that information.

TABLE 2.1
Final Prioritization and Closure Schedule For House Bill (HB) 1205 Disposal Areas

Solid Waste Permit Number and Site Name	Location	Department Regional Office[1]	Latest Cessation of Waste Acceptance Date[2]
429 - Fluvanna County Sanitary Landfill	Fluvanna County	VRO	12/31/2007
92 - Halifax County Sanitary Landfill[3]	Halifax County	BRRO	12/31/2007
49 - Martinsville Landfill	City of Martinsville	BRRO	12/31/2007
14 - Mecklenburg County Landfill	Mecklenburg County	BRRO	12/31/2007
228 - Petersburg City Landfill[3]	City of Petersburg	PRO	12/31/2007

31 - South Boston Sanitary Landfill	Town of South Boston	BRRO	12/31/2007
204 - Waynesboro City Landfill	City of Waynesboro	VRO	12/31/2007
91 - Accomack County Landfill – Bobtown South	Accomack County	TRO	12/31/2012
580 – Bethel Landfill[3]	City of Hampton	TRO	12/31/2012
182 - Caroline County Landfill	Caroline County	NVRO	12/31/2012
149 - Fauquier County Landfill	Fauquier County	NVRO	12/31/2012
405 - Greensville County Landfill	Greensville County	PRO	12/31/2012
29 - Independent Hill Landfill[3]	Prince William County	NVRO	12/31/2012
1 - Loudoun County Sanitary Landfill	Loudoun County	NVRO	12/31/2012
194 - Louisa County Sanitary Landfill	Louisa County	NVRO	12/31/2012
227 - Lunenburg County Sanitary Landfill	Lunenburg County	BRRO	12/31/2012
507 - Northampton County Landfill	Northampton County	TRO	12/31/2012
90 - Orange County Landfill	Orange County	NVRO	12/31/2012
75 - Rockbridge County Sanitary Landfill	Rockbridge County	VRO	12/31/2012
23 - Scott County Landfill	Scott County	SWRO	12/31/2012
587 - Shoosmith Sanitary Landfill[3]	Chesterfield County	PRO	12/31/2012
417 - Southeastern Public Service Authority Landfill[3]	City of Suffolk	TRO	12/31/2012
461 - Accomack County Landfill #2	Accomack County	TRO	12/31/2020
86 - Appomattox County Sanitary Landfill	Appomattox County	BRRO	12/31/2020
582 - Botetourt County Landfill[3]	Botetourt County	BRRO	12/31/2020
498 - Bristol City Landfill	City of Bristol	SWRO	12/31/2020
72 - Franklin County Landfill	Franklin County	BRRO	12/31/2020
398 - Virginia Beach Landfill #2 – Mount Trashmore II[3]	City of Virginia Beach	TRO	12/31/2020

Notes:

[1]Department of Environmental Quality Regional Offices:

BRRO	Blue Ridge Regional Office
NVRO	Northern Virginia Regional Office
PRO	Piedmont Regional Office
SWRO	Southwest Regional Office
TRO	Tidewater Regional Office
VRO	Valley Regional Office

[2]This date means the latest date that the disposal area must cease accepting waste.

[3]A portion of these facilities operated under HB 1205 and another portion currently is compliant with Subtitle D requirements.

C. Facilities are authorized to expand beyond the waste boundaries existing on October 9, 1993, as follows:

1. Existing captive industrial landfills.

a. Existing nonhazardous industrial waste facilities that are located on property owned or controlled by the generator of the waste disposed of in the facility shall comply with all the provisions of this chapter except as shown in subdivision 1 of this subsection.

b. Facility owners or operators shall not be required to modify their facility permit in order to expand a captive industrial landfill beyond the waste boundaries existing on October 9, 1993. Liners and leachate collection systems constructed beyond the waste boundaries existing on October 9, 1993, shall be constructed in accordance with the requirements in effect at the time of permit issuance.

c. Owners or operators of facilities that are authorized under subdivision 1 of this subsection to accept waste for disposal beyond the waste boundaries existing on October 9, 1993, shall ensure that such expanded

disposal areas maintain setback distances applicable to such facilities in 9VAC20-81-120.

d. Facilities authorized for expansion in accordance with subdivision 1 of this subsection are limited to expansion to the limits of the permitted disposal area existing on October 9, 1993, or the facility boundary existing on October 9, 1993, if no discrete disposal area is defined in the facility permit.

2. Other existing industrial waste landfills.

a. Existing nonhazardous industrial waste facilities that are not located on property owned or controlled by the generator of the waste disposed of in the facility shall comply with all the provisions of this chapter except as shown in subdivision 2 of this subsection.

b. Facility owners or operators shall not be required to modify their facility permit in order to expand an industrial landfill beyond the waste boundaries existing on October 9, 1993. Liners and leachate collection systems constructed beyond the waste boundaries existing on October 9, 1993, shall be constructed in accordance with the requirements of 9VAC20-81-130.

c. Prior to the expansion of any such facility, the owner or operator shall submit to the department a written notice of the proposed expansion at least 60 days prior to commencement of construction. The notice shall include recent groundwater monitoring data sufficient to determine that the facility does not pose a threat of contamination of groundwater in a manner constituting an open dump or creating a substantial present or potential hazard to human health or the environment (see 9VAC20-81-45). The director shall evaluate the data included with the notification and may advise the owner or operator of any additional requirements that may be necessary to ensure compliance with applicable laws and prevent a substantial present or potential hazard to health or the environment.

d. Owners or operators of facilities which are authorized under subdivision 2 of this subsection to accept waste for disposal beyond the waste boundaries existing on October 9, 1993, shall ensure that such expanded disposal areas maintain setback distances applicable to such facilities in 9VAC20-81-120 and 9VAC20-81-130.

e. Facilities authorized for expansion in accordance with subdivision 2 of this subsection are limited to expansion to the limits of the permitted disposal area existing on October 9, 1993, or the facility boundary existing on October 9, 1993, if no discrete disposal area is defined in the facility permit.

3. Existing construction/demolition/debris landfills.

a. Existing facilities that accept only construction/demolition/debris waste shall comply with all the provisions of this chapter except as shown in subdivision 3 of this subsection.

b. Facility owners or operators shall not be required to modify their facility permit in order to expand a construction/demolition/debris landfill beyond the waste boundaries existing on October 9, 1993. Liners and leachate collection systems constructed beyond the waste boundaries existing on October 9, 1993, shall be constructed in accordance with the requirements of 9VAC20-81-130.

c. Prior to the expansion of any such facility, the owner or operator shall submit to the department a written notice of the proposed expansion at least 60 days prior to commencement of construction. The notice shall include recent groundwater monitoring data sufficient to determine that the facility does not pose a threat of contamination of groundwater in a manner constituting an open dump or creating a substantial present or potential hazard to human health or the environment (see 9VAC20-81-45). The director shall evaluate the data included with the notification and may advise the owner or operator of any additional requirements that may be necessary to ensure compliance with applicable laws and prevent a substantial present or potential hazard to health or the environment.

d. Owners or operators of facilities which are authorized under subdivision 3 of this subsection to accept waste for disposal beyond the active portion of the landfill existing on October 9, 1993, shall ensure that such expanded disposal areas maintain setback distances applicable to such facilities in 9VAC20-81-120 and 9VAC20-81-130.

e. Facilities, or portions thereof, which have reached their vertical design capacity shall be closed in compliance with 9VAC20-81-160.

f. Facilities authorized for expansion in accordance with subdivision 3 of this subsection are limited to expansion to the permitted disposal area existing on October 9, 1993, or the facility boundary existing on October 9, 1993, if no discrete disposal area is defined in the facility permit.

4. Facilities or units undergoing expansion in accordance with the partial exemptions created by subdivision 1 b, 2 b, or 3 b of this subsection may not receive hazardous wastes generated by the exempt small quantity generators, as defined by the Virginia Hazardous Waste Management Regulations (9VAC20-60), for disposal on the expanded portions of the facility. Other wastes that require special handling in accordance with the requirements of Part VI (9VAC20-81-610 et seq.) of this chapter or that contain hazardous constituents that would pose a risk to health or environment, may only be accepted with specific approval by the director.

5. Nothing in subdivisions 1 b, 2 b, and 3 b of this subsection shall alter any requirement for ground water monitoring, financial responsibility, operator certification, closure, postclosure care, operation, maintenance, or corrective action imposed under this chapter, or impair the powers of the director to revoke or modify a permit pursuant to § 10.1-1409 of the Virginia Waste Management Act or Part V (9VAC20-81-400 et seq.) of this chapter.

D. An owner or operator of a previously unpermitted facility or unpermitted activity that managed materials previously exempt or excluded from this chapter shall submit a complete application for a solid waste management facility permit, permit by rule or a permit modification, as applicable, in accordance with Part V (9VAC20-81-430 et seq.) of this chapter within six months after these materials have been defined or identified as solid wastes. If the director finds that the application is complete, the owner or operator may continue to manage the newly defined or identified waste until a permit or permit modification decision has been rendered or until a date two years after the change in definition whichever occurs sooner, provided however, that in so doing he shall not operate or maintain an open dump, a hazard, or a nuisance.

Owners or operators of solid waste management facilities in existence prior to September 24, 2003, shall now be in compliance with this chapter. Where conflicts exist between the existing facility permit and the new requirements of the regulations, the regulations shall supersede the permit except where the standards in the permit are more stringent than the regulation. Language in an existing permit shall not act as a shield to compliance with the regulation, unless a variance to the regulations has been approved by the director in accordance with the provisions of Part VII (9VAC20-81-700 et seq.) of this chapter. Existing facility permits will not be required to be updated to eliminate requirements conflicting with the regulation, except at the request of the director or if a permit is modified for another reason. However, all sanitary landfills and incinerators that accept waste from jurisdictions outside of Virginia must have submitted the materials required under 9VAC20-81-100 E 4 by March 22, 2004.

E. This chapter is not applicable to landfill units closed in accordance with regulations or permits in effect prior to December 21, 1988, unless releases from these closed landfills meet the open dump criteria found in 9VAC20-81-45, or the closed landfills are found to be a hazard or a nuisance under subdivision 21 of § 10.1-1402 of the Code of Virginia, or a site where improper waste management has occurred under subdivision 19 of § 10.1-1402 of the Code of Virginia.

9VAC20-81-95. Identification of solid waste.

A. Wastes identified in this ~~part~~ section are solid wastes that are subject to this chapter unless regulated pursuant to other applicable regulations issued by the department.

B. Except as otherwise provided, the definition of solid waste per 40 CFR 261.2 as incorporated by 9VAC20-60-261, as amended, is also hereby incorporated as part of this chapter. Except as otherwise provided, all material definitions, reference materials and other ancillaries that are a part of 9VAC20-60-261, as amended, are also hereby incorporated as part of this chapter as well.

C. Except as otherwise modified or excepted by 9VAC20-60, the materials listed in the regulations of the United States Environmental Protection Agency set forth in 40 CFR 261.4 (a) are considered a solid waste for the purposes of this chapter. However, these materials are not regulated under the provisions of this chapter if all conditions specified therein are met. This list and all material definitions, reference materials and other ancillaries that are part of 40 CFR Part 261.4 (a), as incorporated, modified and/or accepted by 9VAC20-60 are incorporated as part of this chapter. In addition, the following materials are not solid wastes for the purpose of this chapter:

1. Materials generated by any of the following, which are returned to the soil as fertilizers:

a. The growing and harvesting of agricultural crops.

b. The raising and husbanding of animals, including animal manures and used animal bedding.

2. Mining overburden returned to the mine site.

3. Recyclable materials used in manner constituting disposal per 9VAC20-60-266.

4. Wood wastes burned for energy recovery.

5. Materials that are:

a. Used or reused, or prepared for use or reuse, as an ingredient in an industrial process to make a product, or as effective substitutes for commercial products or natural resources provided the materials are not being reclaimed or accumulated speculatively; or

b. Returned to the original process from which they are generated.

6. Materials that are beneficially used as determined by the department under this subsection. The department may consider other waste materials and uses to be beneficial in accordance with the provisions of 9VAC20-81-97.

7. The following materials and uses listed in this part are exempt from this chapter as long as they are managed so they do not create an open dump, hazard, or public

nuisance. These materials and the designated use are considered a beneficial use of waste materials:

a. Clean wood, wood chips, or bark from land clearing, logging operations, utility line clearing and maintenance operations, pulp and paper production, and wood products manufacturing, when these materials are placed in commerce for service as mulch, landscaping, animal bedding, erosion control, habitat mitigation, wetlands restoration, or bulking agent at a compost facility operated in compliance with Part IV (9VAC20-81-300 et seq.) of this chapter;

b. Clean wood combustion residues when used for pH adjustment in compost, liquid absorbent in compost, or as a soil amendment or fertilizer, provided the application rate of the wood ash is limited to the nutrient need of the crop grown on the land on which the wood combustion residues will be applied and provided that such application meets the requirements of the Virginia Department of Agriculture and Consumer Services (2VAC5-400 and 2VAC5-410);

c. Compost that satisfies the applicable requirements of the Virginia Department of Agriculture and Consumer Services (2VAC5-400 and 2VAC5-410);

d. Nonhazardous, contaminated soil that has been excavated as part of a construction project and that is used as backfill for the same excavation or excavations containing similar contaminants at the same site, at concentrations at the same level or higher. Excess contaminated soil from these projects is subject to the requirements of this chapter;

e. Nonhazardous petroleum contaminated soil that has been treated to the satisfaction of the department in accordance with 9VAC20-81-660;

f. Nonhazardous petroleum contaminated soil when incorporated into asphalt pavement products;

g. Solid wastes that are approved in advance of the placement, in writing, by the department or that are specifically mentioned in the facility permit for use as alternate daily cover material or other protective materials for landfill liner or final cover system components;

h. Fossil fuel combustion products when used as a material in the manufacturing of another product (e.g., concrete, concrete products, lightweight aggregate, roofing materials, plastics, paint, flowable fill) or as a substitute for a product or material resource (e.g., blasting grit, roofing granules, filter cloth pre-coat for sludge dewatering, pipe bedding);

i. Tire chips and tire shred when used as a sub base fill for road base materials or asphalt pavements when approved by the Virginia Department of Transportation or by a local governing body;

j. Tire chips, tire shred, and ground rubber used in the production of commercial products such as mats, pavement sealers, playground surfaces, brake pads, blasting mats, and other rubberized commercial products;

k. Tire chips and tire shred when used as backfill in landfill gas or leachate collection pipes, recirculation lines, and drainage material in landfill liner and cover systems, and gas interception or remediation applications;

l. Waste tires, tire chips or tire shred when burned for energy recovery or when used in pyrolysis, gasification, or similar treatment process to produce fuel;

m. "Waste-derived fuel product," as defined in 9VAC20-81-10, derived from nonhazardous solid waste;

n. Uncontaminated concrete and concrete products, asphalt pavement, brick, glass, soil, and rock placed in commerce for service as a substitute for conventional aggregate; and

o. Clean, ground gypsum wallboard when used as a soil amendment or fertilizer, provided the following conditions are met:

(1) No components of the gypsum wallboard have been glued, painted, or otherwise contaminated from manufacture or use (e.g., waterproof or fireproof drywall) unless otherwise processed to remove contaminants.

(2) The gypsum wallboard shall be processed so that 95% of the gypsum wallboard is less than 1/4 inch by 1/4 inch in size, unless an alternate size is approved by the department.

(3) The gypsum wallboard shall be applied only to agricultural, silvicultural, landscaped, or mined lands or roadway construction sites that need fertilization.

(4) The application rate for the ground gypsum wallboard shall not exceed the following rates.

Region	Rate
Piedmont, Mountains, and Ridge and Valley	250 lbs/1,000 ft^2
Coastal Plain	50 lbs/1,000 ft^2

Note: These weights are for dry ground gypsum wallboard.

D. The following activities are conditionally exempt from this chapter provided no open dump, hazard, or public nuisance is created:

1. Composting of sewage sludge at the sewage treatment plant of generation without addition of other types of solid wastes.

2. Composting of household waste generated at a residence and composted at the site of generation.

3. Composting activities performed for educational purposes as long as no more than 100 cubic yards of materials are on site at any time. Greater quantities will be allowed with suitable justification presented to the department. For quantities greater than 100 cubic yards, approval from the department will be required prior to composting.

4. Composting of animal carcasses onsite at the farm of generation.

5. Composting of vegetative waste and/or yard waste generated onsite by owners or operators of agricultural operations or owners of the real property or those authorized by the owners of the real property provided:

a. All decomposed vegetative waste and compost produced is utilized on said property;

b. No vegetative waste or other waste material generated from other sources other than said property is received;

c. All applicable standards of local ordinances that govern or concern vegetative waste handling, composting, storage or disposal are satisfied; and

d. They pose no nuisance or present no potential threat to human health or the environment.

6. Composting of yard waste by owners or operators who accept yard waste generated offsite shall be exempt from all other provisions of this chapter as applied to the composting activities provided the requirements of 9VAC20-81-397 B are met.

7. Composting of preconsumer food waste and kitchen culls generated onsite and composted in containers designed to prohibit vector attraction and prevent nuisance odor generation.

8. Vermicomposting, when used to process Category I, Category II, or Category III feedstocks in containers designed to prohibit vector attraction and prevent nuisance odor generation. If offsite feedstocks are received no more than 100 cubic yards of materials may be onsite at any one time. For quantities greater than 100 cubic yards, approval from the department will be required prior to composting.

9. Composting of sewage sludge or combinations of sewage sludge with nonhazardous solid waste provided the composting facility is permitted under the requirements of a Virginia Pollution Abatement (VPA) or VPDES permit.

10. Management of solid waste in appropriate containers at the site of its generation, provided that:

a. Putrescible waste is not stored more than seven days between time of collection and time of removal for disposal;

b. Nonputrescible wastes are not stored more than 90 days between time of collection and time of removal for proper management; and

c. Treatment of waste is conducted in accordance with the following:

(1) In accordance with a waste analysis plan that:

(a) Contains a detailed chemical and physical analysis of a representative sample of the waste being treated, and contains all records necessary to treat the waste in accordance with the requirements of this part, including the selected testing frequency; and

(b) Is kept in the facility's onsite file and made available to the department upon request.

(2) Notification is made to the receiving waste management facility that the waste has been treated.

11. Using rocks, brick, block, dirt, broken concrete, crushed glass, porcelain, and road pavement as clean fill.

12. Storage of less than 100 waste tires at the site of generation provided that no waste tires are accepted from offsite and that the storage will not present a hazard or a nuisance.

13. Storage in piles of land-clearing debris including stumps and brush, clean wood wastes, log yard scrapings consisting of a mixture of soil and wood, cotton gin trash, peanut hulls, and similar organic wastes that do not readily decompose, are exempt from this chapter if they meet the following conditions at a minimum:

a. The wastes are managed in the following manner:

(1) They do not cause discharges of leachate, or attract vectors.

(2) They cannot be dispersed by wind and rain.

(3) Fire is prevented.

(4) They do not become putrescent.

b. Any facility storing waste materials under the provisions of this subsection shall obtain a storm water discharge permit if they are considered a significant source under the provisions of 9VAC25-31-120 A 1 c.

c. No more than a total of 1/3 acre of waste material is stored onsite and the waste pile does not exceed 15 feet in height above base grade.

d. Siting provisions.

(1) All log yard scrapings consisting of a mixture of soil and wood, cotton gin trash, peanut hulls, and similar

organic wastes that do not readily decompose are stored at the site of the industrial activity that produces them;

(2) A 50-foot fire break is maintained between the waste pile and any structure or tree line;

(3) The slope of the ground within the area of the pile and within 50 feet of the pile does not exceed 4:1;

(4) No waste material may be stored closer than 50 feet to any regularly flowing surface water body or river, floodplain, or wetland; and

(5) No stored waste materials shall extend closer than 50 feet to any property line.

e. If activities at the site cease, any waste stored at the site must be properly managed in accordance with these regulations within 90 days. The director can approve longer time frames with appropriate justification. Justification must be provided in writing no more than 30 days after ceasing activity at the site.

f. Waste piles that do not meet these provisions are required to obtain a permit in accordance with the permitting provisions in Part V (9VAC20-81-400 et seq.) of this chapter and meet all of the applicable waste pile requirements in Part IV (9VAC20-81-300 et seq.) of this chapter. Facilities that do not comply with the provisions of this subsection and fail to obtain a permit are subject to the provisions of 9VAC20-81-40.

14. Storage of nonhazardous solid wastes and hazardous wastes, or hazardous wastes from conditionally exempt small quantity generators as defined in Virginia Hazardous Waste Management Regulations (9VAC20-60) at a transportation terminal or transfer station in closed containers meeting the U.S. Department of Transportation specifications is exempt from this section and the permitting provisions of Part V (9VAC20-81-400 et seq.) of this chapter provided such wastes are removed to a permitted storage or disposal facility within 10 days from the initial receipt from the waste generator. To be eligible for this exemption, each shipment must be properly documented to show the name of the generator, the date of receipt by the transporter, and the date and location of the final destination of the shipment. The documentation shall be kept at the terminal or transfer station for at least three years after the shipment has been completed and shall be made available to the department upon request. All such activities shall comply with any local ordinances.

15. Open burning in accordance with the requirements of 9VAC5-130-40.

16. Open burning of vegetative waste is allowed at a closed landfill that has not been released from postclosure care. The activity shall be included in the text of the postclosure plan and conducted in accordance with § 10.1-1410.3 of the Code of Virginia.

17. Placement of trees, brush, or other vegetation from land used for agricultural or silvicultural purposes on the same property or other property of the same landowner.

18. Using fossil fuel combustion products in one or more of the following applications or when handled, processed, transported, or stockpiled for the following uses:

a. As a base, sub-base or fill material under a paved road, the footprint of a structure, a paved parking lot, sidewalk, walkway or similar structure, or in the embankment of a road. In the case of roadway embankments, materials will be placed in accordance with VDOT specifications, and exposed slopes not directly under the surface of the pavement must have a minimum of 18 inches of soil cover over the fossil fuel combustion products, the top six inches of which must be capable of sustaining the growth of indigenous plant species or plant species adapted to the area. The use, reuse, or reclamation of unamended coal combustion byproduct shall not be placed in an area designated as a 100-year flood plain;

b. Processed with a cementitious binder to produce a stabilized structural fill product that is spread and compacted with proper equipment for the construction of a project with a specified end use; or

c. For the extraction or recovery of materials and compounds contained within the fossil fuel combustion products.

E. The following solid wastes are exempt from this chapter provided that they are managed in accordance with the requirements promulgated by other applicable state or federal agencies:

1. Management of wastes regulated by the State Board of Health, the State Water Control Board, the Air Pollution Control Board, the Department of Mines, Minerals and Energy, Department of Agriculture and Consumer Services, or any other state or federal agency with such authority.

2. Drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas, or geothermal energy.

3. Solid waste from the extraction, beneficiation, and processing of ores and minerals, including coal.

4. Fossil fuel combustion products used for mine reclamation, mine subsidence, or mine refuse disposal on a mine site permitted by the Virginia Department of Mines, Minerals and Energy (DMME) when used in accordance with the standards.

5. Solid waste management practices that involve only the onsite placing of solid waste from mineral mining activities at the site of those activities and in compliance with a permit issued by the DMME, that do not include any

municipal solid waste, are accomplished in an environmentally sound manner, and do not create an open dump, hazard or public nuisance are exempt from all requirements of this chapter.

6. Waste or byproduct derived from an industrial process that meets the definition of fertilizer, soil amendment, soil conditioner, or horticultural growing medium as defined in § 3.2-3600 of the Code of Virginia, or whose intended purpose is to neutralize soil acidity (see § 3.2-3700 of the Code of Virginia), and that is regulated under the authority of the Virginia Department of Agriculture and Consumer Services.

7. Fossil fuel combustion products bottom ash or boiler slag used as a traction control material or road surface material if the use is consistent with Virginia Department of Transportation practices.

8. Waste tires generated by and stored at salvage yards licensed by the Department of Motor Vehicles provided that such storage complies with requirements set forth in § 10.1-1418.2 and such storage does not pose a hazard or nuisance.

9. Tire chips used as the drainage material in construction of septage drain fields regulated under the authority of the Virginia Department of Health.

F. The following solid wastes are exempt from this chapter provided that they are reclaimed or temporarily stored incidentally to reclamation, are not accumulated speculatively, and are managed without creating an open dump, hazard, or a public nuisance:

1. Paper and paper products;

2. Clean wood waste that is to undergo size reduction in order to produce a saleable product, such as mulch;

3. Cloth;

4. Glass;

5. Plastics;

6. Tire chips, tire shred, ground rubber; and

7. Mixtures of above materials only. Such mixtures may include scrap metals excluded from regulation in accordance with the provisions of subsection C of this section.

9VAC20-81-140. Operation requirements.

The operation of all sanitary, CDD, and industrial landfills shall be governed by the standards set forth in this section. Landfill operations will be detailed in an operations manual that shall be maintained in the operating record in accordance with 9VAC20-81-485. This operations manual will include an operations plan, an inspection plan, a health and safety plan, an unauthorized waste control plan, an emergency contingency plan, and a landscaping plan meeting the requirements of this section and 9VAC20-81-485. This manual shall be made available to the department when requested. If the applicable standards of this chapter and the landfill's Operations Manual conflict, this chapter shall take precedence.

A. Landfill operational performance standards.

1. Safety hazards to operating personnel shall be controlled through an active safety program consistent with the requirements of 29 CFR Part 1910, as amended.

2. A groundwater monitoring program meeting the requirements of 9VAC20-81-250 shall be implemented, as applicable.

3. A corrective action program meeting the requirements of 9VAC20-81-260 is required whenever the groundwater protection standard is exceeded at statistically significant levels.

4. Open burning at active landfills.

a. Owners or operators shall ensure that the units do not violate any applicable requirements developed by the State Air Pollution Control Board or promulgated by the EPA administrator pursuant to § 110 of the Clean Air Act, as amended (42 USC §§ 7401 to 7671q).

b. Open burning of solid waste, except for infrequent burning of agricultural wastes, silvicultural wastes, land-clearing debris, diseased trees, or debris from emergency cleanup operations is prohibited. There shall be no open burning permitted on areas where solid waste has been disposed of or is being used for active disposal.

c. The owner or operator shall be responsible for extinguishing any fires that may occur at the facility. A fire control plan will be developed that outlines the response of facility personnel to fires. The fire control plan will be provided as an attachment to the emergency contingency plan required under the provisions of 9VAC20-81-485. The fire control plan will be available for review upon request by the public. There shall be no open burning permitted on areas where solid waste has been disposed or is being used for active disposal.

5. Except as provided in 9VAC20-81-130 K, owners or operators shall implement a gas management plan in accordance with 9VAC20-81-200 to control landfill gas such that:

a. The concentration of methane gas generated by the landfill does not exceed 25% of the lower explosive limit for methane in landfill structures (excluding gas control or recovery system components); and

b. The concentration of methane gas does not exceed the lower explosive limit for methane at the facility boundary.

6. Landfills shall not:

a. Allow leachate from the landfill to drain or discharge into surface waters except when treated onsite and discharged into surface water as authorized under a VPDES Permit (9VAC25-31).

b. Cause a discharge of pollutants into waters of the United States, including wetlands, that violates any requirements of the Clean Water Act (33 USC § 1251 et seq.), including, but not limited to, the VPDES requirements and Virginia Water Quality Standards (9VAC25-260).

c. Cause the discharge of a nonpoint source of pollution to waters of the United States, including wetlands, that violates any requirement of an areawide or statewide water quality management plan that has been approved under § 208 or 319 of the Clean Water Act (33 USC § 1251 et seq.), as amended or violates any requirement of the Virginia Water Quality Standards (9VAC25-260).

d. Allow solid waste to be deposited in or to enter any surface waters or groundwaters.

7. Owners or operators shall maintain the run-on/runoff control systems designed and constructed in accordance with 9VAC20-81-130 H.

8. Access to sanitary, CDD, or noncaptive industrial landfills shall be permitted only when an attendant is on duty and only during daylight hours, unless otherwise specified in the landfill permit.

9. Fencing or other suitable control means shall be used to control litter migration. All litter blown from the landfill operations shall be collected on a weekly basis.

10. Odors and vectors shall be effectively controlled so they do not constitute nuisances or hazards. Odor hazard or nuisances shall be controlled in accordance with 9VAC20-81-200 D. Disease vectors shall be controlled using techniques for the protection of human health and the environment.

11. If salvaging is allowed by a landfill, it shall not interfere with operation of the landfill and shall not create hazards or nuisances.

12. Fugitive dust and mud deposits on main offsite roads and access roads shall be minimized at all times to limit nuisances. Dust shall be controlled to meet the requirements of Article 1 (9VAC5-40-60 et seq.) of Part II of 9VAC5-40.

13. Internal roads in the landfill shall be maintained to be passable in all weather by ordinary vehicles. All operation areas and units shall be accessible.

14. All landfill appurtenances listed in 9VAC20-81-130 shall be properly maintained and operated as designed and approved in the facility's permit.

15. Adequate numbers and types of properly maintained equipment shall be available to a landfill for operation. Provision shall be made for substitute equipment to be available or alternate means implemented to achieve compliance with subdivision B 1, C 1, or D 1 of this section, as applicable, within 24 hours should the former become inoperable or unavailable. Operators with training appropriate to the tasks they are expected to perform and in sufficient numbers for the complexity of the site shall be on the site whenever it is in operation.

16. Self-Inspection. Each landfill shall implement an inspection routine including a schedule for inspecting all applicable major aspects of facility operations necessary to ensure compliance with the requirements of this chapter. Records of these inspections must be maintained in the operating record and available for review. At a minimum, the following aspects of the facility shall be inspected on a monthly basis: erosion and sediment controls, storm water conveyance system, leachate collection system, safety and emergency equipment, internal roads, and operating equipment. The groundwater monitoring system and gas management system shall be inspected at a rate consistent with the system's monitoring frequency.

17. Records to include, at a minimum, date of receipt, quantity by weight or volume, and origin shall be maintained on solid waste received and processed to fulfill the applicable requirements of the Solid Waste Information and Assessment Program under 9VAC20-81-80 and the Control Program for Unauthorized Waste under 9VAC20-81-100 E. Such records shall be made available to the department for examination or use when requested.

B. In addition to the standards in subsection A of this section, sanitary landfills shall also comply with the following:

1. Compaction and cover requirements.

a. Unless provided otherwise in the permit, solid waste shall be spread into two-foot layers or less and compacted at the working face, which shall be confined to the smallest area practicable.

b. Lift heights shall be sized in accordance with daily waste volumes. Lift height is not recommended to exceed 10 feet.

c. Daily cover consisting of <u>at least</u> six inches of compacted soil or other approved material shall be placed upon and maintained on all exposed solid waste prior to the end of each operating day, or at more frequent intervals if necessary, to control disease vectors, fires, odors, blowing litter, and scavenging. Alternate materials

of an alternate thickness may be approved by the department if it has been demonstrated that the alternate material and thickness control disease vectors, fires, odors, blowing litter, and scavenging without presenting a threat to human health and the environment. At least three days of acceptable cover soil or approved material at the average usage rate shall be maintained at the landfill or readily available at all times.

d. Intermediate cover of at least six inches of additional compacted soil shall be applied and maintained whenever an additional lift of refuse is not to be applied within 30 days. Further, all areas with intermediate cover exposed shall be inspected as needed, but not less than weekly. Additional cover material shall be placed on all cracked, eroded, and uneven areas as required to maintain the integrity of the intermediate cover system.

e. Final cover construction will be initiated and maintained in accordance with the requirements of 9VAC20-81-160 D 2 when the following pertain:

(1) An additional lift of solid waste is not to be applied within one year, or a longer period as required by the facility's phased development.

(2) Any area of a landfill attains final elevation and within 90 days after such elevation is reached or longer if specified in the landfill's approved closure plan.

(3) An entire landfill's permit is terminated for any reason, and within 90 days of such denial or termination.

f. Vegetation shall be established and maintained on all exposed final cover material within four months after placement, or as specified by the department when seasonal conditions do not permit. Mowing will be conducted a minimum of once a year or at a frequency suitable for the vegetation and climate.

g. Areas where waste has been disposed that have not received waste within 30 days will not have slopes exceeding the final cover slopes specified in the permit or 33% unless steeper slopes are approved in the permit.

2. The active working face of a sanitary landfill shall be kept as small as practicable, determined by the tipping demand for unloading.

3. A sanitary landfill that is located within 10,000 feet of any airport runway used for turbojet aircraft or 5,000 feet of any airport runway used by only piston type aircraft, shall operate in such a manner that the landfill does not increase or pose additional bird hazards to aircraft.

4. Sanitary landfills shall not dispose of the following wastes, except as specifically authorized by the landfill permit or by the department:

a. Free liquids.

(1) Bulk or noncontainerized liquid waste, unless:

(a) The waste is household waste; or

(b) The waste is gas condensate derived from that landfill;

(c) The waste is leachate derived from that landfill and the landfill is designed with a composite liner and leachate collection system as described in 9VAC20-81-130 J 1 a and 9VAC20-81-130 L; or

(2) Containers holding liquid waste, unless:

(a) The container is a small container similar in size to that normally found in household waste;

(b) The container is designed to hold liquids for use other than storage; or

(c) The waste is household waste.

b. Regulated hazardous wastes as defined by the Virginia Hazardous Waste Management Regulations (9VAC20-60).

c. Solid wastes, residues, or soils containing more than 1.0 ppb (parts per billion) TEF (dioxins).

d. Solid wastes, residues, or soils containing 50.0 ppm (parts per million) or more of PCB's except as allowed under the provisions of 9VAC20-81-630.

e. Sludges that have not been dewatered.

f. Contaminated soil unless approved by the department in accordance with the requirements of 9VAC20-81-610 or 9VAC20-81-660.

g. Regulated medical waste as specified in the Regulated Medical Waste Management Regulations (9VAC20-120).

5. Chloroflourocarbons, hydrochlorofluorocarbons, and PCBs must be removed from white goods prior to placement on the working face.

C. In addition to the standards in subsection A of this section, Construction/demolition/debris landfills shall also comply with the following:

1. Compaction and cover requirements.

a. Waste materials shall be compacted in shallow layers during the placement of disposal lifts to minimize differential settlement.

b. Compacted soil cover shall be applied as needed for safety and aesthetic purposes. A minimum one-foot thick progressive cover shall be maintained weekly such that the top of the lift is fully covered at the end of the work week. If the landfill accepts Category I or II nonfriable asbestos-containing material for disposal, daily soil cover shall be placed upon all exposed Category I or II

nonfriable asbestos-containing material prior to the end of each operating day. The open working face of a landfill shall be kept as small as practicable, determined by the tipping demand for unloading.

c. When waste deposits have reached final elevations, or disposal activities are interrupted for 15 days or more, waste deposits shall receive a one-foot thick intermediate cover unless soil has already been applied in accordance with subdivision 1 b of this subsection and be graded to prevent ponding and to accelerate surface run-off.

d. Final cover construction will be initiated and maintained in accordance with the requirements of 9VAC20-81-160 D 2 when the following pertain:

(1) An additional lift of solid waste is not to be applied within one year, or a longer period as required by the facility's phased development.

(2) Any area of a landfill attains final elevation and within 90 days after such elevation is reached or longer if specified in the landfill's approved closure plan.

(3) An entire landfill's permit is terminated for any reason, and within 90 days of such denial or termination.

e. Vegetation shall be established and maintained on all exposed final cover material within four months after placement, or as specified by the department when seasonal conditions do not permit. Mowing will be conducted a minimum of once a year or at a frequency suitable for the vegetation and climate.

f. Areas where waste has been disposed that have not received waste within 30 days will not have slopes exceeding the final cover slopes specified in the permit or 33%.

2. Chloroflourocarbons, hydrochlorofluorocarbons, and PCBs must be removed from white goods prior to placement on the working face.

D. In addition to the standards in subsection A of this section, Industrial Landfills shall also comply with the following:

1. Compaction and cover requirements.

a. Unless provided otherwise in the permit, solid waste shall be spread and compacted at the working face, which shall be confined to the smallest area practicable.

b. Lift heights shall be sized according to the volume of waste received daily and the nature of the industrial waste. A lift height is not required for materials such as fly ash that are not compactable.

c. Where it is necessary for the specific waste, such as Category I or II nonfriable asbestos-containing material, daily soil cover, or other suitable material shall be placed upon all exposed solid waste prior to the end of each operating day. For wastes such as fly ash and bottom ash from burning of fossil fuels, periodic cover to minimize exposure to precipitation and control dust or dust control measures such as surface wetting or crusting agents shall be applied. At least three days of acceptable cover soil or approved material at the average usage rate shall be maintained at the fill at all times at facilities where daily cover is required unless an offsite supply is readily available on a daily basis.

d. Intermediate cover of at least one foot of compacted soil shall be applied whenever an additional lift of refuse is not to be applied within 30 days unless the owner or operator demonstrates to the satisfaction of the director that an alternate cover material or an alternate schedule will be protective of public health and the environment. In the case of facilities where fossil fuel combustion products are removed for beneficial use, intermediate cover must be applied in any area where ash has not been placed or removed for 30 days or more. Further, all areas with intermediate cover exposed shall be inspected as needed but not less than weekly and additional cover material shall be placed on all cracked, eroded, and uneven areas as required to maintain the integrity of the intermediate cover system.

e. Final cover construction will be initiated in accordance with the requirements of 9VAC20-81-160 D 2 when the following pertain:

(1) When an additional lift of solid waste is not to be applied within two years or a longer period as required by the facility's phased development.

(2) When any area of a landfill attains final elevation and within 90 days after such elevation is reached or longer if specified in the landfill's approved closure plan.

(3) When a landfill's permit is terminated within 90 days of such denial or termination.

f. Vegetation shall be established and maintained on all exposed final cover material within four months after placement, or as otherwise specified by the department when seasonal conditions do not otherwise permit. Mowing will be conducted a minimum of once a year or at a frequency suitable for the vegetation and climate.

2. Incinerator and air pollution control residues containing no free liquids shall be incorporated into the working face and covered at such intervals as necessary to minimize them from becoming airborne.

9VAC20-81-160. Closure requirements.

The closure of all sanitary, CDD and industrial landfills shall be governed by the standards set forth in this section.

A. Closure purpose. The owner or operator shall close the landfill in a manner that minimizes the need for further

maintenance and provides for the protection of human health and the environment. Closure shall eliminate the postclosure escape of uncontrolled leachate or of waste decomposition products to the groundwater or surface water to the extent necessary to protect human health and the environment. Closure shall also control and/or minimize surface runoff and the escape of waste decomposition products to the atmosphere.

B. Closure plan and modification of plan.

1. The owner or operator of a solid waste disposal facility shall have a written closure plan. This plan shall identify the steps necessary to completely close the landfill at the time when the operation will be the most extensive and at the end of its intended life. The closure plan shall include, at least:

a. A schedule for final closure that shall include, as a minimum, the anticipated date when wastes will no longer be received, the date when completion of final closure is anticipated, and intervening milestone dates that will allow tracking of the progress of closure.

b. An estimate of waste disposed onsite over the active life of the landfill;

c. An estimate of the largest area ever requiring a final cover as required at any time during the active life;

d. Description of Final Cover System design in accordance with subsection D of this section;

e. Description of storm water management to include design, construction, and maintenance controls;

f. Closure cost estimate for purpose of financial assurance.

2. The owner or operator may amend the closure plan at any time during the active life of the landfill. The owner or operator shall so amend his plan any time changes in operating plans or landfill design affect the closure plan. The amended closure plan shall be placed in the operating record and a copy provided to the department.

3. Closure plans and amended closure plans not previously approved by the director shall be submitted to the department at least 180 days before the date the owner or operator expects to begin construction activities related to closure. The director will approve or disapprove the plan within 90 days of receipt.

4. If the owner or operator intends to use an alternate final cover design, he shall submit a proposed design meeting the requirements of subdivision D 2 ~~e~~ f of this section to the department at least 180 days before the date he expects to begin closure. The department will approve or disapprove the plan within 90 days of receipt.

5. At least 180 days prior to beginning closure of each solid waste disposal unit, the owner or operator shall notify the department and the solid waste planning unit of the intent to close.

C. Time allowed for closure.

1. The owner or operator shall begin closure activities of each unit no later than 30 days after the date on which the unit receives the known final receipt of wastes or, if the unit has remaining capacity and there is a reasonable likelihood that the unit will receive additional wastes, no later than one year after the most recent receipt of wastes. Extensions beyond the one-year deadline for beginning closure may be granted by the director if the owner or operator demonstrates that the unit has the capacity to receive additional wastes and the owner or operator has taken and will continue to take all steps necessary to prevent threats to human health and the environment from the unclosed unit.

2. The owner or operator shall complete closure activities of each unit in accordance with the closure plan and within six months after receiving the final volume of wastes. The director may approve a longer closure period if the owner or operator can demonstrate that the required or planned closure activities will, of necessity, take longer than six months to complete; and that he has taken all steps to eliminate any significant threat to human health and the environment from the unclosed but inactive landfill.

D. Closure implementation.

1. The owner or operator shall close each unit with a final cover as specified in subdivision 2 of this subsection, grade the fill area to prevent ponding, and provide a suitable vegetative cover. Vegetation shall be deemed properly established when there are no large areas void of vegetation and it is sufficient to control erosion.

2. Final cover system.

a. The owner or operator shall install a final cover system that is designed to achieve the performance requirements of this section.

b. Owners or operators of CDD landfill units used for the disposal of wastes consisting only of stumps, wood, brush, and leaves from landclearing operations may apply two feet of compacted soil as final cover material in lieu of the final cover system specified in this section. The provisions of this section shall not be applicable to any landfill with respect to which the director has made a finding that continued operation of the landfill constitutes a threat to the public health or the environment.

c. The final cover system shall be designed and constructed to:

(1) Minimize infiltration through the closed disposal unit by the use of an infiltration layer that is constructed of at least 18 inches of earthen material; and which has a hydraulic conductivity less than or equal to the hydraulic conductivity of any bottom liner system or natural subsoils present, or a hydraulic conductivity no greater than $1x10^{-5}$ cm/sec, whichever is less; and

(2) Minimize erosion of the final cover by the use of an erosion layer that contains a minimum of six inches of earthen material that is capable of sustaining native plant growth, and provide for protection of the infiltration layer from the effects of erosion, frost, and wind.

d. The owner or operator of a sanitary landfill may choose to use this alternate final cover system, which shall consist of at least the following components:

(1) An 18-inch soil infiltration layer with a hydraulic conductivity no greater than $1x10^{-5}$ cm/sec or a geosynthetic clay liner installed over the intermediate cover;

(2) A barrier layer consisting of a geosynthetic membrane having a minimum thickness of 40-mils;

(3) A protective cover layer for protection of the infiltration layer from the effects of erosion, frost, and wind, and consisting of a minimum of 18 inches of soil; and

(4) A vegetative support layer that contains a minimum of six inches of earthen material that is capable of sustaining native plant growth.

e. The owner or operator of a CDD or industrial landfill may choose to use this alternate final cover system, which shall consist of at least the following components:

(1) A barrier layer consisting of a geosynthetic clay liner or a geosynthetic membrane having a minimum thickness of 40 mils;

(2) A protective cover layer for protection of the infiltration layer from the effects of erosion, frost, and wind, and consisting of a minimum of 18 inches of soil; and

(3) A vegetative support layer that contains a minimum of six inches of earthen material that is capable of sustaining native plant growth.

f. The director may approve an alternate final cover design that includes:

(1) An infiltration layer that achieves an equivalent reduction in infiltration as the infiltration layer specified in subdivision 2 c (1) of this subsection; and

(2) A minimum 24-inch erosion layer that is capable of sustaining native plant growth and provide for protection of the infiltration layer from the effects of erosion, frost, and wind.

3. Finished side slopes shall be stable and be configured to adequately control erosion and runoff. Slopes of 33% will be allowed provided that adequate runoff controls are established. Steeper slopes may be considered if supported by necessary stability calculations and appropriate erosion and runoff control features. All finished slopes and runoff management facilities shall be supported by necessary calculations and included in the design manual. To prevent ponding of water, the top slope shall be at least 2.0% after allowance for settlement.

4. Following construction of the final cover system for each unit, the owner or operator shall submit to the department a certification, signed by a professional engineer verifying that closure has been completed in accordance with the closure plan requirements of this part. This certification shall include the results of the CQA/QC requirements under 9VAC20-81-130 Q 1 b (6).

5. Following the closure of all units the owner or operator shall:

a. Post one sign at the entrance of the landfill notifying all persons of the closing, and the prohibition against further receipt of waste materials. Further, suitable barriers shall be installed at former accesses to prevent new waste from being deposited.

b. Within 90 days after closure is completed, submit to the local land recording authority a survey plat prepared by a professional land surveyor registered by the Commonwealth or a person qualified in accordance with Title 54.1 of the Code of Virginia indicating the location and dimensions of landfills. Groundwater monitoring well and landfill gas monitoring probe locations shall be included and identified by the number on the survey plat. The plat filed with the local land recording authority shall contain a note, prominently displayed, which states the owner's or operator's future obligation to restrict disturbance of the site as specified.

c. Record a notation on the deed to the landfill property, or on some other instrument which is normally examined during title searches, notifying any potential purchaser of the property that the land has been used to manage solid waste and its use is restricted under 9VAC20-81-170 A 2 c. A copy of the deed notation as recorded shall be submitted to the department.

d. Submit to the department a certification, signed by a professional engineer, verifying that closure has been completed in accordance with the requirements of subdivisions 5 a, b, and c of this subsection and the landfill closure plan.

6. The department shall inspect all solid waste management facilities at the time of closure to confirm that the closing is complete and adequate. It shall notify the owner or operator of a closed landfill, in writing, if the closure is satisfactory, and shall require any construction or such other steps necessary to bring unsatisfactory sites into compliance with these regulations. Notification by the department that the closure is satisfactory does not relieve the owner or operator of responsibility for corrective action to prevent or abate problems caused by the landfill.

9VAC20-81-250. Groundwater monitoring program.

A. General requirements.

1. Applicability.

a. Existing landfills. Owners or operators of all existing landfills shall be in compliance with the groundwater monitoring requirements specified in this section, except as provided for in subdivision 1 c of this subsection. Owners or operators of landfills that were permitted prior to December 21, 1988, but were closed in accordance with the requirements of their permit or existing regulation prior to December 21, 1988, are not required to be in compliance with the groundwater monitoring requirements specified in this section, unless conditions are recognized that classify the landfill as an Open Dump as defined under 9VAC20-81-45.

b. New landfills. Owners or operators of new facilities shall be in compliance with the groundwater monitoring requirements specified in this section before waste can be placed in the landfill except as provided for in subdivision 1 c of this subsection.

c. No migration potential exemption. Groundwater monitoring requirements under this section may be suspended by the director if the owner or operator can demonstrate that there is no potential for migration of any Table 3.1 constituents to the uppermost aquifer during the active life and the postclosure care period of the landfill. This demonstration shall be certified by a qualified groundwater scientist and shall be based upon:

(1) Site-specific field collected measurements including sampling and analysis of physical, chemical, and biological processes affecting contaminant fate and transport; and

(2) Contaminant fate and transport predictions that maximize contaminant migration and consider impacts on human health and the environment.

2. General requirements.

a. Purpose. Owners or operators shall install, operate, and maintain a groundwater monitoring system that is capable of determining the landfill's impact on the quality of groundwater in the uppermost aquifer at the disposal unit boundary during the active life and postclosure care period of the landfill.

b. Program requirements. The groundwater monitoring program shall meet the requirements of subdivision 3 of this subsection and comply with all other applicable requirements of this section.

c. Director authority. The groundwater monitoring and reporting requirements set forth here are minimum requirements. The director may require, by ~~amending~~ modifying the permit as allowed under 9VAC20-81-600 E, any owner or operator to install, operate, and maintain a groundwater monitoring system and conduct a monitoring program that contains requirements more stringent than this chapter imposes whenever it is determined that such requirements are necessary to protect human health and the environment.

3. Groundwater monitoring system.

a. System requirements. A groundwater monitoring system shall be installed consisting of a sufficient number of monitoring wells, at appropriate locations and depths, capable of yielding sufficient quantities of groundwater for sampling and analysis purposes from the uppermost aquifer that:

(1) Represent the quality of background groundwater that has not been affected by a release from the landfill; and

(2) Represent the quality of groundwater at the disposal unit boundary. The downgradient monitoring system shall be installed at the disposal unit boundary in a manner that ensures detection of groundwater contamination in the uppermost aquifer unless a variance has been granted by the director under 9VAC20-81-740.

(3) When physical obstacles preclude installation of groundwater monitoring wells at the disposal unit boundary, the downgradient monitoring wells may be installed at the closest practicable distance hydraulically downgradient from the boundary in locations that ensure detection of groundwater contamination in the uppermost aquifer.

b. Multiunit systems. The director may approve a groundwater monitoring system that covers multiple waste disposal units instead of requiring separate groundwater monitoring systems for each unit when the landfill has several units, provided the multiunit groundwater monitoring system meets the requirement of subdivision 3 of this subsection and can be demonstrated to be equally protective of human health and the environment as individual monitoring systems. The system for each waste disposal unit would be based on the following factors:

(1) Number, spacing, and orientation of the waste disposal units;

(2) Hydrogeologic setting;

(3) Site history;

(4) Engineering design of the waste disposal units; and

(5) Type of waste accepted at the waste disposal units.

c. Well construction. All monitoring wells shall be of a size adequate for sampling and shall be cased and grouted in a manner that maintains the integrity of the monitoring well bore hole. This casing shall be screened or perforated, and packed with gravel or sand where necessary, to enable sample collection at depths where appropriate aquifer flow zones exist. The annular space above the sampling depth shall be sealed with a suitable material to prevent contamination of samples and the groundwater.

d. Boring logs. A log shall be made of each newly installed monitoring well describing the soils or rock encountered, and the hydraulic conductivity of the geologic units (formations) encountered. A copy of the final log(s) with appropriate maps, including at a minimum a site plan showing the location of all monitoring wells, the total depth of monitoring well, the location of the screened interval, the top and bottom of sand or gravel pack, and the top and bottom of the seal shall be sent to the department with the certification required under subdivision 3 g of this subsection.

e. Well maintenance. The monitoring wells, piezometers, and other groundwater measurement, sampling, and analytical devices shall be operated and maintained in a manner that allows them to perform to design specifications throughout the duration of the groundwater monitoring program. Nonfunctioning monitoring wells must be replaced or repaired upon recognition of damage or nonperformance. Well repair or replacement shall be coordinated with the department ~~for approval~~ prior to initiating the action.

f. Network specifics. The network shall include at least one upgradient monitoring well and at least three downgradient monitoring wells. The number, spacing, and depths of monitoring wells included in a landfill's network shall be determined based on:

(1) Site-specific technical information that shall include thorough characterization by the owner or operator of:

(a) The thickness of any unsaturated geologic units or fill materials that may overlay the uppermost aquifer;

(b) The thickness and description of materials comprising the uppermost aquifer;

(c) Materials comprising the confining unit defining the lower boundary of the uppermost aquifer, including, but not limited to, thicknesses, stratigraphy, lithology, hydraulic conductivities, porosities, and effective porosities; and

(d) the calculated groundwater flow rate and direction within the uppermost aquifer including any seasonal and temporal fluctuations in groundwater flow.

(2) ~~At least one upgradient and at least three downgradient monitoring wells.~~

~~(3) A~~ The lateral spacing between downgradient monitoring wells based on site-specific information supplied under subdivision 3 f (1) of this subsection.

g. Monitoring well certification. The groundwater monitoring well(s) shall, within 30 days of well(s) installation, be certified by a qualified groundwater scientist noting that all wells have been installed in accordance with the documentation submitted under subdivision 3 d of this subsection. Within 14 days of completing this certification, the owner or operator shall transmit the certification to the department.

4. The groundwater sampling and analysis requirements for the groundwater monitoring system are as follows:

a. Quality assurance and control. The groundwater monitoring program shall include consistent field sampling and laboratory analysis procedures that are designed to ensure monitoring results that provide an accurate representation of the groundwater quality at the background and downgradient wells. At a minimum the program shall include procedures and techniques for:

(1) Sample collection;

(2) Sample preservation and shipment;

(3) Analytical procedures;

(4) Chain of custody control; and

(5) Quality assurance and quality control.

b. Analytical methods. The groundwater monitoring program shall include sampling and analytical methods that are appropriate for groundwater sampling and that accurately measure solid waste constituents in groundwater samples. Groundwater samples obtained pursuant to 9VAC20-81-250 B or C shall not be filtered prior to laboratory analysis. The sampling, analysis and quality control/quality assurance methods set forth in EPA document SW-846, as amended, shall be used. The department may require re-sampling if it believes the samples were not properly sampled or analyzed.

c. Groundwater rate and flow. Groundwater elevations at each monitoring well shall be determined immediately prior to purging each time a sample is obtained. The owner or operator shall determine the rate and direction of groundwater flow each time groundwater is sampled pursuant to subsection B or C of this section or 9VAC20-

81-260. Groundwater elevations in wells that monitor the same waste ~~management area~~ disposal unit or units shall be measured within a period of time short enough to avoid temporal variations ~~in groundwater flow~~, which could preclude accurate determination of groundwater flow rate and direction.

d. Background data. The owner or operator shall establish background groundwater quality in a hydraulically upgradient or background well, or wells, for each of the monitoring parameters or constituents required in the particular groundwater monitoring program that applies to the landfill. Background groundwater quality may be established at wells that are not located hydraulically upgradient from the landfill if they meet the requirements of subdivision 4 e of this subsection.

e. Alternate well provision. A determination of background quality may be based on sampling of wells that are not upgradient from the waste ~~management area~~ disposal unit or units where:

(1) Hydrogeologic conditions do not allow the owner or operator to determine what wells are upgradient; and

(2) Sampling at these wells will provide an indication of background groundwater quality that is as representative or more representative than that provided by the upgradient wells.

f. Sampling and statistics. The number of samples collected to establish groundwater quality data shall be consistent with the appropriate statistical procedures determined pursuant to subdivision 4 g of this subsection.

g. Statistical methods. The owner or operator shall specify in the Groundwater Monitoring Plan the statistical method(s) listed in subsection D of this section that will be used in evaluating groundwater monitoring data for each monitoring constituent. The statistical test(s) chosen shall be applied separately for each groundwater constituent in each well after each individual sampling event required under subdivision B 2 or 3, C 2 or 3, or as required under 9VAC20-81-260 E 1.

h. Evaluation and response. After each sampling event required under subsection B or C of this section, the owner or operator shall determine whether or not there is a statistically significant increase over background values for each groundwater constituent required in the particular groundwater monitoring program by comparing the groundwater quality of each constituent at each monitoring well installed pursuant to subdivision 3 a of this subsection to the background value of that constituent. In determining whether a statistically significant increase has occurred, the owner or operator shall:

(1) Ensure the sampling result comparisons are made according to the statistical procedures and performance standards specified in subsection D of this section;

(2) Ensure that within 30 days of completion of sampling and laboratory analysis actions, the determination of whether there has been a statistically significant increase over background at each monitoring well has been completed; and

(3) If identified, the statistically significant increase shall be reported to the department within the notification timeframes identified in subsection B or C of this section and discussed in the quarterly or semi-annual report submission described under subdivision E 2 c of this section. Notifications qualified as being "preliminary," "suspect," "unverified," or otherwise not a final determination of a statistical exceedance will not be accepted.

i. Verification sampling. The owner or operator may at any time within the 30-day statistically significant increases determination period defined under subdivision A 4 h (2) of this section, obtain verification samples if the initial review of analytical data suggests results that might not be an accurate reflection of groundwater quality at the disposal unit boundary. Undertaking verification sampling is a voluntary action on the part of the owner or operator and shall not alter the timeframes associated with determining or reporting a statistically significant increase as otherwise defined under subdivision A 4 h (2), B 2 or 3, or C 2 or 3 of this section.

j. Data validation. The owner or operator may at any time within the 30-day statistically significant increases determination period defined under subdivision A 4 h (2) of this subsection, undertake third-party data validation of the analytical data received from the laboratory. Undertaking such validation efforts is a voluntary action on the part of the owner or operator and shall not alter the timeframes associated with determining or reporting a statistically significant increase as otherwise defined under subdivision A 4 h (2), B 2 or 3, or C 2 or 3 of this section.

5. Alternate source demonstration allowance.

a. Allowance. As a result of any statistically significant increase identified while monitoring groundwater under subdivision B 2 or 3, or C 2 or 3 of this section, or at anytime within the Corrective Action process under 9VAC20-81-260, the owner or operator has the option of submitting an Alternate Source Demonstration report, certified by a qualified groundwater scientist, demonstrating:

(1) A source other than the landfill caused the statistical exceedance;

(2) The exceedance resulted from error in sampling, analysis, or evaluation; or

(3) The exceedance resulted from a natural variation in groundwater quality.

b. Timeframes. A successful demonstration must be made within 90 days of noting a statistically significant increase. The director may approve a longer timeframe for submittal and approval of the Alternate Source Demonstration with appropriate justification.

c. Evaluation and response. Based on the information submitted in accordance with subdivision 5 a of this subsection, the director will:

(1) In the case of the successful demonstration of an error in sampling, analysis, or evaluation, allow the owner or operator to continue monitoring groundwater in accordance with the monitoring program in place at the time of the statistical exceedance.

(2) In the case of a successful demonstration of an alternate source for the release or natural variability in the aquifer matrix:

(a) Require changes in the groundwater monitoring system as needed to accurately reflect the groundwater conditions and allow the owner or operator to continue monitoring groundwater in accordance with the monitoring program in place at the time of the statistical exceedance;

(b) Require any changes to the monitoring system be completed prior to the next regularly scheduled groundwater monitoring event or within 90 days (whichever is greater); and

(c) Require any changes to the monitoring system be approved via the ~~amendment~~ modification process under 9VAC20-81-600 within 90 days of the approval of the alternate source demonstration.

(3) In the case of an unsuccessful Alternate Source Demonstration, require the owner or operator to initiate the actions that would otherwise be required as a result of the statistically significant increase noted under subdivision B 2 or 3, or C 2 or 3 of this section as appropriate.

6. Establishment of groundwater protection standards.

a. Requirement. Upon recognition of a statistically significant increase over background and while monitoring in the Assessment or Phase II monitoring programs defined under subdivision B 3 or C 3 of this section, the owner or operator shall propose a groundwater protection standard for all detected Table 3.1 Column B constituents. The proposed standards shall be submitted to the department by a qualified groundwater scientist and be accompanied by relevant historical groundwater sampling data to justify the proposed concentration levels.

b. Establishment process. The groundwater protection standards shall be established in the following manner:

(1) For constituents for which a maximum contaminant level (MCL) has been promulgated under § 1412 of the Safe Drinking Water Act (40 CFR Part 141), the MCL for that constituent shall be automatically established as the groundwater protection standard upon submission of the proposed standards.

(2) If the owner or operator determines that a site-specific background concentration is greater than the MCL associated with that constituent under subdivision 6 b (1) of this subsection, the background value may be substituted for use as the groundwater protection standard in lieu of the MCL for that constituent upon receiving written department approval.

(3) For constituents for which no MCL has been promulgated, site-specific background concentration value(s) may be used upon receiving written department approval.

(4) For constituents for which no MCL has been promulgated, a risk-based alternate concentration levels may be used if approved by the director as long as:

(a) The owner or operator submits a request to the department asking for approval to use risk-based alternate concentration levels for a specific list of constituents and identifies that these constituents lack an MCL. In the request the owner or operator shall specify whether site-specific, independently calculated, risk-based alternate concentration levels will be applied, or if the facility will accept the default department-provided limits.

(b) ~~Both the~~ The alternate concentration levels that may be provided as default values by the department and those independently calculated by the owner or operator are demonstrated to meet the following criteria or factors before they can be used as groundwater protection standards:

(i) Groundwater quality - The potential for adverse quality effects considering the physical and chemical characteristics of the waste in the landfill, its potential for migration in the aquifer; the hydrogeological characteristics of the facility and surrounding land; the rate and direction of groundwater flow; the proximity and withdrawal rates of groundwater users; the current and future uses of groundwater in the area; the existing quality of groundwater, including other sources of contamination and their cumulative impact on the groundwater quality.

(ii) Human exposure - Potential for health risks caused by exposure to waste constituents released from the landfill using federal guidelines for assessing the health risks of environmental pollutants; scientifically valid studies conducted in accordance with the Toxic Substances Control Act Good Laboratory Practice Standards (40 CFR Part 792); or equivalent standards. For carcinogens, the alternate concentration levels must be set based on a lifetime cancer risk level due to continuous lifetime exposure within the $1x10^{-4}$ to $1x10^{-6}$ range. For systemic toxicants, alternate concentration levels must be demonstrated to be levels to which the human population (including sensitive subgroups) could be exposed to on a daily basis without the likelihood of appreciable risk of deleterious effects during a lifetime.

(iii) Surface water - The potential adverse effect on hydraulically connected surface water quality based on the volume, physical and chemical characteristics of the waste in the landfill; the hydrogeological characteristics of the facility and surrounding land; the rate and direction of groundwater flow; the patterns of rainfall in the region; the proximity of the landfill to surface waters; the current and future uses of surface waters in the area and any water quality standards established for those surface waters; the existing quality of surface water, including other sources of contamination and the cumulative impact on surface water quality.

(iv) Other adverse effects - Potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents; the persistence and permanence of the potential adverse effects; and the potential for health risks caused by human exposure to waste constituents using factors shown in subdivision b (4) (b) (ii) of this subsection.

(5) In making any determination regarding the use of alternate concentration levels under this section, the director will:

(a) Consider any identification of underground sources of drinking water as identified by EPA under 40 CFR 144.7,

(b) Consider additional or modified monitoring requirements or control measures,

(c) Include a schedule for the periodic review of the alternate concentration levels, or

(d) Approve the alternate concentration levels as proposed or issue modified alternate concentration levels.

c. Implementation. Groundwater protection standards shall be considered established for the facility upon completion of the actions described under either subdivision A 6 b (1), (2), (3) or if necessary (4) and shall be placed in the facility Operating Record and shall be used during subsequent comparisons of groundwater sampling data consistent with the requirements of subdivision B 3 f or C 3 e of this section.

d. MCL and background revisions. After establishment of groundwater protection standards under subdivision B 6 b, if the standards are modified as a result of revisions to any MCL or department-approved background, the facility shall update its listing of groundwater protection standards and shall place the new list in the Operating Record and shall use the new values during subsequent comparisons of sampling data consistent with the requirements of subdivision B 3 f or C 3 e of this section.

e. Alternate concentration levels revisions. After establishment of groundwater protection standards under subdivision B 6 b of this section, if the department-approved alternate concentration levels change based on information released by EPA, to the extent practical, the department will issue revisions to the alternate concentration levels for facility use no more often than an annual basis. The facility shall use the alternate concentration levels listing in effect at the time the sampling event takes place when comparing the results against the groundwater protection standards under subdivision B 3 f or C 3 e of this section.

B. Monitoring for sanitary landfills.

1. Applicability.

a. Existing facilities. Except for those sanitary landfills identified in subdivision C 1 of this section, existing sanitary landfill facilities and closed facilities that have accepted waste on or after October 9, 1993, and in the case of 'small' landfills on or after April 9, 1994, shall be in compliance with the detection monitoring requirements specified in subdivision 2 of this subsection unless existing sampling data requires a move to assessment monitoring described under subdivision 3 of this subsection.

b. New facilities. Facilities placed in operation to receive waste after October 9, 1993, shall be in compliance with the detection monitoring requirements specified in subdivision 2 of this section before waste can be placed in the landfill unless existing sampling data requires a move to assessment monitoring described under subdivision 3 of this subsection.

c. Closed facilities. Unless an extension to the deadline above has been granted by the director, closed facilities that have ceased to accept any waste on or before October 9, 1993, and in the case of a "small" landfill, before April 9, 1994, may comply with the "State Monitoring Program" monitoring requirements specified in subdivision C 2 or 3 of this section.

d. Other facilities. Owners or operators of disposal facilities not subject to the federal groundwater

monitoring requirements prescribed under 40 CFR Parts 257 and 258 must perform the groundwater monitoring described in subdivision C 2 or 3 of this section.

e. Proximity to wetlands. Owners or operators of sanitary landfills that accepted waste after June 30, 1999, must:

(1) Perform quarterly groundwater monitoring unless the director determines that less frequent monitoring is necessary consistent with the requirements of the special provisions regarding wetlands in § 10.1-1408.5 of the Code of Virginia.

(2) The quarterly monitoring frequency shall remain in effect until the department is notified waste is no longer being accepted at the sanitary landfill.

(3) This requirement will not limit the authority of the Waste Management Board or the director to require more frequent groundwater monitoring if required to protect human health and the environment.

(4) For purposes of this subdivision "proximity to wetlands" shall be defined as landfills that were constructed on a wetland, have a potential hydrologic connection to such a wetland in the event of an escape of liquids from the facility, or are within a mile of such a wetland.

2. Detection monitoring program.

a. Sampling requirements. All sanitary landfills shall implement detection monitoring except as otherwise provided in subdivision 1 of this subsection. The monitoring frequency for all constituents listed in Table 3.1 Column A shall be as follows:

(1) Initial sampling period.

(a) For facilities that monitor groundwater on a semi-annual basis, a minimum of four independent samples from each well (background and downgradient) shall be collected and analyzed for the Table 3.1 Column A constituents during the first semi-annual sampling period. A semi-annual period is defined under 9VAC20-81-10.

(b) For facilities that monitor groundwater on a quarterly basis as a result of subdivision 1 e of this subsection, a minimum of four samples from each well (background and downgradient) shall be collected and analyzed for the Table 3.1 Column A constituents. The samples shall be collected within the first quarterly period, using a schedule that ensures, to the greatest extent possible, an accurate calculation of background concentrations.

(2) Subsequent sampling events. At least one sample from each well (background and downgradient) shall be collected and analyzed during subsequent semi-annual or quarterly events during the active life and postclosure period. Data from subsequent background sampling events may be added to the previously calculated background data so that the facility maintains the most accurate representation of background groundwater quality with which to carry out statistical analysis required under subdivision A 4 h of this section.

(3) Alternate sampling events. The director may specify an appropriate alternate frequency for repeated sampling and analysis during the active life (including closure) and the postclosure care period. The alternate frequency during the active life (including closure) and the postclosure period shall be no less than annual. The alternate frequency shall be based on consideration of the following factors:

(a) Lithology of the aquifer and unsaturated zone;

(b) Hydraulic conductivity of the aquifer and unsaturated zone;

(c) Groundwater flow rates;

(d) Minimum distance between upgradient edge of the disposal unit boundary and downgradient monitoring well screen (minimum distance of travel); and

(e) Resource value of the aquifer.

b. Evaluation and response. If the owner or operator determines under subdivision A 4 h of this section, that there is:

(1) A statistically significant increase over background as determined by a method meeting the requirements of subsection D of this section, for one or more of the constituents listed in Table 3.1 Column A at any of the monitoring wells at the disposal unit boundary during any detection monitoring sampling event, the owner or operator shall:

(a) Within 14 days of this finding, notify the department of this fact, indicating which constituents have shown statistically significant increases over background levels; and

(b) Within 90 days, (i) establish an assessment monitoring program meeting the requirements of subdivision 3 of this subsection, or (ii) submit an Alternate Source Demonstration as specified in subdivision A 5 of this section. If, after 90 days, a successful demonstration has not been made, the owner or operator shall initiate an assessment monitoring program as otherwise required in subdivision 3 of this subsection. The 90-day Alternate Source Demonstration period may be extended by the director for good cause.

(2) No statistically significant increase over background as determined by a method meeting the requirements of subsection D of this section, for any of the constituents listed in Table 3.1 Column A at any of the monitoring wells at the disposal unit boundary during any detection monitoring sampling event; the owner or operator may

remain in detection monitoring and include a discussion of the sampling results and statistical analysis in the semi-annual or quarterly report required under subdivision E 2 c of this section.

3. Assessment monitoring program. The owner or operator shall implement the assessment monitoring program whenever a statistically significant increase over background has been detected during monitoring conducted under the detection monitoring program.

a. Sampling requirements. Within 90 days of recognizing a statistically significant increase over background for one or more of the constituents listed in Table 3.1 Column A, the owner or operator shall, unless in receipt of an approval to an Alternate Source Demonstration under subdivision A 5 of this section or a director-approved extension, conduct the initial assessment monitoring sampling event for the constituents found in Table 3.1 Column B. A minimum of one sample from each well installed under subdivision A 3 a of this section shall be collected and analyzed during the initial and all subsequent annual Table 3.1 Column B sampling events.

b. Director provisions:

(1) The owner or operator may request that the director approve an appropriate subset of monitoring wells that may remain in detection monitoring defined under subdivision 2 of this subsection, based on the results of the initial, or subsequent annual Table 3.1 Column B sampling events. Monitoring wells may be considered for the subset if:

(a) They show no detections of Table 3.1 Column B constituents other than those already previously detected in detection monitoring defined under subdivision 2 of this subsection; and

(b) They display no statistically significant increases over background for any constituents on the Table 3.1 Column A list. If an increase is subsequently recognized in a well approved for the subset, the well shall no longer be considered part of the detection monitoring subset.

(2) The owner or operator may request the director delete any of the Table 3.1 Column B monitoring constituents from the assessment monitoring program if the owner or operator demonstrates that the deleted constituents are not reasonably expected to be in or derived from the waste.

(3) The director may specify an appropriate alternate frequency for repeated sampling and analysis for the full set of Table 3.1 Column B constituents required by subdivision 3 a of this subsection during the active life and postclosure care period based on the consideration of the following factors:

(a) Lithology of the aquifer and unsaturated zone;

(b) Hydraulic conductivity of the aquifer and unsaturated zone;

(c) Groundwater flow rates;

(d) Minimum distance between upgradient edge of the disposal unit boundary and downgradient monitoring well screen (minimum distance of travel);

(e) Resource value of the aquifer; and

(f) Nature (fate and transport) of any constituents detected in response to subdivision 3 f of this subsection.

c. Development of background. After obtaining the results from the initial or subsequent annual sampling events required in subdivision 3 a of this subsection, the owner or operator shall:

(1) Within 14 days, notify the department identifying the Table 3.1 Column B constituents that have been detected;

(2) Within 90 days, and on at least a semi-annual basis thereafter, resample all wells installed under subdivision A 3 a of this section, conduct analyses for all constituents in Table 3.1 Column A as well as those constituents in Column B that are detected in response to subdivision 3 a of this subsection and subsequent Table 3.1 Column B sampling events as may be required of this section, and report this data in the semi-annual or quarterly report defined under subdivision E 2 c of this section;

(3) Within 180 days of the initial sampling event, establish background concentrations for any Table 3.1 Column B constituents detected pursuant to subdivision B 3 a of this subsection. A minimum of four independent samples from each well (background and downgradient) shall be collected and analyzed to establish background for the detected constituents.

d. Establishment of groundwater protection standards. Within 30 days of establishing background under subdivision 3 c (3) of this subsection, submit proposed groundwater protection standards for all constituents detected under Assessment monitoring. The groundwater protection standards shall be approved by the director in accordance with the provisions of subdivision A 6 of this section.

e. Groundwater monitoring plan. No later than 60 days after approval of the groundwater protection ~~standard~~ standards in accordance with subdivision A 6 of this section, the owner or operator shall submit an updated Groundwater Monitoring Plan that details the site monitoring well network and sampling and analysis procedures undertaken during groundwater monitoring events. The owner or operator shall additionally:

(1) No later than 30 days after the submission of the Groundwater Monitoring Plan, request a permit ~~amendment~~ modification to incorporate the plan and

related groundwater monitoring modules into the landfill's permit in accordance with 9VAC20-81-600. The department may waive the requirement for a permit ~~amendment~~ modification if the Groundwater Monitoring Plan included in the landfill's permit reflects current site conditions in accordance with the regulations.

(2) If the 30-day timeframe specified in subdivision 3 e (1) of this subsection is exceeded, the director will modify the permit in accordance with 9VAC20-81-600 E.

f. Evaluation and response.

(1) If the concentrations of all Table 3.1 Column B constituents are shown to be at or below background values, using the statistical procedures in subsection D of this section, for two consecutive Table 3.1 Column B sampling events, the owner or operator shall notify the director of this finding in the semi-annual or quarterly monitoring report and may return to detection monitoring defined under subdivision 2 of this subsection.

(2) If the concentrations of any Table 3.1 Column B constituents are found to be above background values, but below the groundwater protection standards established under subdivision A 6 of this section using the statistical procedures in subsection D of this section, the owner or operator shall continue in assessment monitoring in accordance with this section and present the findings to the department in the semi-annual or quarterly report.

(3) If one or more Table 3.1 Column B constituents are detected at statistically significant levels above the groundwater protection standard established under subdivision A 6 of this section using the statistical procedures in subsection D of this section, the owner or operator shall:

(a) Within 14 days of this finding, notify the department identifying the Table 3.1 Column B constituents that have exceeded the groundwater protection standard. The notification will include a statement that within 90 days the owner or operator will either:

(i) Undertake characterization and assessment actions required under 9VAC20-81-260 C 1; or

(ii) Submit an Alternate Source Demonstration as specified in subdivision A 5 of this section. If a successful demonstration is made within 90 days, the owner or operator may continue monitoring in accordance with the assessment monitoring program pursuant to subdivision 3 of this subsection. If the 90-day period passes without demonstration approval, the owner or operator shall comply with the actions under 9VAC20-81-260 C within the timeframes specified unless the director has granted an extension to those timeframes.

(b) Describe the results in the semi-annual or quarterly report.

C. Monitoring for CDD, industrial, and State Monitoring Program sanitary landfills.

1. Applicability.

a. Sanitary landfills. Owners or operators of sanitary disposal facilities that have ceased to accept solid waste prior to the federally imposed deadline of October 9, 1993, ~~and~~ or in the case of a "small landfill" before April 9, 1994, are eligible, with the director's approval, to conduct the state groundwater monitoring program described in this section in lieu of the groundwater monitoring program required under subdivision B 2 or 3 of this section.

b. CDD and industrial landfills. Owners or operators of CDD and industrial landfills not subject to the federal groundwater monitoring requirements prescribed under 40 CFR Parts 257 and 258 ~~will~~ shall perform the groundwater monitoring described in this section.

c. Other landfills. All other landfills excluding sanitary landfills, including those that accepted hazardous waste from conditionally exempt small quantity generators after July 1, 1998, ~~will~~ shall perform the groundwater monitoring described in this section.

2. First determination monitoring program.

a. Sampling requirements. A first determination monitoring program shall consist of a background-establishing period followed by semi-annual sampling and analysis for the constituents shown in Table 3.1 Column A at all wells installed under subdivision A 3 a of this section. Within 14 days of each event during first determination monitoring, notify the department identifying the Table 3.1 Column A constituents that have been detected.

b. Development of background. Within 360 days of the initial first determination sampling event:

(1) Establish background concentrations for any constituents detected pursuant to subdivision 2 a of this subsection.

(a) A minimum of four independent samples from each well (background and downgradient) shall be collected and analyzed to establish background concentrations for the detected constituents using the procedures in subsection D of this section.

(b) In those cases where new wells are installed downgradient of waste disposal units that already have received waste, but these wells have not yet undergone their initial sampling event, collection of four independent samples for background development will not be required.

(2) Within 30 days of completing the background calculations required under subdivision 2 b (1) (a) of this subsection, submit a first determination report, signed by a qualified groundwater scientist, to the department which must include a summary of the background concentration data developed during the background sampling efforts as well as the statistical calculations for each constituent detected in the groundwater during the background sampling events.

c. Semi-annual sampling and analysis. Within 90 days of the last sampling event during the background-establishing period and at least semi-annually thereafter, sample each monitoring well in the compliance network for analysis of the constituents in Table 3.1 Column A.

d. Evaluation and response. Upon determination of site background under subdivision 2 b (1) (a) of this subsection, the results of all subsequent first determination monitoring events shall be assessed as follows:

(1) If no Table 3.1 Column A constituents are found to have entered the groundwater at statistically significant levels over background, the owner or operator shall:

(a) Remain in first determination monitoring; and

(b) May request the director delete any Table 3.1 Column A constituents from the semi-annual sampling list if the owner or operator demonstrates that the proposed deleted constituents are not reasonably expected to be in or derived from the waste.

(2) If the owner or operator recognizes a statistically significant increase over background for any Table 3.1 Column A constituent, within 14 days of this finding, the owner or operator shall notify the department identifying the Table 3.1 Column A constituents that have exceeded background levels. The notification will include a statement that within 90 days the owner or operator ~~will~~ shall:

(a) Initiate a Phase II sampling program; or

(b) Submit an Alternate Source Demonstration under subdivision A 5 of this section.

(3) If a successful demonstration is made and approved within the timeframes established under subdivision A 5 of this section, the owner or operator may remain in First Determination monitoring.

(4) If a successful demonstration is not made and approved within the timeframes established under subdivision A 5 of this section, the owner or operator shall initiate Phase II monitoring in accordance with the timeframes in subdivision C 3 of this section. The director may approve a longer timeframe with appropriate justification.

3. Phase II monitoring.

a. Sampling requirements. The owner or operator shall:

(1) Within 90 days of noting the exceedance over background determined under subdivision C 2 d of this section, sample the groundwater in all monitoring wells installed under subdivision A 3 a of this section for all Table 3.1 Column B constituents;

(2) After completing the initial Phase II sampling event, continue to sample and analyze groundwater on a semi-annual basis within the Phase II monitoring program;

b. Background development. If no additional Table 3.1 Column B constituents are detected other than those previously detected under Column A, which already have established their background levels, the owner or operator shall follow the requirements under subdivision 3 c of this subsection regarding groundwater protection standard establishment while continuing to sample for the Table 3.1 Column A list on a semi-annual basis. If one or more additional Table 3.1 Column B constituents are detected during the initial Phase II sampling event:

(1) Within 360 days, establish a background value for each additional detected Table 3.1 Column B constituent.

(2) Submit a Phase II Background report within 30 days of completing the background calculations including a summary of the background concentration data for each constituent detected in the groundwater during the Table 3.1 Column B background sampling events.

(3) If any detected Table 3.1 Column B constituent is subsequently not detected for a period of two years, the owner or operator may petition the director to delete the constituent from the list of detected Table 3.1 Column B constituents that must be sampled semi-annually.

c. Establishment of groundwater protection standards. No later than:

(1) Thirty days after submitting the Phase II Background report required under the provisions of subdivision 3 b (2) of this subsection, or within 30 days of obtaining the results from the initial Table 3.1 Column B sampling event indicating no further sampling for background determination is necessary, the owner or operator shall propose a groundwater protection standard for all detected Table 3.1 constituents.

(2) The groundwater protection standard proposed shall be established in a manner consistent with the provisions in subdivision A 6 of this section.

d. Groundwater monitoring plan. No later than 60 days after establishment of groundwater protection standards in accordance with subdivision A 6 of this section, the owner or operator shall submit an updated Groundwater Monitoring Plan that details the site monitoring well

network and sampling and analysis procedures undertaken during groundwater monitoring events. The department may waive the requirement for an updated plan if the Groundwater Monitoring Plan included in the landfill's permit reflects current site conditions in accordance with the regulations.

(1) No later than 30 days after the submission of the Groundwater Monitoring Plan, the owner or operator shall request a permit ~~amendment~~ modification to incorporate the updated plan and related groundwater monitoring modules into the landfill's permit in accordance with 9VAC20-81-600.

(2) If the 30-day timeframe specified in subdivision 3 d (1) of this subsection is exceeded, the director will modify the permit in accordance with 9VAC20-81-600 E.

e. Evaluation and response. After each subsequent Phase II monitoring event following establishment of groundwater protection standards, the concentration of Table 3.1 Column B constituents found in the groundwater at each monitoring well installed pursuant to subdivision A 3 a of this section will be evaluated against the groundwater protection standards. The evaluation will be presented to the department in a semi-annual Phase II report. The evaluation will be as follows:

(1) If all Table 3.1 constituents are shown to be at or below background values, using the statistical procedures in subsection D of this section, for two consecutive Table 3.1 Column B sampling events, the owner or operator shall notify the director of this finding in the semi-annual report and may return to first determination monitoring;

(2) If any Table 3.1 Column B constituents are found to be above background values, but are below the established groundwater protection standard using the statistical procedures in subsection D of this section, the owner or operator shall continue semi-annual Phase II monitoring and present the findings in a semi-annual report;

(3) If one or more Table 3.1 Column B constituents are above the established groundwater protection standard using the statistical procedures in subsection D of this section, the owner or operator shall:

(a) Notify the department within 14 days of this finding. The notification will include a statement that within 90 days the owner or operator will either: (i) undertake the characterization and assessment actions required under 9VAC20-81-260 C 1; or (ii) submit an alternate source demonstration as specified in subdivision A 5 of this section. If a successful demonstration is made within 90 days, the owner or operator may continue monitoring in accordance with Phase II monitoring program. If the 90-day period is exceeded, the owner or operator shall comply with the timeframes of 9VAC20-81-260 C unless the director has granted an extension to those timeframes; and

(b) Present the findings in the semi-annual report.

D. Statistical methods and constituent lists.

1. Acceptable test methods. The following statistical test methods may be used to evaluate groundwater monitoring data:

a. A parametric analysis of variance (ANOVA) followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance well's mean and the background mean levels for each constituent.

b. An analysis of variance (ANOVA) based on ranks followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance well's median and the background median levels for each constituent.

c. A tolerance or prediction interval procedure in which an interval for each constituent is established from the distribution of the background data, and the level of each constituent in each compliance well is compared to the upper tolerance or prediction limit.

d. A control chart approach that gives control limits for each constituent.

e. Another statistical test method that meets the performance standards specified below. Based on the justification submitted to the department, the director may approve the use of an alternative test. The justification must demonstrate that the alternative method meets the performance standards in subdivision 2 of this subsection.

2. Performance standards. Any statistical method chosen by the owner or operator shall comply with the following performance standards, as appropriate:

a. The statistical method used to evaluate groundwater monitoring data shall be appropriate for the distribution of monitoring parameters or constituents. If the distribution is shown by the owner or operator to be inappropriate for a normal theory test, then the data shall be transformed or a distribution-free theory test shall be used. If the distributions for the constituents differ, more than one statistical method may be needed.

b. If an individual well comparison procedure is used to compare an individual compliance well constituent concentration with background constituent concentrations or a groundwater protection standard, the test shall be done at a Type I error level no less than 0.01

for each testing period. If a multiple comparisons procedure is used, the Type I experiment-wise error rate for each testing period shall be no less than 0.05; however, the Type I error of no less than 0.01 for individual well comparisons must be maintained.

c. If a control chart approach is used to evaluate groundwater monitoring data, the specific type of control chart and its associated parameter values shall be protective of human health and the environment. The parameters shall be determined after considering the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern.

d. If a tolerance interval or a predictional interval is used to evaluate groundwater monitoring data, the levels of confidence and, for tolerance intervals, the percentage of the population that the interval must contain, shall be protective of human health and the environment. These parameters shall be determined after considering the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern.

e. The statistical method shall account for data below the limit of detection with one or more statistical procedures that are protective of human health and the environment. Any estimated quantitation limit (EQL) that is used in the statistical method shall be the lowest concentration level that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operating conditions that are available to the landfill.

f. If necessary, the statistical method shall include procedures to control or correct for seasonal and spatial variability as well as temporal correlation in the data.

E. Recordkeeping and reporting.

1. Records pertaining to groundwater monitoring activities ~~on site~~ shall be retained at a specified location by the owner or operator throughout the active life and postclosure care period of the landfill, and shall include at a minimum:

a. All historical groundwater surface elevation data obtained from wells installed pursuant to subdivision A 3 a of this section;

b. All historical laboratory analytical results for groundwater sampling events required under the groundwater monitoring programs as described in this section;

c. All records of well installation, repair, or abandonment actions;

d. All department correspondence to the landfill; and

e. All approved variances, well subsets, wetlands, or other such director/department approvals.

2. Reporting requirements.

a. Annual report.

(1) An Annual Groundwater Monitoring Report shall be submitted by the owner or operator to the department no later than 120 days from the completion of sampling and analysis conducted under subdivision A 4 h of this section for the second semi-annual event or fourth quarterly event during each calendar year and shall by accompanied by:

(a) A signature page; and

(b) A completed QA/QC DEQ Form ARSC-01.

(2) The technical content of the annual report shall at a minimum, contain the following topical content:

(a) The landfill's name, type, permit number, current owner or operator, and location keyed to a USGS topographic map;

(b) Summary of the design type (i.e., lined versus unlined), operational history (i.e., trench fill versus area fill), and size (acres) of the landfill including key dates such as beginning and termination of waste disposal actions and dates different groundwater monitoring phases were entered;

(c) Description of the surrounding land use noting whether any adjoining land owners utilize private wells as a potable water source;

(d) A discussion of the topographic, geologic, and hydrologic setting of the landfill including a discussion on the nature of the uppermost aquifer (i.e., confined versus unconfined) and proximity to surface waters;

(e) A discussion of the monitoring wells network noting any modifications that were made to the network during the year or any nonperformance issues and a statement noting that the monitoring well network meets (or did not meet) the requirements of subdivision A 3 of this section;

(f) A listing of the groundwater sampling events undertaken during the previous calendar year;

(g) A historical table listing the detected constituents, and their concentrations identified in each well during the sampling period; and

(h) Evaluations of and appropriate responses to the groundwater elevation data; groundwater flow rate as calculated using the prior years elevation data; groundwater flow direction (as illustrated on a potentiometric surface map); and sampling and analytical data obtained during the past calendar year.

b. Semi-annual or quarterly report.

(1) After each sampling event has been completed for the 1st semi-annual or first, second and third quarterly groundwater sampling events, a semi-annual or quarterly monitoring report shall be submitted under separate cover by the owner or operator to the department no later than 120 days from the completion of sampling and analysis conducted under subdivision A 4 h of this section, unless as allowed under a director-approved extension. The report shall at a minimum contain the following items:

(a) Signature page signed by a professional geologist or qualified groundwater scientist;

(b) Landfill name and permit number;

(c) Statement noting whether or not all monitoring points within the permitted network installed to meet the requirements of subdivision A 3 a of this section were sampled as required under subdivision B 2 or 3 or C 2 or 3 during the event;

(d) Calculated rate of groundwater flow during the sampling period as required under subdivision A 4 c of this section;

(e) The groundwater flow direction as determined during the sampling period as required under subdivision A 4 c of this section presented as either plain text or graphically as a potentiometric surface map;

(f) Statement noting whether or not there were statistically significant increases over background or groundwater protection standards during the sampling period, the supporting statistical calculations, and reference to the date the director was notified of the increase pursuant to timeframes in subdivision B 2 or 3 or C 2 or 3, if applicable;

(g) Copy of the full Laboratory Analytical Report including dated signature page (laboratory manager or representative) to demonstrate compliance with the timeframes of subdivision A 4 h of this section. The department will accept the lab report in CD-ROM format.

(2) In order to reduce the reporting burden on the owner or operator and potential redundancy within the operating record, a discussion of the second semi-annual or fourth quarterly sampling event results may be presented in the Annual Report submission.

c. Other submissions. Statistically significant increase notifications, well certifications, the first determination report, alternate source demonstration, nature and extent study, assessment of corrective measures, presumptive remedy proposal, corrective action plan or monitoring plan, or other such report or notification types as may be required under 9VAC20-81-250 or 9VAC20-81-260, shall be submitted in a manner which achieves the timeframe requirements as listed in 9VAC20-81-250 or 9VAC20-81-260.

TABLE 3.1
GroundWater Solid Waste Constituent Monitoring List

Column A – Common Name[1, 2]	Column B – Common Name[1, 2]	CAS RN[3]
	Acenaphthene	83-32-9
	Acenaphthylene	208-96-8
Acetone	Acetone	67-64-1
	Acetonitrile; Methyl cyanide	75-05-8
	Acetophenone	98-86-2
	2-Acetylaminofluorene; 2-AAF	53-96-3
	Acrolein	107-02-8
Acrylonitrile	Acrylonitrile	107-13-1
	Aldrin	309-00-2
	Allyl chloride	107-05-1
	4-Aminobiphenyl	92-67-1
	Anthracene	120-12-7
Antimony	Antimony	(Total)

Arsenic	Arsenic	(Total)
Barium	Barium	(Total)
Benzene	Benzene	71-43-2
	Benzo[a]anthracene; Benzanthracene	56-55-3
	Benzo[b]fluoranthene	205-99-2
	Benzo[k]fluoranthene	207-08-9
	Benzo[ghi]perylene	191-24-2
	Benzo[a]pyrene	50-32-8
	Benzyl alcohol	100-51-6
Beryllium	Beryllium	(Total)
	alpha-BHC	319-84-6
	beta-BHC	319-85-7
	delta-BHC	319-86-8
	gamma-BHC; Lindane	58-89-9
	Bis(2-chloroethoxy)methane	111-91-1
	Bis(2-chloroethyl) ether; Dichloroethyl ether	111-44-4
	Bis(2-chloro-1-methylethyl) ether; 2, 2'-Dichlorodiisopropyl ether; DCIP	108-60-1, See note 4
	Bis(2-ethylhexyl)phthalate	117-81-7
Bromochloromethane;.Chlorobromomethane	Bromochloromethane;.Chlorobromomethane	74-97-5
Bromodichloromethane;.Dibromochloromethane	Bromodichloromethane;.Dibromochloromethane	75-27-4
Bromoform; Tribromomethane	Bromoform; Tribromomethane	75-25-2
	4-Bromophenyl phenyl ether	101-55-3
	Butyl benzyl phthalate; Benzyl butyl phthalate	85-68-7
Cadmium	~~Cadium~~ Cadmium	(Total)
Carbon disulfide	Carbon disulfide	75-15-0
Carbon tetrachloride	Carbon tetrachloride	56-23-5
	Chlordane	Note 5
	p-Chloroaniline	106-47-8
Chlorobenzene	Chlorobenzene	108-90-7
	Chlorobenzilate	510-15-6
	p-Chloro-m-cresol; 4-Chloro-3-methylphenol	59-50-7
Chloroethane; Ethyl chloride	Chloroethane; Ethyl chloride	75-00-3
Chloroform; Trichloromethane	Chloroform; Trichloromethane	67-66-3
	2-Chloronaphthalene	91-58-7
	2-Chlorophenol	95-57-8

	4-Chlorophenyl phenyl ether	7005-72-3
	Chloroprene	126-99-8
Chromium	Chromium	(Total)
	Chrysene	218-01-9
Cobalt	Cobalt	(Total)
Copper	Copper	(Total)
	m-Cresol; 3-methyphenol	108-39-4
	o-Cresol; 2-methyphenol	95-48-7
	p-Cresol; 4-methyphenol	106-44-5
	Cyanide	57-12-5
	2,4-D; 2,4-Dichlorophenoxyacetic acid	94-75-7
	4,4'-DDD	72-54-8
	4,4'-DDE	72-55-9
	4,4'-DDT	50-29-3
	Diallate	2303-16-4
	Dibenz[a,h]anthracene	53-70-3
	Dibenzofuran	132-64-9
Dibromochloromethane; Chlorodibromomethane	Dibromochloromethane; Chlorodibromomethane	124-48-1
1,2-Dibromo-3-chloropropane; DBCP	1,2-Dibromo-3-chloropropane; DBCP	96-12-8
1,2-Dibrimoethane; Ethylene dibromide; EDB	1,2-Dibrimoethane; Ethylene dibromide; EDB	106-93-4
	Di-n-butyl phthalate	84-74-2
o-Dichlorobenzene; 1,2-Dichlorobenzene	o-Dichlorobenzene; 1,2-Dichlorobenzene	95-50-1
	m-Dichlorobenzene; 1,3-Dichlorobenzene	541-73-1
p-Dichlorobenzene; 1,4-Dichlorobenzene	p-Dichlorobenzene; 1,4-Dichlorobenzene	106-46-7
	3,3'-Dichlorobenzidine	91-94-2
trans-1,4-Dichloro-2-butene	trans-1,4-Dichloro-2-butene	110-57-6
	Dichlorodifluoromethane; CFC 12;	75-71-8
1.1-Dichloroethane; Ethylidene chloride	1,1-Dichloroethane; Ethylidene chloride	75-34-3
1,2-Dichloroethane; Ethylene dichloride	1,2-Dichloroethane; Ethylene dichloride	107-06-2
1,1-Dichloroethylene; 1,1-Dichloroethene; Vinylidene chloride	1,1-Dichloroethylene; 1,1-Dichloroethene; Vinylidene chloride	75-35-4
cis-1,2-Dichloroethylene; cis-1,2-Dichloroethene	cis-1,2-Dichloroethylene; cis-1,2-Dichloroethene	156-59-2
trans-1,2-Dichloroethylene	trans-1,2-Dichloroethylene; trans-1,2-Dichroroethene	156-60-5
	2,4-Dichlorophenol	120-83-2

	2,6-Dichlorophenol	87-65-0
1,2-Dichloropropane; Propylene dichloride	1,2-Dichloropropane; Propylene dichloride	78-87-5
	1,3-Dichloropropane; Trimethylene dichloride	142-28-9
	2, 2-Dichloropropane; isopropylidene chloride	594-20-7
	1,1-Dichloropropene	563-58-6
cis-1,3-Dichloropropene	cis-1,3-Dichloropropene	10061-01-5
trans-1,3-Dichloropropene	trans-1,3-Dichloropropene	10061-02-6
	Dieldrin	60-57-1
	Diethyl phthalate	84-66-2
	O,O-Diethyl O-2-pyrazinyl phosphorothioate; Thionazin	297-97-2
	Dimethoate	60-51-5
	p-(Dimethylamino)azobenzene	60-11-7
	7,12-Dimethylbenz[a]anthracene	57-97-6
	3,3'-Dimethylbenzidine	119-93-7
	2,4-Dimethylphenol; m-Xylenol	105-67-9
	Dimethyl phthalate	131-11-3
	m-Dinitrobenzene	99-65-0
	4,6-Dinitro-o-cresol; 4,6-Dinitro-2-methylphenol	534-52-1
	2,4-Dinitrophenol	51-28-5
	2,4-Dinitrotoluene	121-14-2
	2,6-Dinitrotoluene	606-20-2
	Dinoseb; DNBP; 2-sec-Butyl-4,6-dinitrophenol	88-85-7
	Di-n-octyl phthalate	117-84-0
	Diphenylamine	122-39-4
	Disulfoton	298-04-4
	Endosulfan I	959-96-8
	Endosulfan II	33213-65-9
	Endosulfan sulfate	1031-07-8
	Endrin	72-20-8
	Endrin aldehyde	7421-93-4
Ethylbenzene	Ethylbenzene	100-41-4
	Ethyl methacrylate	97-63-2
	Ethylmethanesulfonate	62-50-0
	Famphur	52-85-7

	Fluoranthene	206-44-0
	Fluorene	86-73-7
	Heptachlor	76-44-8
	Heptachlor epoxide	1024-57-3
	Hexachlorobenzene	118-74-1
	Hexachlorobutadiene	87-68-3
	Hexachlorocyclopentadiene	77-47-4
	Hexachloroethane	67-72-1
	Hexachloropropene	1888-71-7
2-Hexanone; Methyl butyl ketone	2-Hexanone; Methyl butyl ketone	591-78-6
	Indeno[1,2,3-cd]pyrene	193-39-5
	Isobutyl alcohol	78-83-1
	Isodrin	465-73-6
	Isophorone	78-59-1
	Isosafrole	120-58-1
	Kepone	143-50-0
Lead	Lead	(Total)
	Mercury	(Total)
	Methacrylonitrile	126-98-7
	Methapyrilene	91-80-5
	Methoxychlor	72-43-5
Methyl bromide; Bromomethane	Methyl bromide; Bromomethane	74-83-9
Methyl chloride; Chloromethane	Methyl chloride; Chloromethane	74-87-3
	3-Methylcholanthrene	56-49-5
Methyl ethyl ketone; MEK; 2-Butanone	Methyl ethyl ketone; MEK; 2-Butanone	78-93-3
Methyl iodide; Iodomethane	Methyl iodide; Iodomethane	74-88-4
	Methyl methacrylate	80-62-6
	Methyl methanesulfonate	66-27-3
	2-Methylnaphthalene	91-57-6
	Methyl parathion; Parathion methyl methyl	298-00-0
4-Methyl-2-pentanone; Methyl isobutyl ketone	4-Methyl-2-pentanone; Methyl isobutyl ketone	108-10-1
Methylene bromide; Dibromomethane	Methylene bromide; Dibromomethane	74-95-3
Methylene chloride; Dichloromethane	Methylene chloride; Dichloromethane	75-09-2
	Naphthalene	91-20-3
	1,4-Naphthoquinone	130-15-4

	1- Naphthylamine	134-32-7
	2-Napthylamine	91-59-8
Nickel	Nickel	(Total)
	o-Nitroaniline; 2-Nitroaniline	88-74-4
	m-Nitroaniline; 3-Nitroaniline	99-09-2
	p-Nitroaniline; 4-Nitroaniline	100-01-6
	Nitrobenzene	98-95-3
	o-Nitrophenol; 2-Nitrophenol	88-75-5
	p-Nitrophenol; 4-Nitrophenol	100-02-7
	N-Nitrosodi-n-butylamine	924-16-3
	N-Nitrosodiethylamine	55-18-5
	N-Nitrosodimethylamine	62-75-9
	N-Nitrosodiphenylamine	86-30-6
	N-Nitrosodipropylamine; N-Nitroso-N-dipropylamine; Di-n-propylnitrosamine	621-64-7
	N-Nitrosomethylethalamine	10595-95-6
	N-Nitrosopiperidine	100-75-4
	N-Nitrosopyrrolidine	930-55-2
	5-Nitro-o-toluidine	99-55-8
	Parathion	56-38-2
	Pentachlorobenzene	608-93-5
	Pentachloronitrobenzene	82-68-8
	Pentachlorophenol	87-86-5
	Phenacetin	62-44-2
	Phenanthrene	85-01-8
	Phenol	108-95-2
	p-Phenylenediamine	106-50-3
	Phorate	298-02-2
	Polychlorinated biphenyls; PCBS; Aroclors	Note 6
	Pronamide	23950-58-5
	Propionitrile; Ethyl cyanide	107-12-0
	Pyrene	129-00-0
	Safrole	94-59-7
Selenium	Selenium	(Total)
Silver	Silver	(Total)
	Silvex; 2,4,5-TP	93-72-1

Styrene	Styrene	100-42-5
	Sulfide	18496-25-8
	2,4,5-T; 2,4,5-Trichlorophenoxyacetic acid	93-76-5
	1,2,4,5-Tetrachlorobenzene	95-94-3
1,1,1,2-Tetrachloroethane	1,1,1,2-Tetrachloroethane	630-20-6
1,1,2,2-Tetrachloroethane	1,1,2,2-Tetrachloroethane	79-34-5
Tetrachloroethylene; Tetrachloroethene; Perchloroethylene	Tetrachloroethylene; Tetrachloroethene; Perchloroethylene	127-18-4
	2,3,4,6-Tetrachlorophenol	58-90-2
Thallium	Thallium	(Total)
	Tin	(Total)
Toluene	Toluene	108-88-3
	o-Toluidine	95-53-4
	Toxaphene	Note 7
	1,2,4-Trichlorobenzene	120-82-1
1,1,1-Trichloroethane; Methychloroform	1,1,1-Trichloroethane; Methychloroform	71-55-6
1,1,2-Trichloroethane	1,1,2-Trichloroethane	79-00-5
Trichloroethylene; Trichloroethene ethene	Trichloroethylene; Trichloroethene ethane	79-01-6
Trichlorofluoromethane; CFC-11	Trichlorofluoromethane; CFC-11	75-69-4
	2,4,5-Trichlorophenol	95-95-4
	2,4,6-Trichlorophenol	88-06-2
1,2,3-Trichloropropane	1,2,3-Trichloropropane	96-18-4
	O,O,O-Triethyl phosphorothioate	126-68-1
	sym-Trinitrobenzene	99-35-4
Vanadium	Vanadium	(Total)
Vinyl acetate	Vinyl acetate	108-05-4
Vinyl chloride; Chloroethene	Vinyl chloride; Chloroethene	75-01-4
Xylene(total)	Xylene(total)	Note 8
Zinc	Zinc	(Total)

NOTES:

[1]Common names are those widely used in government regulations, scientific publications, and commerce; synonyms exist for many chemicals.

[2]The corresponding Chemical Abstracts Service Index name as used in the 9th Collective Index, may be found in Appendix II of 40 CFR 258.

[3]Chemical Abstracts Service Registry Number. Where "Total" is entered, all species in the groundwater that contains this element are included.

[4]This substance is often called Bis(2-chloroisopropyl) ether, the name Chemical Abstracts Service applies to its noncommercial isomer, Propane, 2.2'-oxybis2-chloro (CAS RN 39638-32-9).

[5]Chlordane: This entry includes alpha-chlordane (CAS RN 5103-71-9), beta-chlordane (CAS RN 5103-74-2), gamma-chlordane (CAS RN 5566-34-7), and constituents of chlordane (CAS RN 57-74-9 and CAS RN 12739-03-6).

[6]Polychlorinated biphenyls (CAS RN 1336-36-3); this category contains congener chemicals, including constituents of Aroclor 1016 (CAS RN 12674-11-2), Aroclor 1221 (CAS RN 11104-28-2), Aroclor 1232 (CAS RN 11141-16-5), Aroclor 1242 (CAS RN 53469-21-9), Aroclor 1248 (CAS RN 12672-29-6), Aroclor 1254 (CAS RN 11097-69-1), and Arclor 1260 (CAS RN 11096-82-5).

[7]Toxaphene: This entry includes congener chemicals contained in technical toxaphene (CAS RN 8001-35-2), i.e., chlorinated camphene.

[8]Xylene (total): This entry includes o-xylene (CAS RN 96-47-6), m-xylene (CAS RN 108-38-3), p-xylene (CAS RN 106-42-3), and unspecified xylenes (dimethylbenzenes) (CAS RN 1330-20-7).

9VAC20-81-260. Corrective action program.

A. Corrective action is required whenever one or more groundwater protection standard is exceeded at statistically significant levels. An owner or operator of a landfill may elect to initiate corrective action at any time; however, prior to such initiation, the appropriate groundwater protection standards for all Table 3.1 constituents shall be established consistent with 9VAC20-81-250 A 6. At any time during the corrective action process, the owner or operator may elect to pursue, or the director can determine that, interim measures as defined under subsection F of this section are required in accordance with subdivision E 3 of this section.

B. The director may require periodic progress reports when a corrective action program is required but not yet implemented. ~~At any time during the corrective action process, the owner or operate may elect to pursue, or the director can determine that, interim measures as defined under subsection F of this section are required in accordance with subdivision E 3 of this section.~~

C. Characterization and assessment requirements.

1. Upon notifying the department that one or more of the constituents listed in Table 3.1 Column B has been detected at a statistically significant level exceeding the groundwater protection standards, the owner or operator shall, unless department approval of an Alternate Source Demonstration has been received as noted under 9VAC20-81-250 B 3 f (3) (a) (ii) or 9VAC20-81-250 C 3 c (3) (a) (ii):

a. Characterization. Within 90 days, install additional monitoring wells as necessary ~~including the installation of at least one additional monitoring well at the facility boundary in the direction of contaminant migration~~ sufficient to define the vertical and horizontal extent of the release of constituents at statistically significant levels exceeding the groundwater protection standards including the installation of at least one additional monitoring well at the facility boundary in the direction of contaminant migration.

b. Notification. Notify all persons who own the land or reside on the land that directly overlies any part of the release if contaminants have migrated offsite as indicated by the results of sampling of the characterization wells installed under subdivision 1 a of this subsection within 15 days of completion of the characterization sampling and analysis efforts.

c. Assessment. Within 90 days, initiate an assessment of corrective measures or a proposal for presumptive remedy.

d. Financial assurance. Within 120 days, provide additional financial assurance in the amount of $1 million to the department using the mechanisms required in 9VAC20-70-140 of the Financial Assurance Requirements for Solid Waste Disposal, Transfer, and Treatment Facilities.

e. Public meeting. Prior to submitting the document required under subdivision 1 f of this subsection, schedule and hold a public meeting to discuss the draft results of the corrective measures assessment or the proposal for presumptive remedy, prior to the final selection of remedy. The meeting shall be held to the extent practicable in the vicinity of the landfill. The process to be followed for scheduling and holding the public hearing is described under subdivision 4 of this subsection.

f. Submission requirements. Within 180 days, submit the completed assessment of corrective measures defined under subdivision 3 of this subsection, or the proposal for presumptive remedies defined under subdivision 2 of this subsection, including any responses to public comments received.

g. Director allowance. The submission timeframe noted in subdivision 1 f of this subsection may be extended by the director for good cause upon request of the owner or operator.

2. Presumptive remedy allowance.

a. Applicability. To expedite corrective action, in lieu of an analysis meeting the requirements of subdivision 3 of this subsection, the owner or operator of any facility monitoring groundwater in accordance with 9VAC20-81-250 C may propose a presumptive remedy for the landfill.

b. Options. The presumptive remedy for solid waste landfills shall be limited to one or more of the following:

(1) Containment of the landfill mass, including an impermeable cap;

(2) Control of the landfill leachate;

(3) Control of the migration of contaminated groundwater;

(4) Collection and treatment of landfill gas; and

(5) Reduction of saturation of the landfill mass.

Containment may be selected as a sole or partial remedy until a determination is made under subdivision F 1 of this section that another remedy shall be employed to meet the requirements of subdivision G 1 of this section concerning remediation completion. Upon recognition that presumptive remedies may not be able to achieve the groundwater protection standards, an assessment of corrective measures shall be initiated within 90 days.

c. Restrictions. Presumptive remedies are not applicable to:

(1) Landfills monitoring groundwater under the Federal Subtitle D equivalent program defined under 9VAC20-81-250 B when the use of the presumptive remedy will be the sole remedy applied to the groundwater release; or

(2) Landfills that may monitor groundwater under 9VAC20-81-250 C but that exhibit contamination beyond facility boundaries unless the proposed presumptive remedy option under subdivision 2 b of this subsection can be demonstrated to show it will address the reduction of contamination already present beyond the facility boundary, and the demonstration is approved by the department.

d. Submission requirements. Owner or operators who wish to propose use of the presumptive remedy allowance shall submit with the proposal, signed by a qualified groundwater professional, an:

(1) Assessment of risks resulting from the contamination at the disposal unit boundary and at the facility boundary;

(2) Evaluation of the current trends in groundwater quality data with respect to the established groundwater protection standards; and

(3) Anticipated schedule for initiating and completing presumptive remedy-based remedial activities.

e. Implementation. Upon conducting a public meeting as required under subdivision 4 of this subsection, submitting a corrective action monitoring plan meeting subdivision D 1 of this section, and ~~amending~~ modifying the landfill permit in accordance with 9VAC20-81-600 F 2, the owner or operator may proceed with the implementation of the remedy in accordance with subdivision E 1 of this section.

f. Evaluation and response. The owner or operator shall provide an evaluation of the performance of the implemented presumptive remedy every three years, unless an alternate schedule is approved by the director, in a Corrective Action Site Evaluation report containing, at a minimum, the following information:

(a) A description of how the presumptive remedy is performing with respect to the conditions in subdivision H 1 of this section;

(b) Current and historical groundwater data and analysis;

(c) An evaluation of the changes seen in groundwater contamination after the implementation of the remedy and a projection of when the conditions in subdivision H 1 of this section will be achieved; and

(d) The progress toward achieving the schedule required in subdivision C 2 d (3) of this section.

3. Assessment of corrective measures.

a. Purpose. The assessment shall include an analysis of the effectiveness of several potential corrective measures in meeting all of the requirements and objectives of the remedy as described under this subsection, addressing at least the following:

(1) The performance, reliability, implementation ease, and potential impacts of appropriate potential remedies, including safety impacts, cross-media impacts, and control of exposure to any residual contamination;

(2) The time required to begin and complete the remedy;

(3) The costs of remedy implementation; and

(4) The institutional requirements such as state or local permit requirements or other environmental or public health requirements that may substantially affect implementation of the remedies.

b. Requirements. As part of the assessment of corrective measures submitted to the department for review, the owner or operator must demonstrate that one or more possible groundwater remedy has been evaluated for potential application on site. These remedies may include a specific technology or combination of technologies that achieve or may achieve the standards for remedies

specified in subdivision 3 c (1) of this subsection given appropriate consideration of the factors specified in subdivision D 1 a of this section.

c. Selection of remedy. As part of submission of the assessment of corrective measures document, the owner or operator shall select a remedy that, at a minimum, meets the standards listed in subdivision H 1 of this section.

(1) The selected remedies to be included in the corrective action plan shall:

(a) Be protective of human health and the environment;

(b) Attain the groundwater protection standard as specified pursuant to 9VAC20-81-250 A 6;

(c) Control the sources of releases so as to reduce or eliminate, to the maximum extent practicable, further releases of solid waste constituents into the environment that may pose a threat to human health or the environment; and

(d) Comply with standards for management of wastes.

d. Evaluation and response. The department shall review the assessment of corrective measures to evaluate the proposed remedy and may require revisions to the assessment. If the assessment is approved without revision, the department will notify the owner or operator to prepare a written corrective action plan based on the proposed remedy and such plan will be submitted within 180 days of the department's notification of approval of the assessment of corrective measures.

4. Public meeting process. As part of the public meeting process completed prior to the submission of a proposal for presumptive remedy or assessment of corrective measures:

a. Newspaper notice. The owner or operator must publish a notice once a week for two consecutive weeks in a major local newspaper of general circulation inviting public comment on the results of the corrective measures assessment or proposal for presumptive remedy as applicable. The notice shall include:

(1) The name of the landfill, its location, and the date, time, and place for the public meeting, and the beginning and ending dates for the 30-day comment period. The public meeting shall be held at a time convenient to the public. The comment period will begin on the date the owner or operator publishes the notice in the local newspaper;

(2) The name, telephone, and address of the owner's or operator's representative who can be contacted by the interested persons to answer questions or where comments shall be sent;

(3) Location where copies of the documentation to be submitted to the department in support of the corrective measures assessment or proposal of presumptive remedy can be viewed and copied prior to the meeting;

(4) A statement indicating that the need to perform the corrective measures assessment or presumptive remedy is a result of a statistically significant increase in one or more groundwater protection standards; and

(5) A statement that the purpose of the public meeting is to acquaint the public with the technical aspects of the proposal, describe how the requirements of these regulations will be met, identify issues of concern, facilitate communication, and establish a dialogue between the permittee and persons who may be affected by the landfill.

b. Document review. The owner or operator shall place a copy of the report and supporting documentation in a location accessible to the public during the public comment period in the vicinity of the proposed landfill.

c. Meeting timeframe. The owner or operator shall hold a public meeting within a timeframe that allows for the submission of a completed assessment of corrective measures or presumptive remedy within 180 days of notifying the department of a groundwater protection standard exceedance or as granted under subdivision 1 g of this subsection. The meeting must be scheduled and held:

(1) No earlier than 15 days after the publication of the notice; and

(2) No later than seven days before the close of the 30-day comment period.

D. Corrective action plan and monitoring plan.

1. The owner or operator shall submit to the department a Corrective Action Plan (CAP) and related Corrective Action Monitoring Plan (CAMP) consistent with the findings as presented in the assessment of corrective measures required under subdivision C 3 of this section, or proposal for presumptive remedy described under subdivision C 2 of this section.

a. Requirements. In preparing a proposed corrective action plan, the owner or operator will consider the following evaluation factors:

(1) The long-term and short-term effectiveness and protectiveness of the potential remedies, along with the degree of certainty that the remedy will prove successful based on consideration of the following:

(a) Magnitude of reduction of existing risks;

(b) Magnitude of residual risks in terms of likelihood of further releases due to waste remaining following implementation of a remedy;

(c) The type and degree of long-term management required, including monitoring, operation, and maintenance;

(d) Short-term risks that might be posed to the community, workers, or the environment during implementation of such a remedy, including potential threats to human health and the environment associated with excavation, transportation, and redisposal or containment;

(e) Time until full protection is achieved;

(f) Potential for exposure of humans and environmental receptors to remaining wastes, considering the potential threat to human health and the environment associated with excavation, transportation, re-disposal, or containment;

(g) Long-term reliability of the engineering and institutional controls; and

(h) Potential need for replacement of the remedy.

(2) The effectiveness of the remedy in controlling the source to reduce further releases based on consideration of the following factors:

(a) The extent to which containment practices will reduce further releases;

(b) The extent to which treatment technologies may be used;

(c) Magnitude of reduction of existing risks; and

(d) Time until full protection is achieved.

(3) The ease or difficulty of implementing a potential remedy based on consideration of the following types of factors:

(a) Degree of difficulty associated with constructing the technology;

(b) Expected operational reliability of the technologies;

(c) Need to coordinate with and obtain necessary approvals and permits from other agencies;

(d) Availability of necessary equipment and specialists; and

(e) Available capacity and location of needed treatment, storage, and disposal services.

(4) Practicable capability of the owner or operator, including a consideration of the technical and economic capability. At a minimum the owner or operator must consider capital costs, operation and maintenance costs, net present value of capital and operation and maintenance costs, and potential future remediation costs.

(5) Ensure that all solid wastes that are managed while undergoing corrective action or an interim measure shall be managed in a manner:

(a) That is protective of human health and the environment; and

(b) That complies with all applicable federal and Virginia requirements.

(6) The degree to which community concerns raised as the result of the public meeting required by subdivision C 4 of this section are addressed by the potential remedy.

b. Implementation and completion timeframes. The owner or operator shall specify as part of the selected remedy a schedule for initiating and completing remedial activities. Such a schedule shall require the initiation of remedial activities within a reasonable period of time taking into consideration the factors set forth in this section. The owner or operator shall consider the following factors in determining the schedule of remedial activities:

(1) ~~Extent and nature~~ Nature and extent of contamination;

(2) Practical capabilities of remedial technologies in achieving compliance with groundwater protection standards established under 9VAC20-81-250 A 6 and other objectives of the remedy;

(3) Availability of treatment or disposal capacity for wastes managed during implementation of the remedy;

(4) Desirability of utilizing technologies that are not currently available, but which may offer significant advantages over already available technologies in terms of effectiveness, reliability, safety, or ability to achieve remedial objectives;

(5) Potential risks to human health and the environment from exposure to contamination prior to completion of the remedy;

(6) Resource value of the aquifer including:

(a) Current and future uses;

(b) Proximity and withdrawal rates of users;

(c) Groundwater quantity and quality;

(d) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to the waste constituents;

(e) The hydrological characteristics of the landfill and surrounding land;

(f) Groundwater removal and treatment costs; and

(g) The cost and availability of alternate water supplies;

(7) Practical capability of the owner or operator;

(8) Timeframes for periodic progress reports during design, construction, operation, and maintenance. Items to consider when preparing the reports include but are not limited to:

(a) Progress of remedy implementation;

(b) Results of monitoring and sampling activities;

(c) Progress in meeting cleanup standards;

(d) Descriptions of remediation activities;

(e) Problems encountered during the reporting period and actions taken to resolve problems;

(f) Work for next reporting period;

(g) Copies of laboratory reports including drilling logs, QA/QC documentation, and field data; and

(9) Other relevant factors.

c. Corrective action monitoring program. Any groundwater monitoring program to be employed during the corrective action process:

(1) Shall at a minimum, meet the requirements of the applicable groundwater monitoring program described under 9VAC20-81-250 B 3 or C 3;

(2) Shall determine the horizontal and vertical extent of the plume of contamination for constituents at statistically significant levels exceeding background concentrations;

(3) Can be used to demonstrate the effectiveness of the implemented corrective action remedy; and

(4) Shall demonstrate compliance with the groundwater protection standard established under 9VAC20-81-250 A 6.

2. The proposed corrective action plan shall be submitted to the director for approval. Prior to rendering his approval, the director may:

a. Request an evaluation of one or more alternative remedies;

b Request technical modification of the monitoring program;

c. Request a change in the time schedule; or

d. Determine that the remediation of the release of Table 3.1 constituents is not necessary if the owner or operator demonstrates to the satisfaction of the director that:

(1) The groundwater is additionally contaminated by substances that have originated from a source other than the landfill in a demonstration meeting the requirements of 9VAC20-81-250 A 5 and those substances are present in concentrations such that cleanup of the release from the landfill would provide no significant reduction in risk to actual or potential receptors;

(2) The constituent is present in groundwater that is not currently or reasonably expected to be a source of drinking water and not hydraulically connected with waters to which the constituents are migrating or are likely to migrate in a concentration that would exceed the groundwater protection standards established;

(3) Remediation of the release is technically impracticable; or

(4) Remediation results in unacceptable cross-media impacts.

3. A determination by the director pursuant to subdivision 2 d of this subsection shall not affect the authority of the state to require the owner or operator to undertake source control measures or other measures that may be necessary to eliminate or minimize further releases to the groundwater, to prevent exposure to the groundwater, or to remediate the groundwater to concentrations that are technically practicable and significantly reduce threats to human health or the environment.

4. After an evaluation of the proposed or revised plan, the director will:

a. Approve the proposed corrective action plan as written;

b. Approve the proposed corrective action plan as modified by the owner or operator;

c. Proceed with the permit ~~amendment~~ modification process in accordance with 9VAC20-81-600 F 2; or

d. Disapprove the proposed corrective action plan and undertake appropriate containment or clean up actions in accordance with § 10.1-1402 (18) of the Virginia Waste Management Act.

E. Remedy implementation. Upon completion of the permit ~~amendment~~ modification action described under subdivision D 4 c of this section, the owner or operator shall:

1. Monitoring program. Implement a corrective action groundwater monitoring program meeting the requirements of subdivision D 1 c of this section;

2. Remedy. Implement the remedy described in the Corrective Action Plan and the Permit as amended under subdivision D 4 c of this section; and

3. Interim measures. Take any interim measures necessary to ensure the protection of human health and the environment as described in subsection F of this section.

F. Interim measures.

1. To the greatest extent practicable, interim measures shall be consistent with the objectives of and contribute to the performance of any remedy that may be required pursuant to meeting the groundwater protection standard.

2. Should the director require interim measures pursuant to this section, the director will notify the owner or operator of the necessary actions required. Such actions will be implemented as soon as practicable in accordance with a schedule as specified by the director.

3. The following factors shall be considered in determining whether interim measures are necessary:

a. Timeframes. Time required to develop or implement a final remedy;

b. Exposure. Actual or potential exposure of nearby populations or environmental receptors to hazardous constituents;

c. Drinking water. Actual or potential contamination of drinking water supplies;

d. Resource degradation. Further degradation of the groundwater that may occur if remedial action is not initiated expeditiously;

e. Migration potential. Weather conditions that may cause the constituents to migrate or be released;

f. Accident. Risks of fire or explosion, or potential for exposure to constituents as a result of an accident or failure of a container or handling system; and

g. Other. Situations including the presence of wastes or other contaminants that may pose threats to human health, sensitive ecosystems, and the environment.

G. Remedy performance.

1. The owner or operator shall provide an evaluation of the performance of the remedy consistent with the timeframes established in the permit and present the findings in a Corrective Action Site Evaluation report. The evaluation shall describe the progress toward achieving the groundwater protection standards since implementation of the remedy.

2. An owner or operator or the director may determine, based on information developed after implementation of the remedy or other information contained in the evaluation, that compliance with requirements of subdivision H 1 of this section are not being achieved through the remedy selected. In such cases, the owner or operator shall implement other methods or techniques that could practicably achieve compliance with the requirements, unless the owner or operator makes the determination under subdivision G 3 of this section.

3. If the owner or operator determines that groundwater protection standards cannot be practically achieved with any currently available methods, the owner or operator shall, within 90 days of recognizing that condition:

a. Submit a report, certified by a qualified groundwater scientist, for director approval, that demonstrates that compliance with groundwater protection standards established under 9VAC20-81-250 A 6 cannot be practically achieved with any currently available groundwater remedial methods;

b. Upon receiving director approval under subdivision ~~2 a~~ 3 a of this subsection, implement alternate measures to control exposure of humans or the environment to residual contamination that will remain as a result of termination of remedial actions, as necessary to protect human health and the environment;

c. Implement alternate measures for removal or decontamination of any remediation-related equipment, units, devices, or structures that are:

(1) Technically practicable; and

(2) Consistent with the overall objective of the remedy; and

d. At least 14 days prior to implementing the alternate measures, ~~Submit~~ submit a request for approval to the director describing and justifying the alternate measures to be applied.

H. Remedy completion.

1. The groundwater remedy implemented under corrective action shall be considered complete when:

a. The owner or operator complies with the groundwater protection standards at all points within the plume of contamination that lie at or beyond the disposal unit boundary by demonstrating that no Table 3.1 Column B constituents have exceeded groundwater protection standards for a period of three consecutive years using the appropriate statistical procedures and performance standards as described under 9VAC20-81-250 D; and

b. All other actions required as part of the remedy have been satisfied or completed, and the owner or operator obtains the certification required under subdivision H 2 of this section.

2. Upon completion of the remedy, the owner or operator shall notify the director within 14 days by submitting a certification that the remedy has been completed in compliance with the requirements of the Corrective Action

Plan and the permit as ~~amended~~ modified under subdivision D 4 c of this section.

3. The certification shall be signed by the owner or operator and by a qualified groundwater scientist, and shall include all data relevant to the demonstration of a successful remedy completion.

4. If the director, based on the review of information presented under subdivision H 3 of this section, determines that:

a. The corrective action remedy has been completed in accordance with the requirements of the Corrective Action Plan, the permit as amended, and subdivision H 1 of this section, the director will release the owner or operator from the requirements for financial assurance for corrective action under 9VAC20-70; or

b. The remedy has not yet achieved completion, the owner or operator shall remain in corrective action and meet the financial assurance requirements until such time as a successful demonstration and certification can be made.

Part IV
Other Solid Waste Management Facility Standards: Compost Facilities; Solid Waste Transfer Stations; Centralized Waste Treatment Facilities; Materials Recovery Facilities; Waste to Energy; Incineration Facilities; Surface Impoundments and Lagoons; Waste Piles; Remediation Waste Management Units; Landfill Mining; Miscellaneous Units; and Exempt Management Facilities

9VAC20-81-300. General.

A. Any person who designs, constructs, or operates any solid waste treatment or storage facility not otherwise exempt under ~~9VAC20-81-35 D~~ 9VAC20-81-95 shall comply with the requirements of this part. In addition, this part sets forth conditions that yard waste composting facilities must meet to maintain their exempt status, where applicable, under 9VAC20-81-95 D 6. Further, all applications pursuant to these standards shall demonstrate specific means proposed for compliance with requirements set forth in this part.

B. All facilities, except exempted facilities, shall be maintained and operated in accordance with the permit issued or permit-by-rule status pursuant to this regulation. All facilities shall be maintained and operated in accordance with the approved design and intended use of the facility.

C. Hazardous wastes shall not be disposed or managed in facilities subject to this regulation unless specified in the permit or by specific approval of the executive director.

D. Solid waste management facilities regulated under this part that place solid wastes or residues on site for disposal, or leave such wastes or residues in place after closure, are subject to the provisions of Part III (9VAC20-81-100 et seq.) of this chapter, including:

1. Groundwater monitoring requirements in 9VAC20-81-250;

2. Closure and postclosure care requirements in 9VAC20-81-160 and 9VAC20-81-170; and

3. Permitting requirements of Part V (9VAC20-81-400 et seq.) of this chapter.

E. All other facilities shall close in accordance with the closure plan prepared per the requirements described in this part and 9VAC20-81-480, as applicable.

F. Control program for unauthorized waste. Facilities managing solid waste per activities exempted under the provisions of 9VAC20-81-95 are not required to implement the control program for unauthorized waste as provided in this section.

1. Solid waste treatment or storage facilities regulated under this part shall implement a control program for unauthorized waste in accordance with the following provisions. The owner or operator of the facility shall:

a. Place a written description of the control program for unauthorized waste in the facility's operating manual;

b. Institute a control program (including measures such as signs at all maintained access points indicating hours of operation and the types of solid waste accepted and not accepted, monitoring, alternate collection programs, passage of local laws, etc.) to assure that only solid waste authorized by the department to be managed at the solid waste management facility is being managed there; and

c. Develop and implement a program to teach the solid waste management facility's staff to recognize, remove, and report receipt of solid waste not authorized by the department to be managed at the solid waste management facilities.

2. If unauthorized waste is observed in the waste delivered to the facility prior to unloading, the owner or operator may refuse to accept the waste. If the unauthorized waste is observed in the waste delivered to the facility, the owner or operator shall segregate it, notify the generator, document the incident in the operating record, make necessary arrangements to have the material managed in accordance with applicable federal and state laws, and notify the department of the incident to include the means of proper handling. If the unauthorized waste is accepted, the owner or operator shall remove it, segregate it, and provide to the department a record identifying that waste and its final disposition. Any unauthorized waste accepted by the owner or operator shall be managed in accordance with applicable federal or state laws and regulations. Unauthorized waste that has been segregated shall be adequately secured and

contained to prevent leakage or contamination to the environment. The solid waste management facility owner or operator shall have the unauthorized waste removed or properly managed as soon as practicable, but not to exceed 90 days after discovery. Removal shall be by a person authorized to transport such waste to a waste management facility approved to receive it for treatment, disposal, or transfer.

3. Owners or operators of waste to energy or incinerator facilities receiving waste generated outside of Virginia shall also comply with the increased random inspection provisions in 9VAC20-81-340 E 3.

G. Solid waste management facilities regulated under this part that store waste tires shall also adhere to the requirements of 9VAC20-81-640 for the waste tire storage.

9VAC20-81-397. Exempt yard waste composting facilities.

A. Applicability.

1. The standards in subsection B of this section apply to persons who compost vegetative waste in a manner described in the conditional exemption set forth at 9VAC20-81-95 D.

2. The standards in subsection C of this section apply to persons who operate small vegetative waste disposal units on their property.

B. Composting of yard waste. Additional requirements for managing conditionally exempt yard waste compost facilities, described under 9VAC20-81-95 D 6, are as follows:

1. Owners or operators of agricultural operational activities that accept only yard waste generated offsite are exempt from all other provisions of this chapter as applied to the composting activities provided that:

a. The total time for composting process and storage of material that is being composted shall not exceed 18 months prior to its field application or sale as a horticultural or agricultural product;

b. No waste material other than yard waste is received;

c. The total amount of yard waste received from offsite never exceeds 6,000 cubic yards in any consecutive 12-month period;

d. All applicable standards of local ordinances that govern or concern yard waste handling, composting, storage, or disposal are satisfied;

e. They pose no nuisance or present or potential threat to human health or the environment; and

f. Before receiving any waste, the owner submits a complete DEQ Form YW-3:

2. Owners or operators of agricultural operations that accept only Category I yard waste feedstocks and manures from herbivorous animals generated offsite are exempt from all other provisions of this chapter as applied to the composting activities provided that:

a. The composting area is located not less 300 feet from a property boundary of a parcel owned or controlled by another person, is located not less than 1,000 feet from an occupied dwelling not located on the same property as the composting area, and is not located within an area designated as a flood plain;

b. The agricultural operation has at least one acre of ground suitable to receive yard waste for each 150 cubic yards of finished compost;

c. The total time for the composting process and storage of material that is being composted or has been composted shall not exceed 18 months prior to the field application or sale as horticultural or agricultural product;

d. The owner or operator of any agricultural operation that receives in any 12-month period (consecutive) more than 6,000 cubic yards of waste generated from property not within the control of the owner or the operator shall submit by April 1 each year to the director an annual report in accordance with subdivision 4 of this subsection describing the volume and types of yard waste received for composting by the operation between January 1 and December 31 of the preceding consecutive 12 months and shall certify that the yard waste composting facility complies with local ordinances;

e. No waste material other than yard waste and manures from herbivorous animals are received;

f. The quantities of offsite manures from herbivorous animals brought onsite are limited to achieve a carbon to nitrogen ratio of 25:1 to 40:1. All manures must be incorporated into the compost within 24 hours of delivery. No offsite manures may be stored onsite; and

g. Prior to the receipt of solid waste generated offsite, the owner or operator of the agricultural operation intending to operate under this exemption shall submit a complete DEQ Form YW-4.

3. Owners or other persons authorized by the owner of real property who receive only yard waste generated offsite for the purpose of producing compost on said property shall be exempt from all requirements of this chapter as applied to the composting activity provided that:

a. Not more than 500 cubic yards of yard waste generated offsite is received at the owner's said property in any consecutive 12-month period;

b. No compensation will be received, either directly or indirectly, by the owner or other persons authorized by

the owner of said property from parties providing yard waste generated off said property;

c. All applicable standards of local ordinances that govern or concern yard waste handling, composting, storage, or disposal are satisfied; and

d. They pose no nuisance or present or potential threat to human health or the environment.

4. Owners or operators of an agricultural composting operation in accordance with subdivision 2 of this subsection, who are exempt from the permitting requirements in accordance with 9VAC20-81-95 D and who may receive more than 6,000 cubic yards of yard waste generated from property not within the control of the owner or operator in any 12-month period shall submit an annual report on DEQ Form YW-2. The report shall describe the volume and types of yard waste received for composting. Completion and filing of the form by ~~July 15~~ April 1 for activities in the preceding 12 months (January 1 through December 31) constitutes compliance with the requirements. The annual report shall be submitted on DEQ Form YW-2.

C. Small disposal units for vegetative wastes from land clearing. Additional requirements for managing small disposal units for vegetative waste from land clearing as exempted under 9VAC20-81-95 D 17 are as follows:

Owners of real property who operate small waste disposal units that qualify under all the conditions of this subsection shall be exempt from other provisions, including permitting, of this chapter as applied to those units provided:

1. No person other than the owner of the real property shall be exempt under this section.

2. All owners of the real property who hold title to property at the time the disposal unit is initially opened or during the time the unit remains open (limited to two calendar years below) shall, in the exercise of this exemption, accept responsibility for maintaining compliance of the unit with all requirements of this chapter as set out in this exemption.

3. The owner agrees that he shall not sell, give, or otherwise transfer the responsibility for the unit's compliance to any other party throughout its active life, the postclosure care period, and the corrective action period, and that he shall remain the principal party responsible for the compliance of the unit with this chapter.

4. Only units that are in compliance with all requirements of this section shall qualify, and units that are not in compliance with all requirements of this section shall not qualify or shall cease to qualify. Units that qualify for this exemption shall comply with the following requirements:

a. Only vegetative waste or yard waste shall be placed in the disposal unit; however, grass trimmings or bulk leaves shall not be placed in the disposal unit.

b. The waste disposal unit shall not be larger than 0.50 acres in size.

c. The waste disposal unit shall not be located within 1,000 feet of any other waste disposal unit of any type, including other disposal units exempted by this chapter.

d. The waste disposal unit shall not be located within 150 feet of any existing building or planned building. The waste disposal unit shall not be located within 50 feet of any existing or planned subdivision lot that may be used for the erection of a building.

e. The waste disposal unit shall not be located within 100 feet of a flowing stream; body of water; any well, spring, sinkhole, or unstable geologic feature. Also, it shall not be located within 200 feet of any groundwater source of drinking water.

f. The waste disposal unit shall be constructed to separate all waste by at least two feet vertically from the seasonal high water table.

g. The waste disposal unit should not obstruct the scenic view from any public road and should be graded to present a good appearance.

h. Mounding of the waste disposal unit shall not reach an elevation more than 20 feet above the original elevation of the terrain before the disposal began. The elevation of the original terrain should be based on the general area and not the bottom of ravines and small depressions in the disposal area.

i. The waste received by the waste disposal unit shall be limited to the following:

(1) Waste generated onsite;

(2) Waste generated by clearing the path of a roadway or appurtenances to the roadway when buried within the right-of-way of the roadway (waste shall not be buried in the structural roadway prism) or adjacent land under a permanent easement and the terms of the easement incorporate the construction of the disposal unit; and

(3) Waste from property that is owned by the owner of the disposal unit, within the same construction project, and generated not more than two miles from the unit.

j. The waste disposal unit shall be closed two calendar years from the date it first receives waste. The closure shall include cover with two feet of compacted soil, grading for good appearance with slopes that prevent erosion, and seeding or revegetation. During the life of the unit, earthen material should be applied periodically to prevent excessive subsidence of the waste disposal

unit when closed. Sides of the finished unit shall be sloped to prevent erosion, and slopes shall not be steeper than one vertical foot to three horizontal feet.

k. The location plat and legal description, as set out in subdivision 4 p of this subsection, of all units that are not located wholly within the bed or right-of-way of a public road shall be recorded in the deed book for the property in the court of record prior to the first receipt of waste. Waste disposal shall not be allowed within the structural roadway prism.

l. The owner shall maintain continuous control of access to all disposal units from the time they are opened until they are closed in accordance with this section. The owner shall prevent fires and provide standby equipment and supplies sufficient to easily suppress a fire. Brush and small limbs that might provide tinder for a fire shall be covered at the end of the work day with one foot of soil.

m. The owner shall not be exempt from the CDD landfill groundwater monitoring and corrective action requirements of 9VAC20-81-250 and 9VAC20-81-260, respectively, to include required monitoring during the postclosure period.

n. The owner shall not be exempt from the decomposition gas monitoring and venting requirements of 9VAC20-81-210. The owner of a small waste disposal unit shall comply in all respects with the decomposition gas monitoring and venting requirements as established in this chapter.

o. The owner shall not be exempt from any requirement of the Financial Assurance Regulations For Solid Waste Disposal Facilities, (9VAC20-70), and shall comply with all financial assurance requirements.

p. At least six weeks before beginning construction of a vegetative waste disposal unit, the owner of the real property shall notify in writing the director, the governing board of the city, county, or town wherein the property lies, and all property owners whose parcel will abut the area of the proposed disposal unit. The notice shall give the names and legal addresses of the owners, the type of unit to be developed, and the projected date of initial construction of the unit. The owner shall include a plat and legal description of the disposal unit's metes and bounds prepared and stamped by a Virginia licensed land surveyor. The plat and description shall follow all standard practice such as inclusion of the nearest existing intersection of state roads and existing fixed survey markers in the vicinity.

q. Unless otherwise designated, all monitoring and reporting requirements shall begin at the initiation of the disposal operations and all reports shall be sent to the department and the chief executive of the local government.

9VAC20-81-470. Part B permit application for solid waste l disposal facilities.

Part B permit application requirements for all solid waste disposal facilities regulated under Part III (9VAC20-81-100 et seq.) are contained in this section. The Part B applications shall include the following requirements and documentation:

A. Plans submitted as part of the Part B application shall include the following:

1. Design plans. Design plans shall be certified by a professional engineer and shall consist of, at least, the following:

a. A title sheet indicating the project title, who prepared the plans, the person for whom the plans were prepared, a table of contents, and a location map showing the location of the site and the area to be served.

b. An existing site conditions plans sheet indicating site conditions prior to development.

c. A base grade plan sheet indicating site base grades or the appearance of the site if it were excavated in its entirety to the base elevation, before installation of any engineering modifications or the beginning of any filing.

d. An engineering modification plan sheet indicating the appearance of the site after installation of engineering modifications. More than one plan sheet may be required for complicated sites. This plan is required only for those sites with engineering modifications.

e. A final site topography plan sheet indicating the appearance of the site, and final contours of the site at closing including the details necessary to prepare the site for long-term care.

f. A series of phasing plan sheets showing the progression of site development through time. At a minimum, a separate plan shall be provided for initial site preparations and for each subsequent major phase or new area where substantial site preparation must be performed. Each such plan shall include a list of construction items and quantities necessary to prepare the phase indicated.

g. A site monitoring plan showing the location of all devices for the monitoring of leachate production, groundwater quality, and gas production and venting. This plan shall include a table indicating the parameters to be monitored for the frequency of monitoring before and during site development. The groundwater monitoring plan shall include information as applicable under 9VAC20-81-250 or 9VAC20-81-260.

h. A series of site cross-sections shall be drawn perpendicular and parallel to the site base line at a maximum distance of 500 feet between cross-sections and at points of grade break and important construction features. The location of the cross-sections shall be shown on the plan sheets and the section labeled using the site grid system. Where applicable, each cross-section shall show existing, proposed base and final grades; soil borings and monitoring wells that the section passes through or is adjacent to; soil types, bedrock and water table; leachate control, collection, and monitoring systems; limits of filling for each major waste type; drainage control structures; access roads and ramps on the site ~~parameter~~ perimeter and within the active fill area; the filling sequence or phases; and other site features.

i. Detailed drawings and typical sections for drainage control structures, access roads, fencing, leachate and gas control systems, and monitoring devices, buildings, signs, and other construction details.

j. Plan sheets shall include:

(1) A survey grid with base lines and bench marks to be used for field control.

(2) Limits of filling for each major waste type or fill area.

(3) All drainage patterns and surface water drainage control structures both within the actual fill area and at the site perimeter. Such structures may include berms, ditches, sedimentation basins, pumps, sumps, culverts, pipes, inlets, velocity breaks, sodding, erosion matting, or other methods of erosion control.

(4) Ground surface contours at the time represented by the drawing. Spot elevations shall be indicated for key features.

(5) Areas to be cleared and grubbed and stripped of topsoil.

(6) Borrow areas for liner materials, gas venting materials, berms, roadway construction, daily cover, and final cover.

(7) All soil stockpiles including daily and final cover, topsoil, liner materials, gas venting materials, and other excavation.

(8) Access roads and traffic flow patterns to and within the active fill area.

(9) All temporary and permanent fencing.

(10) The methods of screening such as berms, vegetation, or special fencing.

(11) Leachate collection, control, storage, and treatment systems that may include pipes, manholes, trenches, berms, collection sumps, storage units, pumps, risers, liners, and liner splices.

(12) Gas, leachate, and groundwater monitoring devices and systems.

(13) Severe weather solid waste disposal areas.

(14) Support buildings, scale, utilities, gates, and signs.

(15) Special waste handling areas.

(16) Construction notes and references to details.

(17) Other site features.

2. Closure plan. A detailed closure plan be prepared and submitted. Such a plan shall be prepared in two parts, one reflecting those measures to be accomplished at the midpoint of the permit period, and the other when the useful life of the landfill is reached. The plan shall show how the facility will be closed to meet the requirements of 9VAC20-81-160 and 9VAC20-81-170. The plan shall include the procedures to be followed in closing the site, sequence of closure, time schedules, final plans of completion of closure to include final contours, and long-term care plan sheets showing the site at the completion of closing and indicating those items anticipated to be performed during the period of long-term care for the site. The plans shall include a table listing the items and the anticipated schedule for monitoring and maintenance. In many instances this information can be presented on the final site topography sheet.

3. Postclosure plan. A postclosure care plan containing long-term care information including a discussion of the procedures to be utilized for the inspection and maintenance of: run-off control structures; settlement; erosion damage; gas and leachate control facilities; monitoring for gas, leachate, and groundwater; and other long-term care needs.

B. A design report shall be submitted, which shall include supplemental discussions and design calculations, to facilitate department review and provide supplemental information including the following information:

1. The design report shall identify the project title; engineering consultants; site owner, permittee and operator; proposed permitted acreage; hours of operation; wastes to be accepted; site life; design capacity; and the daily disposal limit. It shall also identify any variances desired by the applicant.

2. A discussion of the basis for the design of the major features of the site, such as traffic routing, base grade and relationships to subsurface conditions, anticipated waste types and characteristics, phases development, liner design, leachate management system design, facility monitoring, and similar design features shall be provided. A list of the conditions of site development as stated in the department

determination of site feasibility and the measures taken to meet the conditions shall be included. A discussion of all calculations, such as refuse-cover balance computations, stockpile sizing estimates, estimate of site life, and run-off and leachate volume estimates shall be included. The calculations shall be summarized with the detailed equations presented in an appendix.

3. Specifications, including detailed instructions to the site operator for all aspects of site construction.

a. Initial site preparations including specifications for clearing and grubbing, topsoil stripping, other excavations, berm construction, drainage control structures, leachate collection system, access roads and entrance, screening, fencing, groundwater monitoring, and other special design features.

b. A plan for initial site preparation including a discussion of the field measurements, photographs to be taken, sampling and testing procedures to be utilized to verify that the in-field conditions encountered were the same as those defined in the feasibility report, and to document that the site was constructed according to the engineering plans and specifications submitted for department approval.

C. Financial assurance documentation. When required by the Financial Assurance Regulations of Solid Waste Disposal, Transfer, and Treatment Facilities (9VAC20-70), the applicant shall provide the completed documentation to demonstrate compliance with those regulations; proof of financial responsibility must be for the entity identified in accordance with 9VAC20-81-450 B 10.

D. DEQ Form SW PTB (Part B Permit Application Form). The applicant shall submit a completed DEQ Form SW PTB.

9VAC20-81-485. Operations manual requirements for solid waste management facilities.

A. Solid waste disposal facilities. An operations manual shall be prepared and maintained in the operating record. The operations manual shall include a certification page signed by a responsible official. This signature shall certify the manual meets the requirements of this chapter. This manual shall be reviewed and recertified annually (by December 31 of each calendar year) to ensure consistency with current operations and regulatory requirements, and shall be made available for review by the department upon request. The operations manual for disposal facility operation shall contain at least the following plans:

1. An operations plan that at a minimum includes:

a. Explanation of how the design and construction plans will be implemented from the initial phase of operation until closure;

b. Municipalities, industries, and collection and transportation agencies served;

c. Waste types and quantities to be disposed;

d. Detailed instructions to the site operator regarding all aspects of site operation in order to ensure that the operational requirements of Part III (9VAC20-81-100 et seq.) of this chapter are achieved. References to specifications on the plan sheet shall be pointed out as well as additional instructions included, where appropriate. At a minimum, the plan specifications shall include:

(1) Daily operations including a discussion of the timetable for development, waste types accepted or excluded, inspection of incoming waste, typical waste handling techniques, hours of operation, traffic routing, drainage and erosion control, windy, wet and cold weather operations, fire protection equipment, manpower, methods for handling of any unusual waste types, methods for vector, dust and odor control, daily cleanup, direction of filling, salvaging, recordkeeping, parking for visitors and employees, monitoring, maintenance, closure of filled areas, gas and leachate control methods, backup equipment with names and telephone numbers where equipment may be obtained, and other special design features;

(2) Development of subsequent phases; and

(3) Site closing information consisting of a discussion of those actions necessary to prepare the site for long-term care and final use in the implementation of the closure plan.

2. An inspection plan that at a minimum includes:

a. A schedule for inspecting all applicable major aspects of facility operations necessary to ensure compliance with the requirements of Part III (9VAC20-81-100 et seq.) of this chapter.

b. The frequency of inspection based on the rate of potential equipment deterioration or malfunction and the probability of an adverse incident occurring if the deterioration or malfunction goes undetected between inspections. The plan shall establish the minimum frequencies for inspections required in 9VAC20-81-140. This plan shall identify areas of the facility subject to spills such as loading and unloading areas and areas in which significant adverse environmental or health consequences may result if breakdown occurs.

c. A schedule for inspecting monitoring, safety, and emergency equipment; security devices; and process operating and structural equipment.

d. The types of potential problems that may be observed during the inspection and any maintenance activities required as a result of the inspection.

3. A health and safety plan that includes description of measures to protect the facility and other personnel from injury and is consistent with the requirements of 29 CFR Part 1910.

4. An unauthorized waste control plan that includes, at a minimum, the methods to be used by the operator to prevent unauthorized disposal of hazardous wastes, bulk liquids, or other wastes not authorized for management or disposal in the facility in order to meet the requirements of 9VAC20-81-140.

5. An emergency contingency plan that includes:

a. Delineation of procedures for responding to fire, explosions, or any unplanned sudden or nonsudden releases of harmful constituents to the air, soil, or surface water;

b. Description of the actions facility personnel shall take in the event of various emergency situations;

c. Description of arrangements made with the local police and fire department that allow for immediate entry into the facility by their authorized representatives should the need arise, such as in the case of personnel responding to an emergency situation; and

d. A list of names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator for the facility. This list shall be kept up to date. Where more than one person is listed, one shall be named as primary emergency coordinator and the others shall be listed in the order in which they will assume responsibility as alternates.

6. A landscaping plan that shall:

a. Delineate existing site vegetation to be retained;

b. Discuss methods to be employed in order to ensure protection of vegetation to be retained during the clearing, grading and construction phases of the project and the supplemental vegetation to be planted; and

c. Information relating to vegetation type, location and purpose, such as for buffer, screening or aesthetics, and schedules for planting, shall accompany the plan.

B. Other solid waste management facilities. An operations manual shall be prepared and maintained in the operating record. The Operations Manual shall include a certification page signed by a responsible official. This signature shall certify the manual meets the requirements of this chapter. This manual shall be reviewed and re-certified annually (by December 31 of each calendar year) to ensure consistency with current operations and regulatory requirements and shall be made available to the department upon request. The manual for facility operation shall contain at least the following plans:

1. An operations plan that at a minimum includes:

a. An explanation of how the design and construction plans will be implemented from the initial phase of operation until closure.

b. Detailed instructions to the site operator regarding all aspects of site operation in order to ensure that the applicable operational requirements of Part IV (9VAC20-81-300 et seq.) are achieved. Daily operations including a discussion of the timetable for development, waste types accepted or excluded, typical waste handling techniques, hours of operation, traffic routing, drainage and erosion control, windy, wet and cold weather operations, fire protection equipment, manpower, methods for handling of any unusual waste types, methods for vector, dust and odor control, daily cleanup, salvaging, record keeping, parking for visitors and employees, monitoring, backup equipment with names and telephone numbers where equipment may be obtained, and other special design features. The daily operations section of the operations manual may be developed as a removable section to improve accessibility for the site operator.

c. Development of subsequent phases of the facility, if applicable.

d. Site closing information consisting of a discussion of those actions necessary to prepare the site for long-term care and final use in the implementation of the closure plan.

2. An inspection plan that at a minimum includes:

a. A schedule for inspecting all applicable major aspects of facility operations necessary to ensure compliance with the requirements of Part IV (9VAC20-81-300 et seq.) of this chapter.

b. The frequency of inspection shall be based on the rate of potential equipment deterioration or malfunction and the probability of an adverse incident occurring if the deterioration or malfunction goes undetected between inspections. The plan shall establish the minimum frequencies for inspections required in ~~9VAC20-81-140~~ 9VAC20-81-340. This plan shall identify areas of the facility subject to spills such as loading and unloading areas and areas in which significant adverse environmental or health consequences may result if breakdown occurs.

c. A schedule for inspecting monitoring, safety, and emergency equipment; security devices; and process operating and structural equipment.

d. The types of potential problems that may be observed during the inspection and any maintenance activities required as a result of the inspection.

3. A health and safety plan that includes description of measures to protect the facility and other personnel from injury and is consistent with the requirements of 29 CFR Part 1910.

4. An unauthorized waste control plan that includes, at a minimum, the methods to be used by the operator to prevent unauthorized disposal of hazardous wastes, bulk liquids, or other wastes not authorized for management or disposal in the facility in order to meet the applicable requirements of 9VAC20-81-340.

5. An emergency contingency plan that includes:

a. Delineation of procedures for responding to fire, explosions, or any unplanned sudden or nonsudden releases of harmful constituents to the air, soil, or surface water;

b. Description of the actions facility personnel shall take in the event of various emergency situations;

c. Description of arrangements made with the local police and fire department that allow for immediate entry into the facility by their authorized representatives should the need arise, such as in the case of personnel responding to an emergency situation; and

d. A list of names, addresses and phone numbers (office and home) of all persons qualified to act as emergency coordinator for the facility. This list shall be kept up to date. Where more than one person is listed, one shall be named as primary emergency coordinator and the others shall be listed in the order in which they will assume responsibility as alternates.

9VAC20-81-490. Effect of the permit.

A. A completed permit for a solid waste management facility shall be prepared at the conclusion of the procedures outlined in 9VAC20-81-450. The permit shall be prepared in detail to establish the construction requirements, monitoring requirements, operating limitations or guides, waste limitations if any, and any other details essential to the operation and maintenance of the facility and its closure. Before receipt of waste by the facility, the applicant must:

1. Notify the department, in writing, that construction has been completed; and submit to the department a letter from a professional engineer certifying that the facilities have been completed in accordance with the approved plans and specifications and is ready to begin operation. This certification letter is in addition to the CQA certification required in 9VAC20-81-130 Q 3 and must be provided by a different individual than the CQA certification. This certification letter is typically provided by the design engineer.

2. Arrange for a department representative to inspect the site and confirm that the site is ready for operation.

B. Certificate-to-Operate (CTO). Following review of a complete CQA certification and site inspection the department shall issue a CTO authorizing the facility to begin receiving waste. The facility shall not receive waste until a CTO has been issued by the department.

C. Inspections. Each facility permitted to accept solid waste requires periodic inspection and review of records and reports. Such requirements shall be set forth in the final permit issued by the department. The permit applicant by accepting the permit, agrees to the specified periodic inspections.

D. Compliance with a valid permit during its term constitutes compliance, for purposes of enforcement, with the Virginia Waste Management Act. However, a permit may be modified, revoked and reissued, or revoked for cause as set forth in 9VAC20-81-570 and 9VAC20-81-600.

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

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

G. A permit may be transferred by the permittee to a new owner or operator only if the permit has been revoked and reissued, or a minor modification made to identify the new permittee and incorporate such other requirements as may be necessary. Upon presentation of the financial assurance proof required by 9VAC20-70 by the new owner, the department will release the old owner from his closure and financial responsibilities and acknowledge existence of the new or modified permit in the name of the new owner.

H. This section provides for the approval of permits or permit modifications that include a time allowance for the permittee to achieve the new standards contained in the approved permit or permit modification.

1. The permit may specify a schedule of compliance leading to compliance with this chapter.

a. Any schedules of compliance under this subsection shall require compliance as soon as possible.

b. Except as otherwise provided, if a permit establishes a schedule of compliance that exceeds one year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.

(1) The time between interim dates shall not exceed one year; and

(2) If the time necessary for completion of any interim requirement is more than one year and is not readily divisible into stages of completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

c. The permit shall be written to require that no later than 14 days following each interim date and the final date of compliance, a permittee shall notify the department, in writing, of his compliance or noncompliance with the interim or final requirements.

2. A permit applicant or permittee may cease conducting regulated activities (by receiving a terminal volume of solid waste, and, in case of treatment or storage facilities, closing pursuant to applicable requirements, or, in case of disposal facilities, closing and conducting postclosure care pursuant to applicable requirements) rather than continue to operate and meet permit requirements as follows:

a. If the permittee decides to cease conducting regulated activities at a specified time for a permit that has already been issued:

(1) The permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or

(2) The permittee shall cease conducting permitted activities before noncompliance with any interim or final compliance schedule requirement already specified in the permit.

b. If the decision to cease conducting regulated activities is made before the issuance of a permit whose terms will include the termination date, the permit shall contain a schedule leading to termination that will ensure timely compliance with applicable requirements.

c. If the permittee is undecided whether to cease conducting regulated activities, the director may issue or modify a permit to continue two schedules as follows:

(1) Both schedules shall contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date that ensures sufficient time to comply with applicable requirements in a timely manner if the decision is to continue conducting regulated activities;

(2) One schedule shall lead to timely compliance with applicable requirements;

(3) The second schedule shall lead to cessation of regulated activities by a date that will ensure timely compliance with applicable requirements; and

(4) Each permit containing two schedules shall include a requirement that, after the permittee has made a final decision, he shall follow the schedule leading to compliance if the decision is to continue conducting regulated activities, and follow the schedule leading to termination if the decision is to cease conducting regulated activities.

d. The applicant's decisions to cease conducting regulated activities shall be evidenced by a firm public commitment satisfactory to the department, such as a resolution of the board of directors of a corporation.

9VAC20-81-530. Recording and reporting required of a ~~permitee~~ permittee.

A. A permit shall specify:

1. Required monitoring, including type, intervals and frequency, sufficient to yield data that are representative of the monitored activity;

2. Requirements concerning the proper use, maintenance, and installation of monitoring equipment or methods, including biological monitoring methods when appropriate; and

3. Applicable reporting requirements based upon the impact of the regulated activity and as specified in this chapter.

B. A permittee shall be subject to the following whenever monitoring is required by the permit:

1. The permittee shall retain records at the permitted facility or another location approved by the department. Records shall include all records required by the facility permit, these regulations, or other applicable regulations. Records of all required monitoring information, including all calibration and maintenance records will be maintained for at least three years from the sample or measurement date. The director may request that this period be extended. For operating landfills, records of the most recent gas and groundwater monitoring event will be maintained at the facility.

2. Records of monitoring information shall include:

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

b. The individuals who performed the sampling or measurements;

c. The dates analyses were performed;

d. The individuals who performed the analyses;

e. The analytical techniques or methods used; and

f. The results of such analyses.

3. Required monitoring results shall be maintained on file for inspection by the department.

C. A permittee shall be subject to the following reporting requirements:

1. Written notice of any planned physical alterations to the permitted facility shall be submitted to the department and approved before such alterations are to occur, unless such items were included in the plans and specifications approved by the department.

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

3. The permittee shall report to the department any noncompliance or unusual condition that may endanger health or environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within five days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the circumstances and its cause; the period of occurrence, including exact dates and times, and, if the circumstance has not been corrected, the anticipated time it is expected to continue. It shall also contain steps taken or planned to reduce, eliminate, and prevent reoccurrence of the circumstances resulting in an unusual condition or noncompliance.

D. Copies of all reports required by the permit, and records of all data used to complete the permit application must be retained by the permittee for at least three years from the date of the report or application. The director may request that this period be extended.

E. When the permittee becomes aware that he failed to submit any relevant facts or submitted incorrect information in a permit application or in any report to the director, he shall promptly submit such omitted facts or the correct information with an explanation.

9VAC20-81-600. Modification of permits.

A. Permits may be modified at the request of any interested person or upon the director's initiative. However, permits may only be modified for the reasons specified in subsections E and F of this section. All requests shall be in writing and shall contain facts or reasons supporting the request. Any permit modification authorizing expansion of an existing sanitary landfill shall incorporate the conditions required for a disposal capacity guarantee in § 10.1-1408.1 P of the Code of Virginia. This provision does not apply to permit applications from one or more political subdivisions that will only accept waste from within those political subdivisions' jurisdiction or municipal solid waste generated within other political subdivisions pursuant to an interjurisdictional agreement.

B. If the director decides the request is not justified, he shall send the requester a response providing justification for the decision.

C. If the director tentatively decides to modify, he shall prepare a draft permit incorporating the proposed changes. The director may request additional information and may require the submission of an updated permit application. In a permit modification under subsection E of this section, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect. During any modification proceeding the permittee shall comply with all conditions of the existing permit until the modified permit is issued.

D. When the director receives any information, he may determine whether or not one or more of the causes listed for modification exist. If cause exists, the director may modify the permit on his own initiative subject to the limitations of subsection E of this section and may request an updated application if necessary. If a permit modification satisfies the criteria in subsection F of this section for minor modifications, the permit may be modified without a draft permit or public review. Otherwise, a draft permit shall be prepared and other appropriate procedures followed.

E. Causes for modification. The director may modify a permit upon his own initiative or at the request of a third party:

1. When there are material and substantial alterations or additions to the permitted facility or activity that occurred after permit issuance that justify the application of permit conditions that are different or absent in the existing permit;

2. When there is found to be a possibility of pollution causing significant adverse effects on the air, land, surface water, or groundwater;

3. When an investigation has shown the need for additional equipment, construction, procedures and testing to ensure the protection of the public health and the environment from adverse effects;

4. If the director has received information pertaining to circumstances or conditions existing at the time the permit was issued that was not included in the administrative record and would have justified the application of different permit conditions, the permit may be modified accordingly if in the judgment of the director such modification is necessary to prevent significant adverse effects on public health or the environment;

5. When 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;

6. When the director determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or material shortage or other events over

which the permittee has little or no control and for which there is no reasonably available remedy;

7. When a modification of a closure plan is required under 9VAC20-81-160 or 9VAC20-81-360 and the permittee has failed to submit a permit modification request within the specified period;

8. When the corrective action program specified in the permit under 9VAC20-81-260 has not brought the facility into compliance with the groundwater protection standard within a reasonable period of time; or

9. When cause exists for revocation under 9VAC20-81-570 and the director determines that a modification is more appropriate.

F. Permit modification at the request of the permittee.

TABLE 5.2
PERMIT MODIFICATIONS

MAJOR	1. Implementation of a groundwater corrective action program as required by 9VAC20-81-260
	2. Change in the remedy applied as part of the groundwater corrective action program
	3. Groundwater monitoring plan for an existing facility where no written plan has previously been provided
	4. Changes to the design of final closure cover
	5. Landfill mining
	6. Reduction in the postclosure care period
	7. Changes in postclosure use of the property with disturbance of cover
	8. All new or modifications of a leachate collection tank or a leachate collection surface impoundment
	9. Addition of new landfill units
	10. Expansion or increase in capacity
	11. Increase in daily disposal limit
	12. Addition or modification of a liner, leachate collection system, leachate detection system
	13. Incorporation or modification of a Research, Development, and Demonstration Plan
MINOR	Any change not specified as major modification (above) or a permittee change (below)
PERMITTEE CHANGE	1. Correction of typographical errors
	2. Equipment replacement or upgrade with functionally equivalent components
	3. Replacement of an existing leachate tank with a tank that meets the same design standards and has a capacity within +/-10% of the replaced tank
	4. Replacement with functionally equivalent, upgrade, or relocation of emergency equipment
	5. Changes in name, address, or phone number of contact personnel
	6. Replacement of an existing well that has been damaged or rendered nonoperable, without change to location, design, or depth of the well
	7. Changes to the expected year of final closure, where other permit conditions are not changed
	8. Changes in postclosure use of the property, without disturbance of the cover
	9. Modification of a leachate tank management practice

1. Permittee change. Items listed under Permittee Change in Table 5.2 may be implemented without approval of the department. If a permittee changes such an item, the permittee shall:

a. Notify the department of the change at least 14 calendar days before the change is put into effect, indicating the affected permit conditions; and

b. Notify the governing body of the county, city, or town in which the facility is located, within 90 calendar days after the change is put into effect.

2. Minor modifications.

a. Minor modifications apply to minor changes that keep the permit current with routine changes to the facility or its operation. These changes do not substantially alter the permit conditions or reduce the capacity of the facility to protect human health or the environment.

b. Minor modifications may be requested for changes that will result in a facility being more protective of human health and the environment or equivalent to the

standards contained in this chapter, unless otherwise noted in Table 5.2. The request for such a minor permit modification will be accompanied by a description of the desired change and an explanation of the manner in which the health and environment will be protected in a greater degree than required by the chapter.

c. Minor permit modifications may be made only with the prior written approval of the department. The permittee shall notify the department that a minor modification is being requested. Notification of the department shall be provided by certified mail or other means that establish proof of delivery. This notice shall specify the changes being made to permit conditions or supporting documents referenced by the permit and shall include an explanation of why they are necessary. Along with the notice, the permittee shall provide the applicable information required by 9VAC20-81-460 and 9VAC20-81-470 or as required by 9VAC20-81-480.

d. The permittee shall send a notice of the modification to the governing body of the county, city or town in which the facility is located. This notification shall be made within 90 days after the department approves the request.

3. Major modifications.

a. Major modifications substantially alter the facility or its operation. Major modifications are listed in Table 5.2.

b. The permittee shall submit a modification request to the department that:

(1) Describes the exact change to be made to the permit conditions and supporting documents referenced by the permit;

(2) Identifies that the alteration is a major modification;

(3) Contains an explanation of why the modification is needed; and

(4) Provides the applicable information required by 9VAC20-81-460 and 9VAC20-81-470 or as required by 9VAC20-81-480.

c. No later than 90 days after receipt of the notification request, the director will determine whether the information submitted under subdivision 3 b (4) of this subsection is adequate to formulate a decision. If found to be inadequate, the permittee will be requested to furnish additional information within 30 days of the request by the director to complete the modification request record. The 30-day period may be extended at the request of the applicant. After the completion of the record, the director will either:

(1) Approve the modification request, with or without changes, and draft a permit modification accordingly;

(2) Deny the request; or

(3) Approve the request, with or without changes, as a temporary authorization having a term of up to 180 days in accordance with subdivision 3 of this subsection.

d. If the director proposes to approve the permit modification, he will proceed with the permit issuance in accordance with 9VAC20-81-450 E.

e. The director may deny or change the terms of a major permit modification request under subdivision F 3 b of this section for the following reasons:

(1) The modification request is incomplete;

(2) The requested modification does not comply with the appropriate requirements of Part III (9VAC20-81-100 et seq.) or Part IV (9VAC20-81-300 et seq.) of this chapter or other applicable requirements; or

(3) The conditions of the modification fail to protect human health and the environment.

4. Temporary authorizations.

a. Upon request of the permittee, the director may, without prior public notice and comment, grant the permittee a temporary authorization in accordance with the requirements of subdivision 4 of this subsection. Temporary authorizations shall have a term of not more than 180 days.

b. (1) The permittee may request a temporary authorization for any major modification that meets the criteria in subdivision 4 c (2) (a) or (b) of this subsection; or that meets the criteria in subdivision 4 c (2) (c) and (d) of this subsection and provides improved management or treatment of a solid waste already listed in the facility permit.

(2) The temporary authorization request shall include:

(a) A description of the activities to be conducted under the temporary authorization;

(b) An explanation of why the temporary authorization is necessary; and

(c) Sufficient information to ensure compliance with Part III (9VAC20-81-100 et seq.) or Part IV (9VAC20-81-300 et seq.) standards.

(3) The permittee shall send a notice about the temporary authorization request to all persons on the facility mailing list. This notification shall be made within seven days of submission of the authorization request.

c. The director shall approve or deny the temporary authorization as quickly as practical. To issue a temporary authorization, the director shall find:

(1) The authorized activities are in compliance with the standards of Part III (9VAC20-81-100 et seq.) or Part IV (9VAC20-81-300 et seq.) of this chapter.

(2) The temporary authorization is necessary to achieve one of the following objectives before action is likely to be taken on an modification request:

(a) To facilitate timely implementation of closure or corrective action activities;

(b) To prevent disruption of ongoing waste management activities;

(c) To enable the permittee to respond to sudden changes in the types or quantities of the wastes managed under the facility permit; or

(d) To facilitate other changes to protect human health and the environment.

d. A temporary authorization may be reissued for one additional term of up to 180 days provided that the permittee has requested a major permit modification for the activity covered in the temporary authorization, and the director determines that the reissued temporary authorization involving a major permit modification request is warranted to allow the authorized activities to continue while the modification procedures of subdivision ~~2~~ 3 of this subsection are conducted.

5. The director's decision to grant or deny a permit modification request under subdivision of this subsection may be appealed under the case decision provisions of the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

6. Newly defined or identified wastes. The permitted facility is authorized to continue to manage wastes defined or identified as solid waste under 9VAC20-81-95 if:

a. It was in existence as a solid waste management facility with respect to the newly defined or identified solid waste on the effective date of the final rule defining or identifying the waste; and

b. It is in compliance with the standards of Part III (9VAC20-81-100 et seq.) or IV (9VAC 20-81-300 et seq.) of this chapter, as applicable, with respect to the new waste, submits a minor modification request on or before the date on which the waste becomes subject to the new requirements; or

c. It is not in compliance with the standards of Part III (9VAC 20-81-100 et seq.) or IV (9VAC 20-81-300 et seq.) of this chapter, as applicable, with respect to the new waste, also submits a complete permit modification request within 180 days after the effective date of the definition or identifying the waste.

7. Research, development and demonstration plans. Research, development and demonstration (RDD) plans may be submitted for sanitary landfills that meet the applicability requirements. These plans shall be submitted as a major permit modification application for existing sanitary landfills or as a part of the Part B application for new sanitary landfills.

a. Applicability.

(1) RDD shall be restricted to permitted sanitary landfills designed with a composite liner system, as required by 9VAC20-81-130 J 1. The effectiveness of the liner system and leachate collection system shall be demonstrated in the plan and shall be assessed at the end of the testing period in order to compare the effectiveness of the systems to the start of the RDD testing period.

(2) Operating permitted sanitary landfills that have exceeded groundwater protection standards at statistically significant levels in accordance with 9VAC20-81-250 B, from any waste unit on site shall have implemented a remedy in accordance with 9VAC20-81-260 C prior to the RDD plan submittal. Operating permitted sanitary landfills that have an exceedance in the concentration of methane gas migrating from the landfill in accordance with 9VAC20-81-200 shall have a gas control system in place per 9VAC20-81-200 B prior to the RDD plan submittal.

(3) An owner or operator of a sanitary landfill that disposes of 20 tons of municipal solid waste per day or less, based on annual average, may not apply for a modification to include a RDD plan.

(4) The sanitary landfill shall have a leachate collection system designed and constructed to maintain less than a 30 cm depth of leachate on the liner.

b. Requirements.

(1) RDD Plans may be submitted for activities such as:

(a) The addition of liquids in addition to leachate and gas condensate from the same landfill for accelerated decomposition of the waste mass; ~~prior to the RDD Plan submittal.~~

(b) Allowing run-on water to flow into the landfill waste mass; ~~and~~

(c) Allowing testing of the construction and infiltration performance of alternative final cover systems~~. An RDD plan may be proposed for~~; and

(d) For other measures to be taken to enhance stabilization of the waste mass.

(2) No landfill owner or operator may continue to implement an RDD plan beyond any time limit placed in the initial plan approval or any renewal without issuance

of written prior approval by the department. Justification for renewals shall be based upon information in annual and final reports as well as research and findings in technical literature.

(3) RDD plans may not include changes to the approved design and construction of subgrade preparation, liner system, leachate collection and removal systems, final cover system, gas and leachate systems outside the limits of waste, run-off controls, run-on controls, or environmental monitoring systems exterior to the waste mass.

(4) Implementation of an approved RDD plan shall comply with the specific conditions of the RDD Plan as approved in the permit for the initial testing period and any renewal.

(5) Structures and features exterior to the waste mass or waste final grades shall be removed at the end of the testing period, unless otherwise approved by the department in writing.

(6) The RDD plan may propose an alternate final cover installation schedule.

c. An RDD plan shall include the following details and specifications. Processes other than adding liquids to the waste mass and leachate recirculation may be practiced in conjunction with the RDD plan.

(1) Initial applications for RDD plans shall be submitted for review and approval prior to the initiation of the process to be tested. These plans shall specify the process that will be tested, describe preparation and operation of the process, describe waste types and characteristics that the process will affect, describe desired changes and end points that the process is intended to achieve, define testing methods and observations of the process or waste mass that are necessary to assess effectiveness of the process, and include technical literature references and research that support use of the process. The plans shall specify the time period for which the process will be tested. The plans shall specify the additional information, operating experience, data generation, or technical developments that the process to be tested is expected to generate.

(2) The test period for the initial application shall be limited to a maximum of three years.

(3) Renewals of testing periods shall be limited to a maximum of three years each. The maximum number of renewals shall be limited to three.

(4) Renewals shall require department review and approval of reports of performance and progress on achievement of goals specified in the RDD plan.

(5) RDD Plans for addition of liquids, in addition to leachate and gas condensate from the same landfill, for accelerated decomposition of the waste mass and/or for allowing run-on water to flow into the landfill waste mass shall demonstrate that there is no increased risk to human health and the environment. The following minimum performance criteria shall be demonstrated.

(a) Risk of contamination to groundwater or surface water will not be greater than the risk without an approved RDD plan.

(b) Stability analysis demonstrating the physical stability of the landfill.

(c) Landfill gas collection and control in accordance with applicable Clean Air Act requirements (i.e., Title V, NSPS or EG rule, etc.).

(d) For RDD plans that include the addition of offsite nonhazardous waste liquids to the landfill, the following information shall be submitted with the RDD plan:

(i) Demonstration of adequate facility liquid storage volume to receive the offsite liquid;

(ii) A list of proposed characteristics for screening the accepted liquids is developed; and

(iii) The quantity and quality of the liquids are compatible with the RDD plan.

If offsite nonhazardous liquids are certified by the offsite generator as stormwater uncontaminated by solid waste, screening is not required for this liquid.

(6) RDD plans for testing of the construction and infiltration performance of alternative final cover systems shall demonstrate that there is no increased risk to human health and the environment. The proposed final cover system shall be as protective as the final cover system required by 9VAC20-81-160 D. The following minimum performance criteria shall be demonstrated:

(a) No build up of excess liquid in the waste and on the landfill liner;

(b) Stability analysis demonstrating the physical stability of the landfill;

(c) No moisture will escape from the landfill to the surface water or groundwater; and

(d) Sufficient reduction in infiltration so that there will be no leakage of leachate from the landfill.

(7) RDD plans that evaluate introduction of liquids in addition to leachate or gas condensate from the same landfill shall propose measures to be integrated with any approved leachate recirculation plan and compliance with requirements for leachate recirculation.

(8) RDD plans shall include a description of warning symptoms and failure thresholds that will be used to initiate investigation, stand-by, termination, and changes to the process and any other landfill systems that might be affected by the process, such as gas extraction and leachate recirculation. Warning symptoms shall result in a reduction or suspension of liquids addition, leachate recirculation, investigation, and changes to be implemented before resuming the process being tested. Failure thresholds shall result in termination of the process being tested, investigation, and changes that will be submitted to the department for review and approval in writing prior to resumption of the process being tested.

(9) RDD plans shall include an assessment of the manner in which the process to be tested might alter the impact that the landfill may have on human health or environmental quality. The assessment shall include both beneficial and deleterious effects that could result from the process.

(10) RDD plans shall include a geotechnical stability analysis of the waste mass and an assessment of the changes that the implementation of the plan are expected to achieve. The geotechnical stability analysis and assessment shall be repeated at the end of testing period, with alteration as needed to include parameters and parameter values derived from field measurements. The plan shall define relevant parameters and techniques for field measurement.

(11) RDD plans shall propose monitoring parameters, frequencies, test methods, instrumentation, recordkeeping and reporting to the department for purposes of tracking and verifying goals of the process selected for testing.

(12) RDD plans shall propose monitoring techniques and instrumentation for potential movements of waste mass and settlement of waste mass, including proposed time intervals and instrumentation, pertinent to the process selected for testing.

(13) RDD plans shall propose construction documentation, construction quality control and construction quality assurance measures, and recordkeeping for construction and equipment installation that is part of the process selected for testing.

(14) RDD plans shall propose operating practices and controls, staffing, monitoring parameters, and equipment needed to support operations of the process selected for testing.

(15) RDD plans that include aeration of the waste mass shall include a temperature monitoring plan, a fire drill and safety program, instructions for use of liquids for control of temperature and fires in the waste mass, and instructions for investigation and repair of damage to the liner and leachate collection system.

(16) RDD plans may include an alternate interim cover system and final cover installation schedule. The interim cover system shall be designed to account for weather conditions, slope stability, and leachate and gas generation. The interim cover shall also control, at a minimum, disease vectors, fires, odors, blowing litter, and scavenging.

d. Reporting. An annual report shall be prepared for each year of the RDD testing period, including any renewal periods, and a final report shall be prepared for the end of the testing period. These reports shall assess the attainment of goals proposed for the process selected for testing, recommend changes, recommend further work, and summarize problems and their resolution. Reports shall include a summary of all monitoring data, testing data and observations of process or effects and shall include recommendations for continuance or termination of the process selected for testing. Annual reports shall be submitted to the department within three months after the anniversary date of the approved permit or permit modification. Final reports shall be submitted at least 90 days prior to the end of the testing period for evaluation by the department. The department shall review this report within 90 days. If the department's evaluation indicates that the goals of the project have been met, are reliable and predictable, the department will provide a minor permit modification to incorporate the continued operation of the project with the appropriate monitoring.

e. Termination. The department may require modifications to or immediate termination of the RDD process being tested if any of the following conditions occur:

(1) Significant and persistent odors;

(2) Significant leachate seeps or surface exposure of leachate;

(3) Significant leachate head on the liner;

(4) Excessively acidic leachate chemistry or gas production rates or other monitoring data indicate poor waste decomposition conditions;

(5) Instability in the waste mass; or

(6) Other persistent and deleterious effects.

The RDD program is an optional participation program, by accepting the modification or new permit, the applicant acknowledges that the program is optional; and that they are aware the department may provide suspension or termination of the RDD program for any reasonable cause, without a public hearing. Notice of suspension or termination will be by letter for a cause

related to a technical problem, nuisance problem, or for protection of human health or the environment as determined by the department.

G. Facility siting. The suitability of the facility location will not be considered at the time of permit modification unless new information or standards indicate that an endangerment to human health or the environment exists which was unknown at the time of permit issuance or the modification is for an expansion or increase in capacity.

Part I
Definitions

9VAC20-85-10. Definitions as established in ~~Virginia~~ Solid Waste Management Regulations ~~(9VAC20-80-10 et seq.)~~.

The definitions set out in Part I of the ~~Virginia~~ Solid Waste Management Regulations ~~9VAC20-80-10 et seq.~~, 9VAC20-81, are incorporated by reference.

9VAC20-85-40. Applicability.

A. This chapter applies to all persons who use, reuse, or reclaim fossil fuel combustion products by applying them to or placing them on land in a manner other than addressed in 9VAC20-81-95 of the ~~Virginia~~ Solid Waste Management Regulations~~, 9VAC20-80-150 and 9VAC20-80-160~~. ~~9VAC20-80-150~~ 9VAC20-81-95 provides for the beneficial use of waste materials such as fossil fuel combustion products, and ~~9VAC20-80-160~~ provides for conditional exemptions from regulation for fossil fuel combustion products.

B. This chapter establishes minimum standards for the owners or operators of coal mining facilities that accept CCB for mine reclamation or mine refuse disposal on a mine site permitted by the Virginia Department of Mines, Minerals and Energy (DMME) unless otherwise exempt under ~~9VAC20-80-160 B~~ 9VAC20-81-95 D 18 of the Solid Waste Management Regulations. If the permit issued by the DMME in accordance with the Virginia Surface Mining Regulations, 4VAC25-130-700.1 et seq., specifies the applicable conditions set forth in Parts III and IV of this chapter, the permittee is exempt from this chapter.

C. Conditions of applicability are as follows:

1. Persons using fossil fuel combustion products other than in a manner prescribed under this chapter, or managing fossil fuel combustion products containing any constituent at a level exceeding levels set forth in Table 1 in Part IV of this chapter, shall manage their waste in accordance with all applicable provisions of the ~~Virginia~~ Solid Waste Management Regulations, ~~9VAC20-80~~ 9VAC20-81;

2. Materials which are accumulated speculatively, materials which are not utilized in a manner described in the operation plan required by 9VAC20-85-90 of this chapter, and off-specification materials which cannot be utilized or reprocessed to make them usable shall be managed in accordance with all appropriate provisions of the ~~Virginia~~ Solid Waste Management Regulations, ~~9VAC20-80~~ 9VAC20-81; and

3. Storage, stockpiling, and other processing or handling of fossil fuel combustion products, which may need to occur prior to their final placement or use, reuse, or reclamation, shall be in a manner necessary to protect human health and safety and the environment. For projects permitted by the DMME, the storage, stockpiling, or handling of CCB shall be managed in accordance with the Virginia Surface Mining Regulations, 4VAC25-130-700.1 et seq.

9VAC20-85-50. Relationship to other regulations.

This chapter does not affect the ~~Virginia~~ Solid Waste Management Regulations, ~~9VAC20-80-10 et seq.~~ 9VAC20-81, or other pertinent regulations of the department or other agencies of the Commonwealth, except that persons subject to and in compliance with this chapter are exempt from the ~~Virginia~~ Solid Waste Management Regulations and the Financial Assurance Regulations for Solid Waste Facilities, ~~9VAC20-70-10 et seq.~~ 9VAC20-70, for those activities covered by this chapter.

9VAC20-85-60. Enforcement and appeals.

A. All administrative enforcement and appeals taken from actions of the department relative to the provisions of this chapter shall be governed by the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

B. The owner or operator of the fossil fuel combustion products site who violates any provision of this chapter will be considered to be operating an unpermitted facility as provided for in ~~9VAC20-80-90~~ 9VAC20-81-40 of the Solid Waste Management Regulations and shall be required to either obtain a permit as required by Part ~~VII~~ V or close under Part ~~V~~ III of ~~this chapter~~ 9VAC20-81.

C. The requirement to obtain a permit or to close the project shall not preclude additional action for remediation or enforcement, including (without limitations) the assessment of civil charges or civil penalties, as is otherwise authorized by law.

Article 3
Operations

9VAC20-85-90. Operations.

The owner or operator of a fossil fuel combustion products site shall prepare an operation plan. At a minimum, the plan shall address the requirements contained in this section.

1. Tracking of mud or fossil fuel combustion products onto public roads from the site shall be controlled at all times to minimize nuisances.

2. The addition of any solid waste including but not limited to hazardous, infectious, construction, debris, demolition, industrial, petroleum-contaminated soil, or municipal solid waste to fossil fuel combustion products is prohibited. This prohibition does not apply to solid wastes from the extraction, beneficiation and processing of ores and minerals conditionally exempted under ~~9VAC20-80-160 A 2~~ 9VAC20-81-95 E 3 of the Solid Waste Management Regulations.

3. Fugitive dust shall be controlled at the site so it does not constitute nuisances or hazards.

4. After preparing the subbase, fossil fuel combustion products shall be placed uniformly and compacted to standards, including insitu density, compaction effort and relative density as specified by a registered professional engineer based on the intended use of the fossil fuel combustion products. The placement and compaction of CCB on coal mine sites shall be subject to the applicable requirements of the Coal Surface Mining Reclamation Regulations, 4VAC25-130-700.1 et seq.

5. A surface run on and runoff control program shall be implemented to control and reduce the infiltration of surface water through the fossil fuel combustion products and to control the runoff from the placement area to other areas and to surface waters.

6. Runoff shall not be permitted to drain or discharge into surface waters except when in accordance with 9VAC25-10-10 et seq., of the State Water Control Board, or otherwise approved by the department.

7. Fossil fuel combustion products site development shall be in accordance with the Virginia Erosion and Sediment Control Regulations, 4VAC50-30, or the Coal Surface Mining Reclamation Regulations, 4VAC25-130-700.1 et seq., as applicable.

Part IV
Administrative Requirements

9VAC20-85-150. General.

A. Notwithstanding any provisions of Part ~~VII~~ V of the ~~Virginia~~ Solid Waste Management Regulations, ~~9VAC20-80~~ 9VAC20-81, the owner or operator of a site which manages only fossil fuel combustion products allowed under 9VAC20-85-40 shall not be required to have a solid waste management facility permit, neither must a fossil fuel combustion products facility operator certified by the Board for Waste Management Facility Operators directly supervise operations at the site, if the owner or operator at least 30 days prior to initial placement of fossil fuel combustion products provides to the appropriate department regional office and verifies receipt of:

1. A certification that it has legal control over the fossil fuel combustion products site for the project life and the closure period. For the purposes of this section, on a coal mine site permitted by the DMME, demonstration of legal right to enter and begin surface coal mining and reclamation operations shall constitute compliance with the provisions of this section.

2. A certification from the governing body of the county, city, or town in which the fossil fuel combustion products site is to be located that the location and operation of the fossil fuel combustion products site are consistent with all applicable ordinances, with the exception of projects permitted by the DMME.

3. A general description of the intended use, reuse, or reclamation of fossil fuel combustion products. Such description will include:

a. A description of the nature, purpose and location of the fossil fuel combustion products site, including a topographic map showing the site area and available soils, and geological maps. The description shall include an explanation of how fossil fuel combustion products will be stored prior to use, reuse or reclamation, if applicable;

b. The estimated beginning and ending dates for the operation;

c. An estimate of the volume of the fossil fuel combustion products to be utilized; and

d. A description of the proposed type of fossil fuel combustion products to be used, reused or reclaimed, including physical and chemical characteristics of the fossil fuel combustion products. The chemical description shall contain the results of TCLP analyses for the constituents shown in Table 1. The description shall also contain a statement that the project will not manage fossil fuel combustion products that contain any constituent at a level exceeding those shown in the table.

TABLE 1.
LIST OF CONSTITUENTS AND MAXIMUM LEVELS.

Constituent	Level, mg/lit
Arsenic	5.0
Barium	100
Cadmium	1.0
Chromium	5.0
Lead	5.0
Mercury	0.2
Selenium	1.0
Silver	5.0

4. A certification by a professional engineer licensed to practice by the Commonwealth that the project meets the locational restrictions of 9VAC20-85-70. Such certificate shall contain no qualifications or exemptions from the requirements.

5. A certificate signed by a professional engineer licensed to practice by the Commonwealth that the project has been designed in accordance with the standards of 9VAC20-85-80 if applicable. Such certificate shall contain no qualifications or exceptions from the requirements and plans.

6. An operational plan describing how the standards of 9VAC20-85-90 will be met.

7. A closure plan describing how the standards of Article 4 of Part III of this chapter will be met, if applicable.

8. A signed statement that the owner or operator shall allow authorized representatives of the Commonwealth, upon presentation of appropriate credentials, to have access to areas in which the activities covered by this chapter will be, are being, or have been conducted to ensure compliance.

B. The materials submitted under the provisions of subsection A of this section will be evaluated for completeness within 30 days of receipt by the appropriate department regional office. If the department notifies the applicant of deficiencies within 30 days, the applicant shall postpone any construction or activities proposed in the application for the department's approval until the department's approval has been received. If the applicant has not received a notice of deficiency within 30 days, the applicant can proceed.

9VAC20-85-180. Administrative procedures.

The administrative procedures associated with the submission of the variance petition, its processing and resolution will be accomplished in accordance with the requirements of ~~9VAC20-80-790~~ Part VII (9VAC20-81-700 et seq.) of the Solid Waste Management Regulations.

Part I
Definitions

9VAC20-120-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise. Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia defines words and terms that supplement those in this chapter. The ~~Virginia~~ Solid Waste Management Regulations, ~~9VAC20-80~~ 9VAC20-81, define additional words and terms that supplement those in the statutes and this chapter. When the statutes, as cited, and the solid waste management regulations, as cited, conflict, the definitions of the statutes are controlling.

"Act" or "regulations" means the federal or state law or regulation last cited in the context, unless otherwise indicated.

"Alternative treatment method" means a method for the treatment of regulated medical waste that is not incineration or steam sterilization (autoclaving).

"Approved sanitary sewer system" means a network of sewers serving a facility that has been approved in writing by the Virginia Department of Health, including affiliated local health departments. Such sewer systems may be approved septic tank/drainfield systems and on-site treatment systems, or they may be a part of a collection system served by an NPDES permitted treatment works.

"Associated" means two or more firms that share staff members, management, directors, and assets or engage in joint ventures. Holding companies and part owners are associated parties.

"Ash" means the residual waste material produced from an incineration process or any combustion.

"ASTM" means the American Society For Testing and Materials.

"Autoclave tape" means tape that changes color or becomes striped when subjected to temperatures that will provide sterilization of materials during treatment in an autoclave or similar device.

"Blood" means human blood, human blood components, and products made from human blood.

"Board" means the Virginia Waste Management Board.

"Body fluids" means liquid emanating or derived from humans including blood; cerebrospinal, synovial, pleural, peritoneal and pericardial fluids; semen and vaginal secretions; amniotic fluid; urine; saliva in dental procedures; and any other body fluids that are contaminated with blood, and any other liquids emanating from humans that may be mixed or combined with body fluids.

"Closure" means the act of securing a regulated medical waste management facility pursuant to the requirements of these regulations.

"Closure plan" means the plan for closure prepared in accordance with the requirements of this chapter.

"Commonwealth" means the Commonwealth of Virginia.

"Container" means any portable enclosure in which a material is stored, transported, treated, or otherwise handled.

"Contaminated" means the presence or the reasonably anticipated presence of blood or other body fluids on an item or surface.

"Contingency plan" means a document setting out an organized, planned and coordinated course of action to be followed in the event of a fire, explosion, or release of

regulated medical waste or regulated medical waste constituents that could threaten human health or the environment.

"CWA" means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act), 33 USC § 1251 et seq.; PL 92-500, PL 93-207, PL 93-243, PL 93-592, PL 94-238, PL 94-273, PL 94-558, PL 95-217, PL 95-576, PL 96-148, PL 96-478, PL 96-483, PL 96-510, PL 96-561, PL 97-35, PL 97-117, PL 97-164, PL 97-216, PL 97-272, PL 97-440, PL 98-45, PL 100-4, PL 100-202, PL 100-404, and PL 100-668.

"Decontamination" means the use of physical or chemical means to remove, inactivate, or destroy human pathogens on a surface or item to the point where they are no longer capable of transmitting disease and the surface or item is rendered safe for handling, use, or disposal.

"Department" means the Virginia Department of Environmental Quality.

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

"Discard" means to throw away or reject. When a material is soiled, contaminated or no longer usable and it is placed in a waste receptacle for disposal or treatment prior to disposal, it is considered discarded.

"Discharge" or "waste discharge" means the accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, or dumping of regulated medical waste into or on any land or state waters.

"Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land or water so that such solid waste or any constituent of it may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

"Disposal facility" means a facility or part of a facility at which solid waste is intentionally placed into or on any land or water, and at which the solid waste will remain after closure.

"Domestic sewage" means untreated sanitary wastes that pass through a sewer system.

"Empty" means wastes have been removed from a container using the practices commonly employed to remove materials of that type.

"EPA" means the U.S. Environmental Protection Agency.

"Etiologic agents" means the specific organisms defined to be etiologic agents in 42 CFR 72.3. In general, etiologic agents as defined in 42 CFR 72.1 means a viable microorganism or its toxin which causes or may cause human disease.

"Federal agency" means any department, agency, or other instrumentality of the federal government, any independent agency, or establishment of the federal government including any government corporation and the Government Printing Office.

"Generate" means to cause waste to become subject to regulation. When regulated medical waste is first discarded, it must be appropriately packaged in accordance with this regulation. At the point a regulated medical waste is discarded it has been generated.

Note: Timeframes associated with storage and refrigeration are no longer linked to the "date of generation."

"Generator" means any person, by site location, whose act or process produces regulated medical waste identified or listed in Part III (9VAC20-120-80 et seq.) of this chapter or whose act first causes a regulated medical waste to become subject to this chapter.

"Hazardous material" means a substance or material that has been so designated under 49 Parts CFR 171 and 173.

"Hazardous waste" means any solid waste defined as a "hazardous waste" by the Virginia Hazardous Waste Management Regulations.

"Health Care Professional" means a medical doctor or nurse practicing under a license issued by the Department of Health Professions.

"Highly leak resistant" means that leaks will not occur in the container even if the container receives severe abuse and stress, but remains substantially intact.

"Highly puncture resistant" means that punctures will not penetrate the container even if the container receives severe abuse and stress, but remains substantially intact.

"Motor vehicle" means a vehicle, machine, roll off container, tractor, trailer, or semi-trailer, or any combination of them, propelled or drawn by mechanical power and used in transportation or designed for such use.

"Nonstationary health care providers" means those persons who routinely provide health care at locations that change each day or frequently. This term includes traveling doctors, nurses, midwives, and others providing care in patients' homes, first aid providers operating from emergency vehicles, and mobile blood service collection stations.

"NPDES" or "National Pollutant Discharge Elimination System" means the national program for issuing, modifying, revoking, reissuing, terminating, monitoring, and enforcing permits pursuant to §§ 307, 402, 318, and 405 of the Clean Water Act. The term includes any state or interstate program that has been approved by the Administrator of the United States Environmental Protection Agency.

"Off-site" means any site that does not meet the definition of on-site as defined in this part, including areas of a facility that are not on geographically contiguous property or outside of the boundary of the site.

"On-site" means the same or geographically contiguous property, which may be divided by public or private right-of-way, provided the entrance and exit to the facility are controlled by the owner or the operator of the facility. Noncontiguous properties owned by the same person but connected by a right-of-way that he controls and to which the public does not have access are also considered on-site property.

"Owner" means the person or persons who own a regulated medical waste management facility or part of a regulated medical waste management facility.

"Package" or "outside package" means a package plus its contents.

"Packaging" means the assembly of one or more containers and any other components necessary to assure compliance with minimum packaging requirements under VRGTHM or this chapter.

"Permit by rule" means provisions of this chapter stating that a facility or activity is deemed to have a permit if it meets the requirements of the provision.

"Permitted waste management facility" or "permitted facility" means a regulated medical waste treatment or storage facility that has received a permit in accordance with the requirements of the chapter.

"Physical construction" means excavation, movement of earth, erection of forms or structures, the purchase of equipment, or any other activity involving the actual preparation of the regulated medical waste management facility.

"Processing" means preparation, treatment, or conversion of regulated medical waste by a series of actions, changes, or functions that bring about a decided result.

"RCRA" means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 USC § 6901 et seq.), the Hazardous and Solid Waste Amendments of 1984, and any other applicable amendments to these laws.

"Regulated medical waste" means solid wastes defined to be regulated medical wastes in Part III (9VAC20-120-80 et seq.) of this chapter.

"Regulated medical waste management" means the systematic administration of activities that provide for the collection, source separation, storage, transportation, transfer, processing, treatment, and disposal of regulated medical wastes whether or not such facility is associated with facilities generating such wastes or otherwise.

"Regulated medical waste management facility" means a solid waste management facility that manages regulated medical waste.

"Safe sharps program" means a program supported by a city, county, town or public authority that is intended to enhance the safe disposal of sharps discarded by private individuals.

"Sanitary sewer system" means a system for the collection and transport of sewage, the construction of which was approved by the Department of Health or other appropriate authority.

"Secondary container" means a storage device into which a container can be placed for the purpose of containing any leakage from the original container.

"Section" means a subpart of this chapter and when referred to all portions of that part apply.

"Sharps" means needles, scalpels, knives, syringes with attached needles, pasteur pipettes and similar items having a point or sharp edge or that are likely to break during transportation and result in a point or sharp edge.

"Shipment" means the movement or quantity conveyed by a transporter of a regulated medical waste between a generator and a designated facility or a subsequent transporter.

"Site" means the land or water area upon which a facility or activity is physically located or conducted, including but not limited to adjacent land used for utility systems such as repair, storage, shipping, or processing areas, or other areas incident to the controlled facility or activity.

"Solid waste" means any garbage, refuse, sludge and other discarded material, including solid, liquid, semisolid or contained gaseous material, resulting from industrial, commercial, mining and agriculture operations, or community activities, but does not include (i) solid or dissolved material in domestic sewage, (ii) solid or dissolved material in irrigation return flows or in industrial discharges which are sources subject to a permit from the State Water Control Board, or (iii) source, special nuclear, or by-product material as defined by the Federal Atomic Energy Act of 1954, as amended 42 USC §§ 2011-2284. The definition of solid waste is further clarified in the ~~Virginia~~ Solid Waste Management Regulations ~~(9VAC20-80-140)~~ (9VAC20-81-95).

"Solid waste management" means the collection, source separation, storage, transportation, transfer, processing, treatment, and disposal of solid wastes or resource recovery.

"Spill" means any accidental or unpermitted discharge, leaking, pumping, pouring, emitting, or dumping of wastes or materials that, when spilled, become wastes.

"Start-up" or "cold start-up" means the beginning of a combustion operation from a condition where the combustor unit is not operating and less than 140°F in all areas.

"Storage" means the holding, including during transportation, of more than 200 gallons of waste, at the end of which the regulated medical waste is treated or stored elsewhere.

"Training" means formal instruction, supplementing an employee's existing job knowledge, designed to protect human health and the environment via attendance and successful completion of a course of instruction in regulated medical waste management procedures, including contingency plan implementation, relevant to those operations connected with the employee's position at the facility.

"Transfer facility" means any transportation related facility including loading docks, parking areas, storage areas, and other similar areas where shipments of regulated medical waste are held during the normal course of transportation.

"Transportation" or "transport" means the movement of regulated medical waste by air, rail, highway, or water.

"Transport vehicle" means any vehicle used for the transportation of cargo.

"Vector" means a living animal, insect or other arthropod that may transmits an infectious disease from one organism to another.

"VRGTHM" means Virginia Regulations Governing the Transportation of Hazardous Materials promulgated by the Virginia Waste Management Board as authorized by §§ 10.1-1450 through 10.1-1454 of the Code of Virginia.

"Waste management facility" means all contiguous land and structures, other appurtenances, and improvements on them used for treating, storing, or disposing of waste.

"Waste management unit" means any unit at a treatment or storage facility that possesses a permit, or that has received regulated medical waste (as defined in this chapter) at any time, including units that are not currently active.

9VAC20-120-70. Relationship to other bodies of regulation.

A. The Solid Waste Management Regulations ~~(9VAC20-80)~~ (9VAC20-81) address other requirements for regulated medical waste management. Any regulated medical waste management facility must also conform to any applicable sections of the solid waste management regulations issued by the board and any special solid waste management regulations such as those defining financial assurance requirements. If there is a conflict between the details of regulations here and the others, this chapter is controlling.

B. Regulated medical waste management facility must also comply with any applicable sections of the Hazardous Waste Management Regulations (9VAC20-60) issued by the department. If there is a conflict between the details of regulations here and the hazardous waste management regulations, the latter regulations are controlling.

C. Intrastate shipment of hazardous materials is subject to the Regulations Governing the Transportation of Hazardous Materials (9VAC20-110) of the department. If there is a conflict between the details of regulations here and the hazardous materials transportation regulations, the latter are controlling.

D. Generators of regulated medical waste and regulated medical waste management facilities may be subject to the general industry standard for occupational exposure to bloodborne pathogens in 16VAC25-90-1910.1030 (29 CFR 1910.1030).

E. Persons transporting regulated medical waste are subject to the federal hazardous material transportation requirements in 49 CFR 171 through 178.

F. If there is a conflict between the regulations here and adopted regulations of another agency of the Commonwealth, the provisions of these regulations are set aside to the extent necessary to allow compliance with the regulations of the other agency. If neither regulation controls, the more stringent standard applies.

G. Nothing here either precludes or enables a local governing body to adopt ordinances. Compliance with one body of regulation does not insure compliance with the other, and, normally, both bodies of regulation must be complied with fully.

9VAC20-120-100. Recycled materials.

A. Untreated regulated medical wastes shall not be used, reused, or reclaimed.

B. Wastes that have been treated in accord with these regulations are no longer regulated medical waste and may be used, reused, or reclaimed in accordance with the provisions of the ~~Virginia~~ Solid Waste Management Regulations ~~(9VAC20-80)~~ (9VAC20-81).

C. Bed linen, instruments, medical care equipment and other materials that are routinely reused for their original purpose are not subject to these regulations until they are discarded and are a solid waste. These items do not include reusable carts or other devices used in the management of regulated medical waste (see 9VAC20-120-260).

Article 6
Treatment and Disposal

9VAC20-120-300. Methods of treatment and disposal.

A. All regulated medical waste must be incinerated, sterilized by steam, or treated by a method as described in Part VII (9VAC20-120-520 et seq.), VIII (9VAC20-120-580 et seq.), or IX (9VAC20-120-630 et seq.) of this chapter.

B. No regulated medical waste shall be disposed of in a solid waste landfill or other solid waste management facility. Upon authorized treatment and management in accord with this

chapter, the solid waste or its ash is not regulated medical waste and may be disposed of at any landfill or other solid waste management facility permitted to receive municipal solid waste or garbage, provided the disposal is in accordance with the Solid Waste Management Regulations, ~~9VAC20-80~~ 9VAC20-81, and other applicable regulations and standards.

C. Regulated medical waste in closed bags or containers shall not be compacted or subjected to violent mechanical stress; however, after it is fully treated and it is no longer regulated medical waste, it may be compacted in a closed container. Nothing in this section shall prevent the puncturing of containers or packaging immediately prior to permitted treatment in which grinding, shredding, or puncturing is integral to the process units; however, all grinding, shredding and puncturing shall be done with safe and sanitary methods. Nothing in this section shall prevent the use of devices that grind, shred or compact to reduce volume at the point of generation. Devices will be constructed in a manner that prevents employee exposure to the waste, contains any aerosol or mist that may be caused by the process, and treats or filters any air evacuated from the chamber during processing. These devices may be employed at the point of generation and prior to enclosing the regulated medical waste in plastic bags and other required packaging; however, the waste remains regulated medical waste. Appropriate means must be employed to appropriately protect workers and contain the waste when unloading regulated medical wastes from such a device.

9VAC20-120-540. Analysis and management of the ash product; procedure; results and records; disposition of ash; ash storage.

A. Once every eight hours of operation of a continuously fed incinerator and once every batch or 24 hours of operation of a batch fed incinerator, a representative sample of 250 milliliters of the bottom ash shall be collected from the ash discharge or the ash discharge conveyer. Samples collected during 1,000 hours of operation or quarterly, whichever is more often, shall be thoroughly mixed and seven random portions of equal volume shall be composited into one sample for laboratory analysis. This sample shall be tested in accord with the methods established by the Virginia Hazardous Waste Management Regulations for determining if a solid waste is a hazardous waste. Also, the sample shall be tested for total organic carbon content.

At incinerators equipped with air pollution control devices that remove and collect incinerator emissions control ash or dust, this ash shall be held separately and not mixed with bottom ash. Once every eight hours of operation of a continuously fed incinerator and once every batch or 24 hours of operation of a batch fed incinerator, a representative sample of 250 milliliters of the air pollution control ash or dust shall be collected from the pollution control ash discharge. Air pollution control ash or dust samples collected during 1,000 hours of operation or quarterly, whichever is more often, shall be thoroughly mixed and seven random portions of equal volume shall be composited into one sample for laboratory analysis. This sample shall be tested in accord with the methods established by the Virginia Hazardous Waste Management Regulations for determining if a waste is a hazardous waste.

B. A log shall document the ash sampling, to include the date and time of each sample collected; the date, time and identification number of each composite sample; and the results of the analyses, including laboratory identification. Results of analyses must be returned from the laboratory and recorded within four weeks following collection of the composite sample. The results and records described in this part shall be maintained for a period of three years, and shall be available for review.

C. If a waste ash is found to be hazardous waste (based on a sample and a confirmation sample) the waste ash shall be disposed of as a hazardous waste in accord with the Virginia Hazardous Waste Management Regulations. If ash is found not to be hazardous waste by analysis, it may be disposed of in a solid waste landfill that is permitted to receive garbage, municipal solid waste or incinerator ash, provided the disposal is in accordance with the Solid Waste Management Regulations, ~~9VAC20-80~~ 9VAC20-81. If the ash is found to be hazardous waste, the operator shall notify the Director of the Department of Environmental Quality within 24 hours. No later than 15 calendar days following, the permittee shall submit a plan for treating and disposing of the waste on hand at the facility and all unsatisfactorily treated waste that has left the facility. The permittee may include with the plan a description of the corrective actions to be taken to prevent further unsatisfactory performance. No ash subsequently generated from the incinerator waste stream that was found to be hazardous waste shall be sent to a nonhazardous solid waste management facility in the Commonwealth without the express written approval of the director.

D. Air pollution control ash and bottom ash shall be held separately and not mixed; however, once both are determined not to be hazardous waste, they may be combined and disposed of as other solid waste. Throughout the storage of the untested material it shall be kept in covered highly leak resistant containers. It should be held until the generator determines whether the ash waste is hazardous waste. Areas where untested material containers are placed must be constructed with a berm to prevent runoff from that area.

E. Regulated medical waste treated in compliance with Part VII (9VAC20-120-520 et seq.), VIII (9VAC20-120-580 et seq.) or IX (9VAC20-120-630 et seq.) of this chapter shall be deemed to be treated in accordance with this chapter. Regulated medical waste not treated in accordance with this chapter shall not be transported, received for transport or

disposal, or disposed of in any solid waste management facility.

9VAC20-120-810. Amendment of permits.

A. Temporary authorizations.

1. Upon request of the permittee, the director may, without prior public notice and comment, grant the permittee a temporary authorization in accordance with the requirements of this section. Temporary authorizations shall have a term of not more than 180 calendar days.

2. a. The permittee may request a temporary authorization for:

(1) Any substantive amendment meeting the criteria in subdivision 3 b (1) of this subsection; and

(2) Any major amendment that meets the criteria in subdivision 3 b (1) or (2) of this subsection; or that meets the criteria in subdivisions 3 b (3) and (4) of this subsection and provides improved management or treatment of a regulated medical waste already listed in the facility permit.

b. The temporary authorization request shall include:

(1) A description of the activities to be conducted under the temporary authorization;

(2) An explanation of why the temporary authorization is necessary; and

(3) Sufficient information to ensure compliance with standards in Part V (9VAC20-120-330 et seq.) or VI (9VAC20-120-400 et seq.) of this chapter.

c. The permittee shall send a notice about the temporary authorization request to all persons on the facility mailing list. This notification shall be made within seven calendar days of submission of the authorization request.

3. The director shall approve or deny the temporary authorization as quickly as is practical. To issue a temporary authorization, the director shall find:

a. The authorized activities are in compliance with the standards of Part V (9VAC20-120-330 et seq.), VII (9VAC20-120-520 et seq.), VIII (9VAC20-120-580 et seq.) or IX (9VAC20-120-630 et seq.) of this chapter.

b. The temporary authorization is necessary to achieve one of the following objectives before action is likely to be taken on an amendment request:

(1) To facilitate timely implementation of closure or corrective action activities;

(2) To prevent disruption of ongoing waste management activities;

(3) To enable the permittee to respond to sudden changes in the types or quantities of the wastes managed under the facility permit; or

(4) To facilitate other changes to protect human health and the environment.

4. A temporary authorization may be reissued for one additional term of up to 180 calendar days provided that the permittee has requested a substantive or a major permit amendment for the activity covered in the temporary authorization, and (i) the reissued temporary authorization constitutes the director's decision on a substantive permit amendment in accordance with the Solid Waste Management Regulations ~~(9VAC20-80)~~ (9VAC20-81) or (ii) the director determines that the reissued temporary authorization involving a major permit amendment request is warranted to allow the authorized activities to continue while the amendment procedures of the Solid Waste Management Regulations ~~(9VAC20-80)~~ (9VAC20-81) are conducted.

B. Newly defined or identified wastes. The permittee is authorized to continue to manage wastes defined or identified as regulated medical waste under Part III (9VAC20-120-80 et seq.) of this chapter if he:

1. Was in existence as a regulated medical waste management facility with respect to the newly defined or identified regulated medical waste on the effective date of the final rule defining or identifying the waste; and

2. (i) Is in compliance with the standards of Part V, VII, VIII or IX, as applicable, with respect to the new waste, submits a minor modification request on or before the date on which the waste becomes subject to the new requirements or (ii) is not in compliance with the standards of Part V or VI, as applicable, with respect to the new waste, but submits a complete permit amendment request within 180 calendar days after the effective date of the definition or identifying the waste.

C. The suitability of the facility location will not be considered at the time of permit amendment unless new information or standards indicate that an endangerment to human health or the environment exists that was unknown at the time of permit issuance.

9VAC20-130-10. Definitions.

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

"Agricultural waste" means all solid waste produced from farming operations.

"Board" means the Virginia Waste Management Board.

"Commercial waste" means all solid waste generated by establishments engaged in business operations other than

manufacturing or construction. This category includes, but is not limited to, solid waste resulting from the operation of stores, markets, office buildings, restaurants and shopping centers.

"Compost" means a stabilized organic product produced by composting in such a manner that the product can be handled, stored, and/or applied to the land.

"Composting" means the manipulation of the natural process of decomposition of organic materials to increase the rate of decomposition.

"Construction waste" means solid waste that is produced or generated during construction, remodeling, or repair of pavements, houses, commercial buildings, and other structures. Construction wastes include, but are not limited to, lumber, wire, sheetrock, broken brick, shingles, glass, pipes, concrete, paving materials, and metal and plastics if the metal or plastics are a part of the materials of construction or empty containers for such materials. Paints, coatings, solvents, asbestos-containing material, any liquid, compressed gases, or semi-liquids and garbage are not construction wastes.

"Debris waste" means solid waste resulting from land clearing operations. Debris wastes include, but are not limited to, stumps, wood, brush, leaves, soil, and road spoils.

"Demolition waste" means solid waste produced by the destruction of structures and their foundations and includes the same materials as construction wastes.

"Department" means the Department of Environmental Quality.

"Director" means the Director of the Department of Environmental Quality or his designee. For purposes of submissions to the director as specified in the Waste Management Act, submissions may be made to the department.

"Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste into or on any land or water so that such solid waste or any constituent of it may enter the environment or be emitted into the air or discharged into any waters.

"Facility" means solid waste management facility unless the context clearly indicates otherwise.

"Hazardous waste" means a "hazardous waste" as defined by the Virginia Hazardous Waste Management Regulation, 9VAC20-60.

"Incineration" means the controlled combustion of solid waste for disposal.

"Industrial waste" means any solid waste generated by manufacturing or industrial process that is not a regulated hazardous waste. Such waste may include, but is not limited to, waste resulting from the following manufacturing processes: electric power generation; fertilizer/agricultural chemicals; food and related products/byproducts; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.

"Institutional waste" means all solid waste emanating from institutions such as, but not limited to, hospitals, nursing homes, orphanages, and public or private schools. It can include regulated medical waste from health care facilities and research facilities that must be managed as a regulated medical waste.

"Integrated waste management plan" means a governmental plan that considers all elements of waste management during generation, collection, transportation, treatment, storage, disposal, and litter control and selects the appropriate methods of providing necessary control and services for effective and efficient management of all wastes. An "integrated waste management plan" must provide for source reduction, reuse and recycling within the jurisdiction and the proper funding and management of waste management programs.

"Jurisdiction" means a local governing body; city, county or town; or any independent entity, such as a federal or state agency, which join with local governing bodies to develop a waste management plan.

"Landfill" means a sanitary landfill, an industrial waste landfill, or a construction/demolition/debris landfill (as these terms are defined in the Solid Waste Management Regulations ~~(9VAC20-80)~~ (9VAC20-81).

"Litter" means all waste material disposable packages or containers, but not including the wastes of the primary processes of mining, logging, farming, or manufacturing.

"Market" or "markets" means interim or end destinations for the recyclable materials, including a materials recovery facility (MRF).

"Market conditions" means business and system related issues used to determine if materials can be targeted, collected, and delivered to an interim or end market in an efficient manner. Issues may include, but are not limited to: the cost of collection, storage and preparation or both; the cost of transportation; accessible volumes of materials targeted for recycling; market value of materials targeted for collection/recycling; and distance to viable markets.

"Materials recovery facility (MRF)" means, for the purpose of this regulation, a facility for the collection, processing and marketing of recyclable materials including, but not limited to: metal, paper, plastics, and glass.

"Mulch" means woody waste consisting of stumps, trees, limbs, branches, bark, leaves and other clean wood waste that has undergone size reduction by grinding, shredding, or chipping, and is distributed to the general public for landscaping purposes or other horticultural uses, except composting as defined and regulated under the Solid Waste Management Regulations ~~(9VAC20-80) or the Vegetative Waste Management and Yard Waste Composting Regulations (9VAC20-101)~~ (9VAC20-81).

"Municipal solid waste" means waste that is normally composed of residential, commercial, and institutional solid waste and residues derived from the combustion of these wastes.

"Permit" means the written permission of the director to own, operate or construct a solid waste management facility.

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

"Principal recyclable materials (PRMs)" means paper, metal, plastic, glass, commingled yard waste, wood, textiles, tires, used oil, used oil filters, used antifreeze, batteries, electronics, or material as may be approved by the director. Commingled materials refers to single stream collections of recyclables where sorting is done at a materials recovery facility.

"Recycling" means the process of separating a given waste material from the waste stream and processing it so that it may be used again as a raw material for a product, which may or may not be similar to the original product. For the purpose of this chapter, recycling shall not include processes that only involve size reduction.

"Recycling residue" means the (i) nonmetallic substances, including but not limited to plastic, rubber, and insulation, which remain after a shredder has separated for purposes of recycling the ferrous and nonferrous metal from a motor vehicle, appliance or other discarded metallic item and (ii) organic waste remaining after removal of metals, glass, plastics and paper that are to be recycled as part of a resource recovery process for municipal solid waste resulting in the production of a refuse derived fuel.

"Regional boundary" means the boundary defining an area of land that will be a unit for the purpose of developing a waste management plan, and is established in accordance with 9VAC20-130-180 through 9VAC20-130-220.

"Regulated medical waste" means solid wastes so defined by the Regulated Medical Waste Management Regulations (9VAC20-120) as promulgated by the Virginia Waste Management Board.

"Residential waste" means any waste material, including garbage, trash and refuse, derived from households. Households include single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day-use recreation areas. Residential wastes do not include sanitary waste in septic tanks (septage), that is regulated by other state agencies.

"Resource recovery system" means a solid waste management system that provides for collection, separation, recycling and recovery of energy or solid wastes, including disposal of nonrecoverable waste residues.

"Reuse" means the process of separating a given solid waste material from the waste stream and using it, without processing or changing its form, other than size reduction, for the same or another end use.

"Sanitary landfill" means an engineered land burial facility for the disposal of household waste, which is so located, designed, constructed and operated to contain and isolate the waste so that it does not pose a substantial present or potential hazard to human health or the environment. A sanitary landfill also may receive other types of solid wastes, such as commercial solid waste, nonhazardous sludge, hazardous waste from conditionally exempt small quantity generators, construction demolition debris, and nonhazardous industrial solid waste.

"Site" means all land and structures, other appurtenances, and improvements on them used for treating, storing, and disposing of solid waste. This term includes adjacent land within the facility boundary used for the utility systems such as repair, storage, shipping or processing areas, or other areas incident to the management of solid waste. (Note: This term includes all sites whether they are planned and managed facilities or open dumps.)

"Sludge" means any solid, semisolid or liquid waste generated from a public, municipal, commercial or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility.

"Solid waste" means any of those materials defined as "solid waste" in the Solid Waste Management Regulations ~~(9VAC20-80)~~ (9VAC20-81).

"Solid waste planning unit" means each region or locality that submits a solid waste management plan.

"Solid waste management facility ("SWMF")" means a site used for planned treating, storing, or disposing of solid waste. A facility may consist of several treatment, storage, or disposal units.

"Source reduction" means any action that reduces or eliminates the generation of waste at the source, usually within a process. Source reduction measures include process modifications, feedstock substitutions, improvements in feedstock purity, improvements in housekeeping and management practices, increases in the efficiency of machinery, and recycling within a process. Source reduction minimizes the material that must be managed by waste disposal or nondisposal options by creating less waste.

"Source reduction" is also called "waste prevention," "waste minimization," or "waste reduction."

"Source separation" means separation of recyclable materials by the waste generator of materials that are collected for use, reuse, reclamation, or recycling.

"Tons" means 2,000 pounds.

"Transfer station" means any solid waste storage or collection facility at which solid waste is transferred from collection vehicles to haulage vehicles for transportation to a central solid waste management facility for disposal, incineration or resource recovery.

"Vegetative waste" means decomposable materials generated by yard and lawn care or land-clearing activities and includes, but is not limited to, leaves, grass trimmings, and woody wastes such as shrub and tree prunings, bark, limbs, roots, and stumps. For more detail see ~~Vegetative Waste Management and Yard Waste Composting Regulations (9VAC20-101)~~ the Solid Waste Management Regulations (9VAC20-81).

"Waste exchange" means any system to identify sources of wastes with potential for use reuse, recycling or reclamation and to facilitate its acquisition by persons who reuse, recycle or reclaim it, with a provision for maintaining confidentiality of trade secrets.

"White goods" means any stoves, washers, hot water heaters or other large appliances. For the purposes of this chapter, this definition also includes, but is not limited to, such Freon-containing appliances as refrigerators, freezers, air conditioners, and dehumidifiers.

"Yard waste" means decomposable waste materials generated by yard and lawn care and includes leaves, grass trimmings, brush, wood chips, and shrub and tree trimmings. Yard waste shall not include roots or stumps that exceed six inches in diameter.

9VAC20-130-60. Applicability of regulations.

A. This chapter applies to all cities, counties, towns, designated solid waste planning units (under 9VAC20-130-180) and permitted solid waste facilities within the solid waste planning unit, including those facilities covered under permit by rule procedures found in ~~9VAC20-80~~ 9VAC20-81. Any city, county, and town may mutually agree to unite for the purpose of solid waste management planning, and upon joint written notification to the director, shall be deemed to be a solid waste planning unit for development of a solid waste management plan.

B. Any cities, counties, and towns may be represented by a planning district, public service authority, or designated region that has been adopted under 9VAC20-130-90 B.

C. The plan may (subject to statutory authority) specify that all solid waste must be recycled at the rate established by the plan regardless of the point of origin of the solid waste. Solid wastes from both public and private sources shall be subject to such requirement.

9VAC20-130-120. Planning requirements.

A. Basic planning elements:

1. Objectives for solid waste management within the planning unit;

2. A discussion as to how the plan will be implemented and tracked, consisting of an integrated waste management strategy to support and promote the hierarchy set forth at 9VAC20-130-30; giving preference to alternatives in the following order of priority: source reduction, reuse, recycling, resource recovery, incineration, and landfilling;

3. Definition of incremental stages of progress toward the objectives and schedule for their implementation, including, for compliance with ~~9VAC20-80-500~~ 9VAC20-81-450, specific solid waste management facility names, facility capacities, and life based on 20-year need;

4. Strategy for the provision of necessary funds and resources;

5. Descriptions of the funding and resources necessary, including consideration of fees dedicated to future facility development;

6. Strategy for public education and information on source reduction, reuse, and recycling; and

7. Consideration of public and private sector partnerships and private sector participation in execution of the plan. Existing private sector recycling operations should be incorporated in the plan and the expansion of such operations should be encouraged.

B. A minimum recycling rate as specified in § 10.1-1411 of the Code of Virginia for total municipal solid waste generated annually in each solid waste planning unit shall be met and maintained.

1. The plan shall describe how the minimum recycling rate shall be met or exceeded. The department may approve the solid waste management plans of units that do not currently meet the minimum recycling rate only if all other requirements of these regulations have been met and the solid waste planning unit demonstrates its commitment to implementing a strong and detailed action plan for recycling to meet the required rate.

2. When a solid waste planning unit's annual recycling rate falls below the minimum rate, it shall constitute evidence of a significant deviation from the plan. The plan may be subject to revocation by the department under 9VAC20-130-110 E unless the solid waste planning unit submits a recycling action plan acceptable to the department per subsection I of this section.

C. The solid waste management plan shall include data and analyses of the following type(s) for each jurisdiction. Each item below shall be in a separate section and labeled as to content:

1. Population information and projections for 20 years of population growth and development patterns;

2. Urban concentrations, geographic conditions, economic growth and development, markets for the reuse and recycling of materials, transportation conditions, and related factors;

3. Estimates of solid waste generation from residential, commercial institutional, industrial, construction, demolition, debris and other types of sources, including the amounts reused, recycled, recovered as a resource, incinerated and landfilled. Entities engaged in the collection, processing, and marketing of recyclable materials should provide data for incorporation into the recycling rate calculation, when requested by the planning unit.

4. A listing of existing and planned solid waste collection, storage, treatment, transportation, disposal and other management facilities, their projected capacities, expected life and systems for their use;

5. All milestones in the implementation of the solid waste management plan over the 20-year projection and the parties responsible for each milestone;

6. A description of programs for solid waste reduction, reuse, recycling, resource recovery, incineration, storage, treatment, disposal and litter control;

7. A description of outreach programs for waste exchange, public education and public participation;

8. The procedures for and results of evaluating solid waste collection, including transfer stations; and

9. The assessment of all current and predicted needs for solid waste management for a period of 20 years and a description of the action to be taken to meet those needs.

D. All known solid waste disposal sites, closed, inactive and active, within the area of the solid waste management plan shall be documented and recorded at a centralized archive authorized to receive and record information and a copy shall be sent to the department. All new sites shall be recorded at the same central data source.

E. A methodology shall be utilized to monitor the amount of solid waste of each type produced within the area of the solid waste management plan and to record the annual production by solid waste types at a centralized archive and a copy shall be sent to the department.

F. The solid waste management plan shall include, when developed locally, a copy of the local governing body's resolution adopting the solid waste management plan.

G. The solid waste management plan shall include, when developed regionally, a copy of the resolution approving the plan adopted in accordance with the Virginia Area Development Act, the Virginia Water and Waste Authorities Act, the provisions of the Code of Virginia governing joint exercise of powers by political subdivisions (§ 15.2-1300 of the Code of Virginia), or other authority as applicable.

H. The solid waste management plan shall clearly and explicitly demonstrate the manner in which the goals of the planning requirements in these regulations shall be accomplished and actions to take if these requirements are not met.

I. A planning unit that does not meet the requirements of these regulations shall submit an action plan, by mail or electronic mail, for approval by the department. Such action plans shall include:

1. A description of the deficiency that requires the development of the action plan.

2. A time schedule to resolve the deficiency(ies) associated with the planning unit's failure to meet the requirements of the approved solid waste management plan.

3. A reporting requirement to the department, of a minimum of once every six months, including activities or updates documenting how the action plan requirements are being met.

4. Plans and all subsequent reports and submittals shall be reviewed by the department within 30 days of receipt by the department.

5. All the department's requests for further information or response(s) shall be provided within 30 days of receipt at the planning unit. The department may grant reasonable extensions to these deadlines on a case-by-case basis.

Part I
Definitions

9VAC20-140-10. Definition incorporated by reference.

The definitions set out in Part I of the ~~Virginia~~ Solid Waste Management Regulations ~~(9VAC20-80-10 et seq.)~~ (9VAC20-81) are incorporated by reference.

9VAC20-150-10. Definitions.

A. The definitions set out in Part I of the ~~Virginia~~ Solid Waste Management Regulations~~, 9VAC20-80-10 et seq.,~~ (9VAC20-81) are incorporated by reference.

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

"Applicant" means any person or persons seeking reimbursement under this chapter.

"Asphalt pavement containing recycled rubber" means any hot mix or spray applied binder in asphalt paving mixture that contains rubber from waste tire materials which is used for asphalt pavement base, surface course or interlayer, or other road and highway related uses.

"Authorized signature" means the signature of an individual who has authority to sign on behalf of, and bind, the applicant.

"Available funds" means for a given fiscal year, a maximum of 80% of the previous fiscal year's collection of the waste tire tax plus 85% of nonobligated carryover funds at the end of the previous fiscal year.

"Burning" means the controlled burning of waste tire materials for the purpose of energy recovery.

"Cost of use" means the equipment, leasehold improvements, buildings, land, engineering, transportation, operating, taxes, interest, and depreciation or replacement costs of using waste tire materials incurred by the end user after deducting any tipping fee received by the end user.

"Daily cover" means using waste tire material as an alternate cover placed upon exposed solid waste to control disease vectors, fires, odors, blowing litter and scavenging without presenting a threat to human health and the environment.

"Department" means the Department of Environmental Quality.

"Director" means the Director of the Department of Environmental Quality or the director's designee.

"Embankment" means a raised earthen structure to carry a roadway.

"End user" means:

1. For energy recovery: the person who utilizes the heat content or other forms of energy from the burning or pyrolysis of waste tire materials;

2. For other eligible uses: the last person who uses the waste tire materials to make a product with economic value. If the waste tire materials are processed by more than one person in becoming a product, the end user is the last person to use the tire as waste tire materials. A person who produces waste tire materials and gives or sells them to another person to use is not an end user.

"Energy recovery" means utilizing the heat content or other forms of energy from the burning or pyrolysis of waste tire materials.

"Fill material for construction" means the material is used as a base or sub-base under the footprint of a structure, a paved parking lot, sidewalk, walkway or similar application.

"Generator" means any person whose act or process produces waste tires or whose act first causes a tire to become a solid waste.

"Hauler" means a person who picks up or transports waste tires for the purpose of removal to a permitted storage, processing or disposal facility.

"Partial reimbursement" means reimbursement that does not exceed the purchase price of waste tire materials or the cost of use if the waste tire materials were not purchased.

"Passenger tire equivalent" means a measure of passenger, truck tires, and oversize tires where: One passenger car tire equals 20 pounds or 1/100 ton. One truck tire 20-24 inch rim equals 100 pounds or 1/200 ton and a tire with over 24-inch rim equals 200 pounds or greater as computed by the end user.

"Processor" means a person engaged in the processing of waste tires including, but not limited to, stamping, stripping, shredding, or crumbing; that operates under a permit issued by the local, state, or federal government; or is exempt from permit requirements.

"Pyrolysis" means thermal treatment of waste tire materials to separate it into other components with economic value.

"Retreading" means processing a waste tire by attaching a new tread to make a usable tire.

"Road bed base" means the foundation of a road prepared for surfacing.

"Tipping fee" means a fee charged to a person for disposal of a waste tire.

"Tire" means a continuous solid or pneumatic rubber covering encircling the wheel of a vehicle in which a person or property is transported, or by which they may be drawn on a highway.

"Tire pile" means an accumulation of waste tire materials that violates the ~~Virginia~~ Solid Waste Management Regulations ~~(9VAC20-80-10 et seq.)~~ (9VAC20-81).

"Waste tire" means a tire that has been discarded because it is no longer suitable for its original intended purpose because of wear, damage or defect.

"Waste tire materials" means whole waste tires or waste tires that have been size reduced by physical or chemical process. This term includes waste tires or chips or similar materials as specified in §§ 10.1-1422.3 and 10.1-1422.4 of the Code of Virginia.

"Waste Tire Trust Fund" means the nonreverting fund set up by § 10.1-1422.3 of the Code of Virginia in which proceeds from the waste tire tax are deposited.

Part II
General Information

9VAC20-150-20. Purpose.

The purpose of this chapter is to define the types of uses eligible for partial reimbursement, to establish the procedures for application and processing of reimbursement, and to establish the amount of reimbursement.

9VAC20-150-40. End uses of waste tires eligible for reimbursement.

A. The following uses of waste tire materials will be eligible for the reimbursement if the use complies with applicable local ordinances and regulations and the ~~Virginia~~ Solid Waste Management Regulations~~, 9VAC20-80~~ (9VAC20-81) or the equivalent regulations in another state. The eligible uses are:

1. Civil engineering applications, which utilize waste tire materials as a substitute for soil, sand, or aggregate in a construction project such as land or surface applications, road bed base and embankments; fill material for construction projects; and daily cover and other substitutions at a permitted solid waste facility if the facility's permit is so modified;

2. Burning of waste tire materials for energy recovery;

3. Pyrolysis; and

4. Products made from waste tire materials such as molded rubber products, rubberized asphalt, soil amendments, playground and horse arena surfacing materials, mulches, mats, sealers, etc.

B. Uses that are not eligible for reimbursement include:

1. Reuse as a vehicle tire;

2. Retreading;

3. Burning without energy recovery; and

4. Landfilling, except use as specified in subdivision A 1 of this section.

9VAC20-160-10. Definitions.

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

"Authorized agent" means any person who is authorized in writing to fulfill the requirements of this program.

"Carcinogen" means a chemical classification for the purpose of risk assessment as an agent that is known or suspected to cause cancer in humans, including but not limited to a known or likely human carcinogen or a probable or possible human carcinogen under an EPA weight-of-evidence classification system.

"Certificate" means a written certification of satisfactory completion of remediation issued by the director pursuant to § 10.1-1232 of the Code of Virginia.

"Completion" means fulfillment of the commitment agreed to by the participant as part of this program.

"Contaminant" means any man-made or man-induced alteration of the chemical, physical or biological integrity of soils, sediments, air and surface water or groundwater including, but not limited to, such alterations caused by any hazardous substance (as defined in the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC § 9601(14)), hazardous waste (as defined in 9VAC20-60), solid waste (as defined in ~~9VAC20-80-10)~~ 9VAC20-81), petroleum (as defined in Articles 9 (§ 62.1-44.34:8 et seq.) and 11 (§ 62.1-44.34:14 et seq.)) of the Virginia State Water Control Law, or natural gas.

"Cost of remediation" means all costs incurred by the participant pursuant to activities necessary for completion of voluntary remediation at the site, based on an estimate of the net present value (NPV) of the combined costs of the site investigation, report development, remedial system installation, operation and maintenance, and all other costs associated with participating in the program and addressing the contaminants of concern at the site.

"Department" means the Department of Environmental Quality of the Commonwealth of Virginia or its successor agency.

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

"Engineering controls" means physical modification to a site or facility to reduce or eliminate potential for exposure to contaminants. These include, but are not limited to, stormwater conveyance systems, pump and treat systems, slurry walls, liner systems, caps, monitoring systems, and leachate collection systems.

"Hazard index (HI)" means the sum of more than one hazard quotient for multiple contaminants or multiple exposure pathways or both. The HI is calculated separately for chronic, subchronic, and shorter duration exposures.

"Hazard quotient" means the ratio of a single contaminant exposure level over a specified time period to a reference dose for that contaminant derived from a similar period.

"Incremental upper-bound lifetime cancer risk level" means a conservative estimate of the incremental probability of an individual developing cancer over a lifetime. Upper-bound lifetime cancer risk level is likely to overestimate "true risk."

"Institutional controls" means legal or contractual restrictions on property use that remain effective after remediation is completed, and are used to reduce or eliminate

the potential for exposure to contaminants. The term may include, but is not limited to, deed and water use restrictions.

"Land use controls" means legal or physical restrictions on the use of, or access to, a site to reduce or eliminate potential for exposure to contaminants, or prevent activities that could interfere with the effectiveness of remediation. Land use controls include but are not limited to engineering and institutional controls.

"Noncarcinogen" means a chemical classification for the purposes of risk assessment as an agent for which there is either inadequate toxicological data or is not likely to be a carcinogen based on an EPA weight-of-evidence classification system.

"Operator" means the person currently responsible for the overall operations at a site, or any person responsible for operations at a site at the time of, or following, the release.

"Owner" means any person currently owning or holding legal or equitable title or possessory interest in a property, including the Commonwealth of Virginia, or a political subdivision thereof, including title or control of a property conveyed due to bankruptcy, foreclosure, tax delinquency, abandonment, or similar means.

"Participant" means a person who has received confirmation of eligibility and has remitted payment of the registration fee.

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

"Program" means the Virginia Voluntary Remediation Program.

"Property" means a parcel of land defined by the boundaries in the deed.

"Reference dose" means an estimate of a daily exposure level for the human population, including sensitive subpopulations, that is likely to be without an appreciable risk of deleterious effects during a lifetime.

"Registration fee" means the fee paid to enroll in the Voluntary Remediation Program, based on 1.0% of the total cost of remediation at a site, not to exceed the statutory maximum.

"Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing of any contaminant into the environment.

"Remediation" means actions taken to cleanup, mitigate, correct, abate, minimize, eliminate, control and contain or prevent a release of a contaminant into the environment in order to protect human health and the environment, including actions to investigate, study or assess any actual or suspected release. Remediation may include, when appropriate and approved by the department, land use controls.

"Remediation level" means the concentration of a contaminant with applicable land use controls, that is protective of human health and the environment.

"Report" means the Voluntary Remediation Report required by 9VAC20-160-70.

"Restricted use" means any use other than residential.

"Risk" means the probability that a contaminant will cause an adverse effect in exposed humans or to the environment.

"Risk assessment" means the process used to determine the risk posed by contaminants released into the environment. Elements include identification of the contaminants present in the environmental media, assessment of exposure and exposure pathways, assessment of the toxicity of the contaminants present at the site, characterization of human health risks, and characterization of the impacts or risks to the environment.

"Site" means any property or portion thereof, as agreed to and defined by the participant and the department, which contains or may contain contaminants being addressed under this program.

"Termination" means the formal discontinuation of participation in the Voluntary Remediation Program without obtaining a certification of satisfactory completion.

"Unrestricted use" means the designation of acceptable future use for a site at which the remediation levels, based on either background or standard residential exposure factors, have been attained throughout the site in all media.

9VAC20-160-30. Eligibility criteria.

A. Candidate sites shall meet eligibility criteria as defined in this section.

B. Any persons who own, operate, have a security interest in or enter into a contract for the purchase or use of an eligible site who wish to voluntarily remediate that site may participate in the program. Any person who is an authorized agent of any of the parties identified in this subsection may participate in the program.

C. Sites are eligible for participation in the program if (i) remediation has not been clearly mandated by the United States Environmental Protection Agency, the department or a court pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (42 USC § 9601 et seq.), the Resource Conservation and Recovery Act (42 USC § 6901 et seq.), the Virginia Waste Management Act (§ 10.1-1400 et seq. of the Code of Virginia), the Virginia State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia), or other applicable statutory or common law; or (ii) jurisdiction of the statutes listed in clause (i) has been waived.

A site on which an eligible party has completed remediation of a release is potentially eligible for the program if the actions can be documented in a way which are equivalent to the requirements for prospective remediation, and provided the site meets applicable remediation levels.

Petroleum or oil releases not mandated for remediation under Articles 9 (§ 62.1-44.34:8 et seq.) and 11 (§ 62.1-44.34:14 et seq.) of the Virginia State Water Control Law may be eligible for participation in the program.

Where an applicant raises a genuine issue based on documented evidence as to the applicability of regulatory programs in subsection D of this section, the site may be eligible for the program. Such evidence may include a demonstration that:

1. It is not clear whether the release involved a waste material or a virgin material;

2. It is not clear that the release occurred after the relevant regulations became effective; or

3. It is not clear that the release occurred at a regulated unit.

D. For the purposes of this chapter, remediation has been clearly mandated if any of the following conditions exist, unless jurisdiction for such mandate has been waived:

1. Remediation of the release is the subject of a permit issued by the U.S. Environmental Protection Agency or the department, a pending or existing closure plan, a pending or existing administrative order, a pending or existing court order, a pending or existing consent order, or the site is on the National Priorities List;

2. The site at which the release occurred is subject to the Virginia Hazardous Waste Management Regulations (9VAC20-60) (VHWMR), is a permitted facility, is applying for or should have applied for a permit, is under interim status or should have applied for interim status, or was previously under interim status, and is thereby subject to requirements of the VHWMR;

3. The site at which the release occurred constitutes an open dump or unpermitted solid waste management facility under ~~Part IV (9VAC20-80-170 et seq.)~~ 9VAC20-81-45 of the ~~Virginia~~ Solid Waste Management Regulations;

4. The director determines that the release poses an imminent and substantial threat to human health or the environment; or

5. Remediation of the release is otherwise the subject of a response action required by local, state, or federal law or regulation.

E. The director may determine that a site under subdivision D 3 of this section may participate in the program provided that such participation complies with the substantive requirements of the applicable regulations.

9VAC20-170-30. Applicability.

A. This chapter applies to each owner and/or operator of a vessel transporting solid wastes or regulated medical wastes for the purposes of commercial carriage as cargo, and each owner or operator of a receiving facility. This chapter also applies to the receiving facilities and vessels transporting solid wastes or regulated medical wastes upon the navigable waters of the Commonwealth to the extent allowable under state law.

B. This chapter does not apply to a public vessel as defined under 9VAC20-170-10, the owner and operator of a public vessel, vessels transporting solid wastes or regulated medical wastes incidental to their predominant business or purposes, vessels transporting solid wastes or regulated medical wastes generated during normal operations of the vessel, solid wastes or regulated medical wastes generated during the normal operations of the vessel, and solid wastes excluded ~~pursuant to 9VAC20-80-150~~ or conditionally exempted pursuant to ~~9VAC20-80-160~~ 9VAC20-81-95 of the ~~Virginia~~ Solid Waste Management Regulations.

9VAC20-170-40. Relationship to other regulations.

A. The Solid Waste Management Regulations ~~(9VAC20-80)~~ (9VAC20-81) prescribe requirements for the solid waste management facilities in general. While a facility utilized to receive solid wastes or regulated medical wastes transported, loaded, or unloaded upon the navigable waters of the Commonwealth, to the extent allowable under state law, by a commercial transporter is a solid waste management facility, this chapter herein prescribes specific requirements, including siting, design/construction, operation, and permitting, for this type of facilities. If there is any overlapping requirement between these two regulations, whichever is more stringent shall apply.

B. The Regulated Medical Waste Management Regulations (9VAC20-120) address special needs for regulated medical waste management. A facility utilized to receive regulated medical waste transported, loaded, or unloaded upon the navigable waters of the Commonwealth, to the extent allowable under state law, by a commercial transporter is a regulated medical waste facility and it must conform to any applicable sections of the Regulated Medical Waste Management Regulations adopted by the board. If there is any overlapping requirement between these two regulations, whichever is more stringent shall apply.

C. This chapter does not exempt any receiving facility from obtaining a Virginia Water Protection Permit as required by the Virginia Water Protection Permit Program Regulation (9VAC25-210), whenever it is applicable.

VA.R. Doc. No. R11-2731; Filed June 8, 2011, 1:15 p.m.

Final Regulation

REGISTRAR'S NOTICE: The Virginia Waste Management Board is claiming an exemption from the Administrative Process Act in accordance with (i) § 2.2-4006 A 3 of the Code of Virginia, which excludes regulations that consist only of changes in style or form or corrections of technical errors and (ii) § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Virginia Waste Management Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **9VAC20-90. Solid Waste Management Permit Action Fees and Annual Fees (amending 9VAC20-90-10, 9VAC20-90-50, 9VAC20-90-65 through 9VAC20-90-115, 9VAC20-90-130; adding 9VAC20-90-113).**

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

Effective Date: August 3, 2011.

Agency Contact: Melissa 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 melissa.porterfield@deq.virginia.gov.

Summary:

This regulatory action implements Chapter 420 of the 2011 Acts of Assembly relating to annual fees for nonhazardous solid waste management facilities. For sanitary landfills, noncaptive industrial landfills, and construction and demolition debris landfills, an annual fee of $0.115 per ton of waste deposited in the facility replaces a tiered fee schedule. Incinerators and energy recovery facilities will be assessed an annual fee of $0.055 per ton of waste incinerated. The annual fees for other types of solid waste management facilities such as composting, regulated medical waste, and transfer stations are increased in accordance with Chapter 420. The annual fees will be adjusted annually for inflation based on the Consumer Price Index. The amendments also update citations that have changed as a result of Amendment 7 to the Solid Waste Management Regulations (9VAC20-81).

Part I
Definitions

9VAC20-90-10. Definitions.

Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia defines words and terms that supplement those in this chapter. The ~~Virginia~~ Solid Waste Management Regulations, ~~9VAC20-80,~~ 9VAC20-81, and the ~~Virginia~~ Regulated Medical Waste Management Regulations, 9VAC20-120, define additional words and terms that supplement those in the statute and this chapter. When the statute, as cited, and the solid waste management regulations, as cited, define a word or term differently, the definition of the statute is controlling. The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Department" means the Virginia Department of Environmental Quality.

"Director" means the director of the Department of Environmental Quality.

"Operating" means actively managing solid waste, or conducting closure or post closure activities. A facility will begin operating on the date of the approval of the certificate to operate (CTO) or the approval of the permit-by-rule (PBR) as applicable. The facility will no longer be considered operating upon certification of completion of closure activities or in the case of a disposal facility upon release from post closure responsibility.

"Permit-by-rule" means provisions of the chapter stating that a facility or activity is deemed to have a permit if it meets the requirements of the provision.

"Permitted facility" means a facility holding the written permission of the director to conduct solid waste management activities; this includes facilities operating under permit-by-rule.

9VAC20-90-50. Applicability of regulations.

A. These regulations apply to all persons operating or proposing to operate a permitted facility for the management of solid waste under the provisions of:

1. Part ~~VII (9VAC20-80-480 through 9VAC20-80-620)~~ V (9VAC20-81-400 through 9VAC20-81-600) of the ~~Virginia~~ Solid Waste Management Regulations;

2. Part X (9VAC20-120-680 through 9VAC20-120-830) of the Regulated Medical Waste Management Regulations; or

3. ~~Part V (9VAC20-101-160 through 9VAC20-101-180) of the Vegetative Waste Management and Yard Waste Composting Regulations; or~~

~~4.~~ Part V (9VAC20-85-170 through 9VAC20-85-180) of the ~~Regulation Governing Management of Coal Combustion By-Products~~ Coal Combustion Byproduct Regulations.

The fees shall be assessed in accordance with Part III (9VAC20-90-70 through 9VAC20-90-120) of this chapter.

B. When the director finds it necessary to amend or modify any permit in accordance with § 10.1-1408.1 E or § 10.1-1409 of the Code of Virginia, ~~9VAC20-80-620~~ 9VAC20-81-600 of the ~~Virginia~~ Solid Waste Management Regulations or Part X (9VAC20-120-680 through 9VAC20-120-830) of the Regulated Medical Waste Management Regulations, as applicable, the holder of that permit shall be assessed a fee in

accordance with 9VAC20-90-90 even if the director has initiated the amendment or modification action.

C. When the director finds it necessary to revoke and reissue any permit in accordance with § 10.1-1408.1 E or § 10.1-1409 of the Code of Virginia, ~~9VAC20-80-600 B 1~~ 9VAC20-81-570 B 1 of the ~~Virginia~~ Solid Waste Management Regulations, or Part X (9VAC20-120-680 through 9VAC20-120-830) of the Regulated Medical Waste Management Regulations, as applicable, the holder of that permit shall be assessed a fee in accordance with 9VAC20-90-80.

D. If the director finds it necessary either to revoke and reissue a permit in accordance with § 10.1-1408.1 E or § 10.1-1409 of the Code of Virginia, or ~~9VAC20-80-600 B 2~~ 9VAC20-81-570 B 2 of the ~~Virginia~~ Solid Waste Management Regulations, the holder of that permit shall be assessed a fee in accordance with 9VAC20-90-100.

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

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

1. Annual fees, including those that are based on annual tonnage, shall be calculated using the procedures in 9VAC20-90-113, 9VAC20-90-114, and 9VAC20-90-115.

2. For facilities engaged in multiple activities under the provisions of a single permit, an operator shall pay multiple annual fees.

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

B. Due date.

1. Submission date. The department may bill the operator for amounts due or becoming due in the immediate future. Payments are due on or before October 1 or 30 days after receipt of a bill from the department, whichever comes later, unless the operator is using the quarter payment option. Except as specified in subdivision 2 of this subsection, all annual fees are submitted on a yearly basis and are due on or before October 1 (for the preceding annual year).

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

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

C. Method of payment. Fees shall be paid by check, draft, or postal money order made payable to "Treasurer of Virginia/DEQ," and shall be sent to the Department of Environmental Quality, Receipts Control, P.O. Box 1104, Richmond, VA 23218. When the department is able to accept electronic payments, payments may be submitted electronically.

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

E. Late payment of annual fee. Interest may be charged for late payments at the underpayment rate set out by the U.S. Internal Revenue Service established pursuant to Section 6621(a)(2) of the Internal Revenue Code. This rate is prescribed in § 58.1-15 of the Code of Virginia and is calculated on a monthly basis at the applicable periodic rate. A 10% late payment fee may be charged to any delinquent (over 90 days past due) account. The Department of Environmental Quality is entitled to all remedies available under the Code of Virginia in collecting any past due amount and may recover any attorney's fees and other administrative costs incurred in pursuing and collecting any past due amount.

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

Part III
Determination of Fee Amount

9VAC20-90-70. General.

A. Each application for a new permit, each application for a modification or amendment to a permit, and each revocation and issuance of a permit is a separate action and shall be assessed a separate fee. The amount of such fees is determined on the basis of this Part III (9VAC20-90-70 through 9VAC20-90-120).

B. Right of entry, inspection and audit. Upon presentation of appropriate credentials and upon consent of the owner or operator of the facility, the director of the Virginia Department of Environmental Quality or his designee, in addition to the routine inspection of the facility provided in ~~9VAC20-80-100~~, 9VAC20-81-50 or 9VAC20-120-740 shall

have the right to enter, inspect, and audit the records of the facility consistent with § 10.1-1456 of the Code of Virginia. The director may designate rights of entry, inspection, and audit to any department personnel or contractors to the department. The owner of operator of the facility shall provide complete and timely access during business hours to all equipment, and facility records. The director shall have the right to require an audit of the facility's records related to the payment of annual fees.

C. In addition to permit action fees listed in Tables 3.1-1, 3.1-2, and 3.1-3 of 9VAC20-90-120, the applicant for a permit action shall arrange for the newspaper publication and radio broadcast and bear the cost of the publication and broadcast if required. The department shall send notification to the applicant that the publication and broadcast are required, and the notification shall include the text of the notice, dates of publication and broadcast, and the acceptable newspapers and radio stations wherein the notice may be published. The department shall also require the petitioner for a variance from any regulation to arrange for any newspaper publication and radio broadcast required under the Virginia Solid Waste Management Regulations (9VAC20-80) (9VAC20-81) or the Regulated Medical Waste Management Regulations (9VAC20-120) and to bear the cost of such publication and broadcast. The department may arrange for the newspaper publication and radio broadcast listed in this subsection and require the applicant to remit the cost of such publication and broadcast.

9VAC20-90-80. New facility permit issuance or action.

All applicants for new solid and regulated medical waste treatment, storage, and disposal facility permits are assessed an appropriate fee shown in Table 3.1-1 of 9VAC20-90-120 depending on the type of permit or permit action.

Applicants for an emergency permit are assessed a fee shown on Table 3.1-1 of 9VAC20-90-120 unless the director determines that a lesser fee is appropriate at the time the permit is issued.

(NOTE: Certain solid waste management facility permit amendments modifications are so extensive that they require issuance of new permits (see 9VAC20-80-480 C 9VAC20-81-400 C of the Virginia Solid Waste Management Regulations). Such applications will be considered to be applications for new facilities.)

9VAC20-90-90. Applications for permit actions, amendment or modification.

A. General. Facility permits issued by the director are typically based on the modular concept to assure completeness and consistency of the documents. Each facility permit may consist of several modules dealing with the requirements addressing separate topics pertinent to the specific facility. The modules used in the solid and regulated medical waste program are:

1. The general permit conditions module (Module I) that contains the general conditions required for all solid or regulated medical waste facility permits and includes documents to be submitted prior to operation, documents that must be maintained at the facility, and a compliance schedule, if any.

2. The general facility requirements module (Module II) that contains the listing of wastes that the facility may accept or a list of wastes prohibited from acceptance, an analysis plan, security and site access information, inspection requirements, personnel training requirements, special standards based on particular location, a preparedness and prevention plan, a contingency plan, closure and post-closure cost estimates, and facility-specific financial assurance requirements.

3. The separate facility modules, one for each of the different type of facility provided for in Parts V III and VI IV of the Virginia Solid Waste Management Regulations, containing design requirements (e.g., liners, leachate management systems, aeration systems, wastewater collection systems), specific operating requirements (e.g., compaction and cover requirements, equipment, monitoring), and recordkeeping requirements. The following modules have been developed:

a. Module III—Sanitary landfills;

b. Module IV—Construction/demolition/debris landfill;

c. Module V—Industrial landfill;

d. Module VI—Compost facility;

e. Module VII—Transfer station;

f. Module VIII—Materials recovery facility; and

g. Module IX—Energy recovery and incineration facility.

4. All gas management plans submitted for review (Module III, IV, or V) will be assessed a fee as listed in Table 3.1-2 of 9VAC20-90-120.

5. The groundwater monitoring modules contain requirements for well location, installation, and construction, listing of monitoring parameters and constituents, sampling and analysis procedures, statistical procedures, data evaluation, recordkeeping and reporting, and special requirements when significant increases occur in monitoring parameters. Module X is designed specifically for Phase I or detection monitoring and Module XI for Phase II or assessment monitoring. If groundwater protection standards are being established for facilities without Modules X and XI, then both Modules X and XI will be issued for the major modification fee. However, for facilities with Module X already included in their permit, the major modification fee will be assessed to add Module XI.

6. The closure module (Module XII), included in all permits, contains requirements for actions during the active life of the facility (updating plan), during the closure process, and after the closure has been performed. Facilities required to submit a closure plan in accordance with §§ 10.1-1410.1 and 10.1-1410.2 A 1 of the Code of Virginia will be assessed a fee for Module XII as listed in Table 3.1-2 of 9VAC20-90-120.

7. The post-closure module (Module XIII), included in solid waste disposal facility permits, contains requirements during the post-closure period and for periodic updating of the post-closure plan. Facilities required to submit a post-closure plan in accordance with § 10.1-1410.2 of the Code of Virginia will be assessed a fee for Module XIII as listed in Table 3.1-2 of 9VAC20-90-120.

8. The schedule for compliance for corrective action (Module XIV) is used when facility groundwater monitoring results indicate groundwater protection standards have been statistically exceeded.

9. The leachate handling module (Module XV), included in solid waste disposal facility permits, contains requirements for storage, treatment and disposal of leachate generated by the facility.

10. The regulated medical waste storage module (Module XVI) and regulated medical waste treatment module (Module XVII) have been developed for facilities storing and/or treating regulated medical waste.

B. Applicants for a modification or amendment of an existing permit will be assessed a fee associated with only those modules that will require changes. In situations where the modular concept is not employed (for example, changes incorporated directly into a nonmodular permit), fees will be assessed as appropriate for the requirements stipulated for modules in subsection A of this section had they been used.

C. Applicants for a modification or amendment or subject to revocation and reissuance of an existing permit will be assessed a separate public participation fee whenever the modification or amendment requires a public hearing.

D. The fee schedules for major permit actions, amendments, or modifications are shown in Table 3.1-2 of 9VAC20-90-120.

E. In no case will the fee for a modification, amendment or revocation and reissuance of a permit be higher than that for a new facility of the same type.

9VAC20-90-100. Minor actions, amendments or modifications.

Applicants for minor modifications and minor permit amendments under the provisions of ~~9VAC20-80-620 F~~ 9VAC20-81-600 F 2 shall not be assessed a permit modification fee.

9VAC20-90-110. Review of variance requests.

Applicants requesting variances from the ~~Virginia~~ Solid Waste Management Regulations ~~(9VAC20-80)~~ (9VAC20-81), the Regulated Medical Waste Management Regulations (9VAC20-120), or the ~~Regulation Governing Management of Coal Combustion By Products~~ Coal Combustion Byproduct Regulations (9VAC20-85) will be assessed a fee as shown in Table 3.1-3 of 9VAC20-90-120. All variance requests are subject to base fees. Additional fees are listed for reviews of specific types of variance requests and are to be submitted in addition to base fees. ~~For example, a variance request for an alternate liner design would require submission of the base fee in addition to the fee associated with the review of the alternate liner system design.~~ Variance requests are not subject to public participation fees listed in Table 3.1-2 of 9VAC20-90-120.

9VAC20-90-113. Annual fee calculation for incinerators and energy recovery facilities.

A. General. All persons operating an incinerator or energy recovery facility that is permitted under the regulations outlined in 9VAC20-90-50 shall submit annual fees according to the procedures provided in 9VAC20-90-65. Annual fees shall be calculated using the procedures provided in subsection B of this section. Fees shall be rounded to the nearest dollar. The 2010 base fee rate is $0.055 per ton.

B. Fee calculation. Annual tonnage will be determined from the total amount of waste reported as having been incinerated on Form DEQ 50-25 for the preceding year pursuant to the Waste Information Assessment Program (9VAC20-81-80). Annual fees shall be calculated by multiplying the number of tons of waste incinerated by the fee rate set forth in subsection A of this section adjusted annually by the change in the Consumer Price Index. The Consumer Price Index is the Consumer Price Index for all-urban consumers for the 12-month period ending on April 30 of the calendar year preceding the year the annual 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.

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

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

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

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

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

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

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

A. General. All persons operating a sanitary landfill, noncaptive industrial landfill, or a construction and demolition debris landfill permitted under the regulations outlined in 9VAC20-90-50 shall submit annual fees according to the procedures provided in 9VAC20-90-65. Annual fees shall be calculated using the procedures provided in subsection B of this section. Fees shall be rounded to the nearest dollar. The 2010 base fee rate is $0.115 per ton.

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

~~$$F = B \times C$$~~

~~$$C = 1 + \Delta CPI$$~~

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

~~where:~~

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

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

~~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).~~

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

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

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

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

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

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

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

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

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

B. Fee calculation. Annual tonnage will be determined from the total amount of waste reported as having been landfilled on Form DEQ 50-25 for the preceding year pursuant to the Waste Information Assessment Program (9VAC20-81-80). Annual fees shall be calculated by multiplying the tons of waste landfilled (excluding any ash landfilled that was generated by incinerators and energy recovery facilities located in Virginia previously assessed a fee under 9VAC20-90-113) by the fee rate set forth in subsection A of this section adjusted annually by the change in the Consumer Price Index. The Consumer Price Index is the Consumer Price Index values for all-urban consumers for the 12-month period ending on April 30 of the calendar year preceding the year the annual 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. Landfills receiving ash generated by incinerators and energy recovery facilities located in Virginia previously assessed a fee under 9VAC20-90-113 shall report to the board the amount of ash received from individual facilities on the Solid Waste Information Reporting Table, Form DEQ 50-25. The tonnage of ash identified as being generated by incinerators and energy recovery facilities previously assessed a fee under 9VAC20-90-113 shall be exempted from the annual fee assessed for sanitary landfills, construction and demolition debris landfills, and noncaptive industrial landfills.

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

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

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

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

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

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

1. If the landfill received waste during the previous calendar year, the annual fee will be based on the amount of waste landfilled for the preceding year pursuant to the Waste Information Assessment Program (9VAC20-81-80); or

2. If the landfill did not receive waste during the previous calendar year and began post-closure care during the

previous calendar year as provided in 9VAC20-81-170, the landfill shall be subject to the post-closure care annual fee.

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

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

A. General. All persons operating a ~~sanitary landfill, an incinerator, or another type of~~ composting facility ~~other than a noncaptive industrial landfill or construction and demolition debris landfill~~, regulated medical waste facility, materials recovery facility, transfer station, landfill in post-closure care, or active captive industrial landfill that is permitted under the regulations outlined in 9VAC20-90-50 shall submit annual fees according to the procedures provided in 9VAC20-90-65. Annual fees shall be calculated using the procedures provided in subsection B of this section. Fees shall be rounded to the nearest dollar. The 2010 base fee rates are provided in Table 4.1 of 9VAC20-90-130. Active captive industrial landfills shall submit Form DEQ 50-25 to the department to indicate if the landfill is a small landfill or large landfill based on the total amount of waste landfilled during the preceding calendar year.

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

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

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

~~$C = 1 + \Delta CPI$~~

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

~~where:~~

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

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

~~A = the direct cost adjustment factor.~~

~~P = 79~~

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

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

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

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

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

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

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

~~3. Values for B (base fee rate) for other facilities are based only on the facility type. For example, the base fee rate in~~

~~Table 4.1 of 9VAC20-90-130 for a composting facility is $500.~~

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

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

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

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

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

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

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

B. Fee calculation. Annual fees shall be the fee rate set forth in subsection A of this section adjusted annually by the change in the Consumer Price Index. The Consumer Price Index is the Consumer Price Index for all-urban consumers for the 12-month period ending on April 30 of the calendar year preceding the year the annual 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.

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

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

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

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

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

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

1. If the landfill received waste during the previous calendar year, the annual fee will be based on the amount of waste landfilled for the preceding year pursuant to the Waste Information Assessment Program (9VAC20-81-80); or

2. If the landfill did not receive waste during the previous calendar year and began post-closure care during the previous calendar year as provided in 9VAC20-81-170, the landfill shall be subject to the post-closure care annual fee.

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

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

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

Category of Facility/Activity	Base Fee Rate ~~(B)~~
1. Sanitary landfills, noncaptive industrial landfills, and construction and demolition landfills are assigned a ~~two part~~ base fee rate ~~(B) based on their annual tonnage~~ as follows:	
~~Base Tonnage to Maximum Tonnage~~	~~Base Tonnage Fee Rate~~ / ~~Additional Fee Per Ton Over Base Tonnage~~
~~Up to 10,000~~	~~$1,000~~ / ~~none~~
~~10,001 to 100,000~~	~~$1,000~~ / ~~$0.09~~
~~100,001 to 250,000~~	~~$10,000~~ / ~~$0.09~~
~~250,001 to 500,000~~	~~$23,500~~ / ~~$0.075~~
~~500,001 to 1,000,000~~	~~$42,250~~ / ~~$0.06~~
~~1,000,001 to 1,500,000~~	~~$72,250~~ / ~~$0.05~~
~~Over 1,500,000~~	~~$97,250~~ / ~~$0.04~~
Sanitary landfill	$0.115 per ton of waste landfilled
Construction, demolition, debris landfill	$0.115 per ton of waste landfilled
Noncaptive industrial landfill	$0.115 per ton of waste landfilled
2. Incinerators and energy recovery facilities are assigned a base fee rate based upon their annual tonnage as follows:	
~~Annual Tonnage~~	Base Fee Rate ~~(B)~~
~~10,000 or less~~	~~$2,000~~
~~10,001 to 50,000~~	~~$3,000~~
~~50,001 to 100,000~~	~~$4,000~~
~~100,001 or more~~	~~$5,000~~
Incinerators	$0.055 per ton of waste incinerated
Energy recovery facilities	$0.055 per ton of waste incinerated
3. Other types of facilities are assigned a base fee rate as follows:	
Type of Facility/Activity	Base Fee Rate ~~(B)~~
Composting	~~$500~~ $1,200
Regulated medical waste	~~$1,000~~ $2,500
Materials recovery	~~$2,000~~ $4,500
Transfer station	~~$2,000~~ $5,500
Facilities in post-closure care	~~$500~~ $1,000
4. Active captive industrial landfills are assigned a base fee rate as follows:	
Type of Facility/Activity	Base Fee Rate
Small landfills (landfilling less than 100,000 tons per year)	$2,500
Large landfills (landfilling 100,000 tons or more per year)	$7,500

NOTICE: The following form used in administering the regulation was filed by the agency and is published following the listing. Online users of this issue of the Virginia Register of Regulations may click on the name to access the form. The form is also available through the agency contact or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS (9VAC20-90)

Solid Waste Information and Assessment Program - Reporting Table, DEQ Form 50-25 (rev. 10/10).

SOLID WASTE INFORMATION AND ASSESSMENT PROGRAM REPORTING TABLE - FORM DEQ 50-25

1	Facility Name				
2	Permit Number	3 Date Submitted to DEQ		4 Annual Reporting Period	
5	Preparer's First Name	Middle Initial	Last Name		6 Telephone
7	Preparer's E-mail Address			An email address will be used to contact you in case of questions about this form submission.	
8	Has there been a change to the Annual Fee Billing Contact, Address or Telephone Number? □ **Yes** □ **No**				
	Contact First Name	Last Name		Contact Phone	
	Address				
	City	State		Zip Code	
9A	Remaining Permitted Capacity	Cubic Yards	If a facility's permitted capacity is reported in tons, please note this below in General Comments. DEQ will apply conversion factors based on the type of waste in order to calculate the volume and the number of years of permitted capacity available in the state.		
9B	Expected Remaining Permitted Life	Years			
10	**Does facility have active scales?** □ **Yes** or □ **No** **Note**: facilities with no active scales must enter the total amount landfilled in cubic yards.			Total amount landfilled in cubic yards	
11	Originating Jurisdiction		11A Statement of Economic Benefits submitted? □**Yes** or □ **No**		

Waste amounts measured in : □ Tons or □ Cubic Yards

	Waste Type	Total Amount of Waste Received (a)	Recycled On-Site (b)	Composted On-site (c)	Landfilled On-site (d)	Incinerated On-Site (e)	Sent Off-Site to be: (f)		Stored On-Site:(g)		Other (h)	
							Recycled	Treated, Stored, Disposed	Beginning of Reporting Period	End of Reporting Period	Mulched	Other Than Mulched
12	Municipal Solid Waste											
13	Construction/ Demolition/Debris											
14	Industrial Waste											
15	Regulated Medical Waste											
16	Vegetative/Yard Waste											
17	Incineration Ash											
18	Sludge											
19	Tires											
20	White Goods											
21	Friable Asbestos											
22	Petroleum Contaminated Soil											
23	Other Wastes (specify)											
24	Total											

General Comments

Complete a separate form for each jurisdiction.
See the instructions for completing Form DEQ 50-25. A separate form is provided for the optional Statement of Economic Benefits.

Revised 10/27/2010

VA.R. Doc. No. R11-2766; Filed June 8, 2011, 12:55 p.m.

TITLE 13. HOUSING

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

Final Regulation

REGISTRAR'S NOTICE: The Virginia Housing Development Authority is exempt from the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) pursuant to § 2.2-4002 A 4; however, under the provisions of § 2.2-4031, it is required to publish all proposed and final regulations.

Title of Regulation: **13VAC10-10. Rules and Regulations - General Provisions for Programs of the Virginia Housing Development Authority (amending 13VAC10-10-80).**

Statutory Authority: § 36-55.30:3 of the Code of Virginia.

Effective Date: July 1, 2011.

Agency Contact: J. Judson McKellar, Jr., General Counsel, Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, VA 23220, telephone (804) 343-5540, or email judson.mckellar@vhda.com.

Summary:

Because of recent federal regulatory changes, the Virginia Housing Development Authority (VHDA) is restructuring its single family mortgage loan program as a mortgage purchase program whereby the loans will be originated in the name of the mortgage lenders, will be funded at closing by such lenders, and will be purchased by the authority after closing. The amendments make the requirements in the current regulations for reinvestment of loan sales proceeds and for the prudent investment certification inapplicable in the case of a mortgage loan that, when made, is to be purchased by VHDA. The amendments conform the current regulations to the amendments to § 36-55.35 of the Code of Virginia enacted in the 2011 Session of the General Assembly. The amendments also expressly recognize that the authority under the current regulations to purchase mortgage loans includes the purchase of single family mortgage loans pursuant to the regulations in 13VAC10-40.

13VAC10-10-80. Purchase of mortgage loans.

A. The authority may from time to time, pursuant and subject to its rules and regulations, purchase mortgage loans from mortgage lenders, including, without limitation, the purchase of single family mortgage loans pursuant to 13VAC10-40. In furtherance thereof, the executive director may request mortgage lenders to submit offers to sell mortgage loans to the authority in such manner, within such time period and subject to such terms and conditions as he shall specify in such request. The executive director may take such action as he shall deem necessary or appropriate to solicit offers to sell mortgage loans, including mailing of the request to mortgage lenders, advertising in newspapers or other publications and any other methods of public announcement which he may select as appropriate under the circumstances. The executive director may also consider and accept offers for sale of individual mortgage loans submitted from time to time to the authority without any solicitation therefor by the authority.

B. The authority shall require as a condition of the purchase of any mortgage loans from a mortgage lender pursuant to this section that such mortgage lender within 180 days from the receipt of proceeds of such purchase shall enter into written commitments to make, and shall thereafter proceed as promptly as practical to make and disburse from such proceeds, residential mortgage loans in the Commonwealth of Virginia having a stated maturity of not less than 20 years from the date thereof in an aggregate principal amount equal to the amount of such proceeds. The ~~foregoing~~ requirement in ~~this~~ subsection B of this section shall not apply to the purchase by the authority of a mortgage loan that, when made by the mortgage lender, is to be purchased by the authority or that is held, insured, or assisted by the federal government or any agency or instrumentality thereof.

C. At or before the purchase of any mortgage loan pursuant to this section, the mortgage lender shall certify to the authority that the mortgage loan would in all respects be a prudent investment and that the proceeds of the purchase of the mortgage loan shall be invested as provided in subsection B of this section or invested in short-term obligations pending such investment; provided, however, that such certification shall not be required in the case of the purchase by the authority of a mortgage loan that, when made by the mortgage lender, is to be purchased by the authority or that is held, insured, or assisted by the federal government or any agency or instrumentality thereof.

D. The purchase price for any mortgage loan to be purchased by the authority pursuant to this section shall be established or determined in accordance with subsection B of § 36-55.35 of the Code of Virginia.

VA.R. Doc. No. R11-2757; Filed June 8, 2011, 3:46 p.m.

TITLE 14. INSURANCE

STATE CORPORATION COMMISSION

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.

Proposed Regulation

Title of Regulation: **14VAC5-211. Rules Governing Health Maintenance Organizations (amending 14VAC5-211-10, 14VAC5-211-20, 14VAC5-211-70, 14VAC5-211-90, 14VAC5-211-100, 14VAC5-211-140, 14VAC5-211-150, 14VAC5-211-180, 14VAC5-211-210, 14VAC5-211-220, 14VAC5-211-230).**

Statutory Authority: §§ 12.1-13 and 38.2-223 of the Code of Virginia.

Public Hearing Information: A public hearing will be scheduled upon request.

Public Comment Deadline: July 15, 2011.

Agency Contact: Althelia P. Battle, Deputy Commissioner, Life and Health, Bureau of Insurance, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9074, FAX (804) 371-9944, or email al.battle@scc.virginia.gov.

Summary:

The proposed amendments are necessary to comply with new and amended statutes in Chapter 882 of the 2011 Virginia Acts of Assembly. Specifically, the amendments include:

1. Removing dated language in the applicability and scope;

2. Adding and amending definitions to conform to the requirements of Article 6 of Chapter 34 of Title 38.2 of the Code of Virginia;

3. Creating an exception for the application of copayments and deductibles to preventive services;

4. Conforming the complaint and appeals procedures to recognize new requirements in Chapter 5 of Title 32.1 and Chapter 35.1 of Title 38.2 of the Code of Virginia;

5. Revising disclosure requirements to comply with new requirements; and

6. Adding provisions for rescission of coverage.

AT RICHMOND, JUNE 10, 2011

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. INS-2011-00119

Ex Parte: In the matter of Amending Rules
Governing Health Maintenance Organizations

ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia provides that the State Corporation Commission ("Commission") shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction, and § 38.2-223 of the Code of Virginia provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of Title 38.2 of the Code of Virginia.

The rules and regulations issued by the Commission pursuant to § 38.2-223 of the Code of Virginia are set forth in Title 14 of the Virginia Administrative Code.

The Bureau of Insurance ("Bureau") has submitted to the Commission a proposal to amend certain sections in Chapter 211 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Health Maintenance Organizations," specifically set forth at 14 VAC 5-211-10, 14 VAC 5-211-20, 14 VAC 5-211-70, 14 VAC 5-211-90, 14 VAC 5-211-100, 14 VAC 5-211-140, 14 VAC 5-211-150, 14 VAC 5-211-180, and 14 VAC 5-211-210 through 14 VAC 5-211-230.

The amendments to these sections of Chapter 211 are necessary to comply with the provisions of Chapter 882 of the 2011 Virginia Acts of Assembly, which in part establishes Article 6 of Chapter 34 of Title 38.2 of the Code of Virginia. These amendments clarify and implement the provisions of Chapter 882 which becomes effective on July 1, 2011.

The Commission is of the opinion that sections 10, 20, 70, 90, 100, 140, 150, 180, and 210 through 230 of Chapter 211 of Title 14 of the Virginia Administrative Code should be amended and considered for adoption.

Accordingly, IT IS ORDERED THAT:

(1) The proposal that certain sections in Chapter 211 of Title 14 of the Virginia Administrative Code be amended at 14 VAC 5-211-10, 14 VAC 5-211-20, 14 VAC 5-211-70, 14 VAC 5-211-90, 14 VAC 5-211-100, 14 VAC 5-211-140, 14 VAC 5-211-150, 14 VAC 5-211-180, and 14 VAC 5-211-210 through 14 VAC 5-211-230, is attached hereto and made a part hereof.

(2) All interested persons who desire to comment in support of or in opposition to, or request a hearing to oppose amending sections 10, 20, 70, 90, 100, 140, 150, 180, and 210 through 230 of Chapter 211 of Title 14 of the Virginia Administrative Code shall file such comments or hearing request on or before July 15, 2011, with the Clerk of the Commission, Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, and shall refer to Case No. INS-2011-00119. Interested persons desiring to submit comments electronically may do so by following the instructions at the Commission's website: http://www.scc.virginia.gov/caseinfo.htm.

(3) If no written request for a hearing on the proposed amendments is filed on or before July 15, 2011, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposal, may amend sections 10, 20, 70, 90, 100, 140, 150, 180, and 210 through 230 of Chapter 211 of Title 14 of the Virginia Administrative Code as proposed by the Bureau of Insurance.

(4) AN ATTESTED COPY hereof, together with a copy of the proposal to amend rules, shall be sent by the Clerk of the Commission to the Bureau of Insurance in care of Deputy Commissioner Althelia P. Battle, who forthwith shall give further notice of the proposal to amend rules by mailing a copy of this Order, together with the proposal, to all health maintenance organizations licensed by the Commission to conduct the business of a health maintenance organization in the Commonwealth of Virginia, as well as all interested parties.

(5) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, together with the proposal to amend rules, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(6) The Commission's Division of Information Resources shall make available this Order and the attached proposed amendments to the rules on the Commission's website, http://www.scc.virginia.gov/case.

(7) The Bureau of Insurance shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of paragraph (4) above.

Part I
Applicability and Definitions

14VAC5-211-10. Applicability and scope.

A. This chapter sets forth rules to carry out the provisions of Chapter 43 (§ 38.2-4300 et seq.) of Title 38.2 of the Code of Virginia, and applies to all health maintenance organizations and to all health maintenance organization contracts and evidences of coverage delivered or issued for delivery by a health maintenance organization established or operating in this Commonwealth ~~on and after January 1, 2006~~.

~~B. A new contract or evidence of coverage issued or put in force on or after January 1, 2006, shall comply with this chapter.~~

~~C. A contract or evidence of coverage reissued, renewed, or extended in this Commonwealth on or after January 1, 2006, shall comply with this chapter. A contract or evidence of coverage written before January 1, 2006, shall be deemed to be reissued, renewed, or extended on the date it allows the health maintenance organization to change its terms or adjust the premiums charged.~~

~~D.~~ B. In the event of conflict between the provisions of this chapter and the provisions of any other rules issued by the commission, the provisions of this chapter shall be controlling as to health maintenance organizations.

14VAC5-211-20. Definitions.

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

"Basic health care services" means in-area and out-of-area emergency services, inpatient hospital and physician care, outpatient medical services, laboratory and radiologic services, and preventive health services as further described in 14VAC5-211-160. "Basic health care services" also means limited treatment of mental illness and substance abuse in accordance with the minimum standards as may be prescribed by the commission, which shall not exceed the level of services mandated for insurance carriers pursuant to Chapter 34 (§ 38.2-3400 et seq.) of Title 38.2 of the Code of Virginia. In the case of a health maintenance organization that has contracted with this Commonwealth to furnish basic health care services to recipients of medical assistance under Title XIX of the Social Security Act (42 USC § 1396 et seq.) pursuant to § 38.2-4320 of the Code of Virginia, the basic health care services to be provided by the health maintenance organization to program recipients may differ from the basic health care services required by this chapter to the extent necessary to meet the benefit standards prescribed by the state plan for medical assistance services authorized pursuant to § 32.1-325 of the Code of Virginia.

"Coinsurance" means a copayment, expressed as a percentage of the allowable charge for a specific health care service.

"Commission" means the State Corporation Commission.

"Conversion contract" means an individual contract that the health maintenance organization issues after a conversion option has been exercised.

"Copayment" means an amount an enrollee is required to pay in order to receive a specific health care service.

"Deductible" means an amount an enrollee is required to pay out of pocket before the health care plan begins to pay the costs associated with health care services.

"Emergency services" means those health care services that are rendered by affiliated or nonaffiliated providers after the sudden onset of a medical condition that manifests itself by symptoms of sufficient severity, including severe pain, that the absence of immediate medical attention could reasonably be expected by a prudent layperson who possesses an average knowledge of health and medicine to result in (i) serious jeopardy to the mental or physical health of the individual, (ii) danger of serious impairment of the individual's bodily functions, (iii) serious dysfunction of any of the individual's

bodily organs, or (iv) in the case of a pregnant woman, serious jeopardy to the health of the fetus. Emergency services provided within the plan's service area shall include covered health care services from nonaffiliated providers only when delay in receiving care from a provider affiliated with the health maintenance organization could reasonably be expected to cause the enrollee's condition to worsen if left unattended.

"Enrollee" or "member" means an individual who is enrolled in a health care plan.

"Evidence of coverage" means a certificate, individual or group agreement or contract, or identification card issued in conjunction with the certificate, agreement or contract, issued to a subscriber setting out the coverage and other rights to which an enrollee is entitled.

"Excess insurance" or "stop loss insurance" means insurance issued to a health maintenance organization by an insurer licensed in this Commonwealth, on a form approved by the commission, or a risk assumption transaction acceptable to the commission, providing indemnity or reimbursement against the cost of health care services provided by the health maintenance organization.

"Group contract" means a contract for health care services issued by a health maintenance organization, which by its terms limits the eligibility of subscribers and enrollees to a specified group.

"Health care plan" means an arrangement in which a person undertakes to provide, arrange for, pay for, or reimburse a part of the cost of health care services. A significant part of the arrangement shall consist of arranging for or providing health care services, including emergency services and services rendered by nonparticipating referral providers, as distinguished from mere indemnification against the cost of the services, on a prepaid basis. For purposes of this chapter, a significant part shall mean at least 90% of total costs of health care services.

"Health care professional" means a physician or other health care practitioner licensed, accredited, or certified to perform specified health care services consistent with state law.

"Health care services" means the furnishing of services to an individual for the purpose of preventing, alleviating, curing, or healing human illness, injury or physical disability.

"Health maintenance organization" means a person who undertakes to provide or arrange for one or more health care plans. A health maintenance organization is deemed to be offering one or more managed care health insurance plans and is subject to Chapter 58 (§ 38.2-5800 et seq.) of Title 38.2 of the Code of Virginia.

"Limited health care services" means dental care services, vision care services, mental health services, substance abuse services, pharmaceutical services, and other services as may be determined by the commission to be limited health care services. Limited health care services shall not include hospital, medical, surgical or emergency services unless the services are provided incidental to the limited health care services set forth in the preceding sentence.

"Medical necessity" or "medically necessary" means appropriate and necessary health care services that are rendered for a condition which, according to generally accepted principles of good medical practice, requires the diagnosis or direct care and treatment of an illness, injury, or pregnancy-related condition, and are not provided only as a convenience.

"NAIC" means the National Association of Insurance Commissioners.

"Net worth" or "capital and surplus" means the excess of total admitted assets over the total liabilities of the health maintenance organization, provided that surplus notes shall be reported and accounted for in accordance with § 38.2-4300 of the Code of Virginia.

"Nonparticipating referral provider" means a provider who is not a participating provider but with whom a health maintenance organization has arranged, through referral by its participating providers, to provide health care services to enrollees. Payment or reimbursement by a health maintenance organization for health care services provided by nonparticipating referral providers may exceed 5.0% of total costs of health care services, only to the extent that any excess payment or reimbursement over 5.0% shall be combined with the costs for services that represent mere indemnification, with the combined amount subject to the combination of limitations set forth in this definition and in this section's definition of health care plan.

"Out-of-area services" means the health care services that the health maintenance organization covers when its members are outside the geographical limits of the health maintenance organization's service area.

"Participating provider" or "affiliated provider" means a provider who has agreed to provide health care services to enrollees and to hold those enrollees harmless from payment with an expectation of receiving payment, other than copayments or deductibles, directly or indirectly from the health maintenance organization.

"Primary care ~~physician~~ health care professional" means a ~~physician~~ health care professional who provides initial and primary care to enrollees; who supervises, coordinates, and maintains continuity of patient care; and who may initiate referrals for specialist care, if referrals are a requirement of the enrollee's health care coverage.

"Provider" or "health care provider" means a physician, hospital, or other person that is licensed or otherwise authorized to furnish health care services.

"Rescission" means a cancellation or discontinuance of coverage under a health care plan that has a retroactive effect. "Rescission" does not include: (i) a cancellation or discontinuance of coverage under a health care plan if the cancellation or discontinuance of coverage has only a prospective effect, or the cancellation or discontinuance of coverage is effective retroactively to the extent it is attributable to a failure to timely pay required premiums or contributions towards the cost of coverage; or (ii) a cancellation or discontinuance of coverage when the health care plan covers active employees and, if applicable, dependents and those covered under continuation coverage provisions, if the employee pays no premiums for coverage after termination of employment and the cancellation or discontinuance of coverage is effective retroactively back to the date of termination of employment due to a delay in administrative recordkeeping.

"Service area" means a clearly defined geographic area in which the health maintenance organization has directly or indirectly arranged for the provision of health care services to be generally available and readily accessible to enrollees.

"Specialist" means a licensed health care provider to whom an enrollee may be referred by his primary care ~~physician~~ health care professional and who is certified or eligible for certification by the appropriate specialty board, where applicable, to provide health care services in a specialized area of health care.

"Subscriber" means a contract holder, an individual enrollee, or the enrollee in an enrolled family who is responsible for payment to the health maintenance organization or on whose behalf the payment is made.

"Supplemental health care services" means health care services that may be offered by a health maintenance organization in addition to the required basic health care services.

"Surplus notes" means those instruments that meet the requirements of 14VAC5-211-40.

14VAC5-211-70. Conversion of coverage.

A. A health care plan shall offer to its group contract holders, for an enrollee whose eligibility for coverage terminates under the group contract, the options to convert to an individual policy or continue coverage as set forth in this section. The group contract holder shall select one of the following options:

1. Conversion of coverage within 31 days after issuance of the written notice required in subsection C of this section, but in no event beyond the 60-day period following the date of termination of the enrollee's coverage under the group contract, to an individual contract that provides benefits which, at a minimum, meet the requirements of basic or limited health care services as applicable, in accordance with this chapter. Coverage shall not be refused on the basis that the enrollee no longer resides or is employed in the health maintenance organization's service area. The conversion contract shall cover the enrollee covered under the group contract as of the date of termination of the enrollee's coverage under the group contract. Coverage shall be provided without additional evidence of insurability, and no preexisting condition limitations or exclusions may be imposed other than those remaining unexpired under the contract from which conversion is exercised. A probationary or waiting period set forth in the conversion contract shall be deemed to commence on the effective date of coverage under the original contract.

2. Continuation of coverage under the existing group contract for a period of at least 12 months immediately following the date of termination of the enrollee's eligibility for coverage under the group contract. Continuation coverage shall not be applicable if the group contract holder is required by federal law to provide for continuation of coverage under its group health plan pursuant to the Consolidated Omnibus Budget Reconciliation Act (COBRA) (P.L. 99-272). Coverage shall be provided without additional evidence of insurability subject to the following requirements:

a. The application and payment for the extended coverage is made to the group contract holder within 31 days after issuance of the written notice required in subsection C of this section, but in no event beyond the 60-day period following the date of the termination of the person's eligibility;

b. Each premium for the extended coverage is timely paid to the group contract holder on a monthly basis during the 12-month period; and

c. The premium for continuing the group coverage shall be at the health care plan's current rate applicable to the group contract plus any applicable administrative fee not to exceed 2.0% of the current rate.

B. A conversion contract or continuation of coverage shall not be required to be made available when:

1. The enrollee is covered by or is eligible for benefits under Title XVIII of the Social Security Act (42 USC § 1395 et seq.) known as Medicare;

2. The enrollee is covered by or is eligible for substantially the same level of hospital, medical, and surgical benefits under state or federal law;

3. The enrollee is covered by substantially the same level of benefits under any policy, contract, or plan for individuals in a group;

4. The enrollee has not been continuously covered during the three-month period immediately preceding the enrollee's termination of coverage;

5. The enrollee was terminated by the health care plan for any of the reasons stated in 14VAC5-211-230 A 1, 2, ~~3,~~ or ~~6~~ 5, or coverage was rescinded; or

6. The enrollee was terminated from a plan administered by the Department of Medical Assistance Services that provided benefits pursuant to Title XIX or XXI of the Social Security Act (42 USC § 1396 et seq. or § 1397 aa et seq.).

C. The group contract holder shall provide each enrollee or other person covered under the group contract written notice of the availability of the option chosen and the procedures and timeframes for obtaining continuation or conversion of the group contract. The notice shall be provided within 14 days of the group contract holder's knowledge of the enrollee's or other covered person's loss of eligibility under the group contract.

14VAC5-211-90. Copayments.

A. ~~A~~ Except for preventive services required by § 38.2-3442 of the Code of Virginia, a health maintenance organization may require a copayment of enrollees as a condition for the receipt of a specific health care service. A copayment shall be shown in the evidence of coverage as either a specified dollar amount or as coinsurance.

B. If the health maintenance organization has an established copayment maximum, it shall keep accurate records of each enrollee's copayment expenses and notify the enrollee when his copayment maximum is reached. The notification shall be given no later than 30 days after the health maintenance organization has processed sufficient claims to determine that the copayment maximum is reached. The health maintenance organization shall not charge additional copayments for the remainder of the contract or calendar year, as appropriate. The health maintenance organization shall also promptly refund to the enrollee all copayments charged after the copayment maximum is reached. Any maximum copayment amount shall be shown in the evidence of coverage as a specified dollar amount, and the evidence of coverage shall clearly state the health maintenance organization's procedure for meeting the requirements of this subsection.

C. The provisions of this subsection shall not apply to any Family Access to Medical Insurance Security (FAMIS) Plan (i) authorized by the United States Centers for Medicare and Medicaid Services pursuant to Title XXI of the Social Security Act (42 USC § 1397aa et seq.) and the state plan established pursuant to Chapter 13 (§ 32.1-351 et seq.) of Title 32.1 of the Code of Virginia and (ii) underwritten by a health maintenance organization.

14VAC5-211-100. Deductibles.

~~A~~ Except for preventive services required by § 38.2-3442 of the Code of Virginia, a health maintenance organization may require an enrollee to pay an annual deductible in accordance with § 38.2-4303 A 8 of the Code of Virginia.

14VAC5-211-140. Freedom of choice.

A. At the time of enrollment an enrollee shall have the right to select a primary care ~~physician~~ health care professional from among the health maintenance organization's affiliated primary care ~~physicians~~ health care professionals, subject to availability and in accordance with § 38.2-3443 of the Code of Virginia.

B. An enrollee who is dissatisfied with his primary care ~~physician~~ health care professional shall have the right to select another primary care ~~physician~~ health care professional from among the health maintenance organization's affiliated primary care ~~physicians~~ health care professionals, subject to availability. The health maintenance organization may impose a reasonable waiting period for this transfer.

14VAC5-211-150. ~~Grievance~~ Complaint and appeals procedure.

A. A health maintenance organization shall establish and maintain a ~~grievance or~~ complaint system to provide reasonable procedures for the prompt and effective resolution of written complaints in accordance with Chapter 5 (§ 32.1-137.1 et seq.) of Title 32.1 and ~~Chapters~~ Chapter 58 (§ 38.2-5800 et seq.) ~~and 59 (§ 38.2-5900 et seq.)~~ of Title 38.2 of the Code of Virginia. In addition, a health maintenance organization shall establish and maintain an internal appeals procedure in accordance with Chapter 5 (§ 32.1-137.1 et seq.) of Title 32.1 and Chapter 35.1 (§ 38.2-3556 et seq.) of Title 38.2 of the Code of Virginia and applicable regulations. A record of all written complaints shall be maintained for the period specified in § 38.2-511 of the Code of Virginia. A record of all requests for internal appeal shall be maintained in accordance with the provisions of § 32.1-137.16 of the Code of Virginia.

B. Pending the resolution of a written complaint filed by a subscriber or enrollee, coverage may not be terminated for the subscriber or enrollee for any reason that is the subject of the written complaint, except where ~~the health maintenance organization has in good faith made an effort to resolve the complaint and~~ coverage is being terminated or rescinded in accordance with 14VAC5-211-230.

14VAC5-211-180. Out-of-area services.

In addition to out-of-area emergency services required to be provided as basic health care services, a health maintenance organization may offer to its enrollees indemnity benefits covering out-of-area services. A description of the procedure for obtaining out-of-area services and notification requirements before obtaining these services shall be included

in the evidence of coverage as well as a description of restrictions or limitations on out-of-area services. ~~A~~ Except for out-of-area emergency services, a health care plan that requires the enrollee to contact the health maintenance organization before obtaining out-of-area services shall provide for ~~emergency~~ telephone consultation on a 24-hour per day, seven-day per week basis.

Part V
Disclosure and Prohibitions

14VAC5-211-210. Disclosure requirements.

A. A subscriber shall be entitled to an evidence of coverage under a health care plan provided by a health maintenance organization established or operating in this Commonwealth, including any amendments to it. The evidence of coverage excluding the identification card shall be delivered or issued for delivery within a reasonable period of time after enrollment, but not more than 60 days from the later of the effective date of coverage or the date on which the health maintenance organization is notified of enrollment. The identification card shall be delivered or issued for delivery within 15 days from the later of the effective date of coverage or the date on which the health maintenance organization is notified of enrollment.

B. An evidence of coverage delivered or issued for delivery shall contain the following:

1. The name, address, and telephone number of the health maintenance organization;

2. The health care services and other benefits to which the enrollee is entitled under the health care plan;

3. Exclusions or limitations on the services, kind of services, benefits, or kind of benefits to be provided, including any deductible or copayment features;

4. Where and in what manner information is available as to how services may be obtained;

5. The effective date and the term of coverage;

6. The total amount of payment for health care services and any indemnity or service benefits that the enrollee is obligated to pay with respect to individual contracts, or an indication whether the plan is contributory or noncontributory for group certificates;

7. A description of the health maintenance organization's method of resolving enrollee complaints, including a description of any arbitration procedure if complaints ~~and grievances~~ may be resolved through a specified arbitration agreement;

8. A list of providers and a description of the service area that shall be provided with the evidence of coverage if the information is not given at the time of enrollment;

9. The right of an enrollee to convert to an individual contract issued by the health maintenance organization or to continue group coverage, as applicable, including the terms and conditions under which coverage may be converted or continued;

10. The terms and conditions under which coverage may be terminated or rescinded;

11. Coordination of benefits provisions, if applicable;

12. Assignment restrictions in the contract;

13. The health maintenance organization's procedure for filing claims, including any requirements for notifying the health maintenance organization of a claim and requirements for filing proof of loss;

14. The health maintenance organization's eligibility requirements, including the conditions under which dependents may be added and the limiting age for dependents and subscribers covered under an individual or group contract;

15. An incontestability clause that states that~~, in the absence of fraud,~~ all statements made by a subscriber shall be considered representations and not warranties and that no statement shall be the basis for ~~voiding~~ terminating coverage or denying a claim after the contract has been in force for two years from its effective date, unless the ~~statement was material to the risk and was contained in a written application~~ contract can be rescinded under § 38.2-3441 of the Code of Virginia;

16. A provision that the contract or evidence of coverage and any amendments to it constitutes the entire contractual agreement between the parties involved and that no portion of the charter, bylaws, or other document of the health maintenance organization shall constitute part of the contract unless it is set forth in full in the contract; ~~and~~

17. Except for an evidence of coverage that does not provide for the periodic payment of premium or for the payment of any premium, a provision that the contract holder is entitled to a grace period of not less than 31 days for the payment of any premium due except the first premium. The provision shall also state that during the grace period the coverage shall continue in force unless the contract holder has given the health maintenance organization written notice of discontinuance in accordance with the terms of the contract and in advance of the date of discontinuance. The contract may provide that the contract holder shall be liable to the health maintenance organization for the payment of a pro rata premium for the time the contract was in force during the grace period~~.~~ ; and

18. Terms and conditions related to the designation of a primary care health care professional.

14VAC5-211-220. Exclusions for preexisting conditions.

In addition to the limitations on preexisting conditions exclusions set forth in §§ 38.2-3432.3, 38.2-3444, and 38.2-3514.1 of the Code of Virginia, a health maintenance organization shall not exclude or limit health care services for a preexisting condition when the enrollee transfers coverage from one health care plan to another during open enrollment or when the enrollee converts coverage under his conversion option, except to the extent that a preexisting condition limitation or exclusion remains unexpired under the original contract. Any required probationary or waiting period is deemed to commence on the effective date for individual coverage, and on the enrollment date of the contract for group coverage.

14VAC5-211-230. Reasons for termination or rescission.

A. A health maintenance organization shall not terminate an enrollee's coverage for services provided under a health maintenance organization contract except for one or more of the following reasons:

1. Failure to pay the amounts due under the contract, including failure to pay a premium required by the contract as shown in the contract or evidence of coverage;

~~2. Fraud or material misrepresentation in enrollment or in the use of services or facilities~~;

~~3.~~ 2. Material violation of the terms of the contract;

~~4.~~ 3. Failure to meet the eligibility requirements under a group contract, provided that a conversion or continuation option is offered;

~~5.~~ 4. Termination of the group contract under which the enrollee was covered; or

~~6.~~ 5. Other good cause as agreed upon in the contract between the health care plan and the group or the subscriber. Coverage shall not be terminated on the basis of the status of the enrollee's health or because the enrollee has exercised his rights under the plan's ~~grievance~~ complaint or appeals system by registering a complaint against the health maintenance organization. Failure of the enrollee and the primary care ~~physician~~ health care professional to establish a satisfactory relationship shall not be deemed good cause unless the health maintenance organization has in good faith made an effort to provide the opportunity for the enrollee to establish a satisfactory patient-physician relationship, including assigning the enrollee to other primary care ~~physicians~~ health care professionals from among the organization's participating providers.

B. A health maintenance organization shall not terminate coverage for services provided under a contract without giving the subscriber written notice of termination, effective at least 31 days from the date of mailing or, if not mailed, from the date of delivery, except that:

1. For termination due to nonpayment of premium, the grace period as required in 14VAC5-211-210 B 17 shall apply;

2. For termination due to nonpayment of premium by an employer, the notice provisions required in § 38.2-3542 C of the Code of Virginia shall apply;

3. For termination due to activities that endanger the safety and welfare of the health maintenance organization or its employees or providers, immediate notice of termination may be given; or

4. For termination due to change of eligibility status, immediate notice of termination may be given.

C. A health maintenance organization shall not rescind coverage for services provided under a contract unless the enrollee or a person seeking coverage on behalf of an enrollee performs an act, practice, or omission that constitutes fraud, or the person makes an intentional misrepresentation of material fact, as prohibited by the terms of the plan. Notice of any rescission shall comply with the requirements of § 38.2-3441 of the Code of Virginia.

VA.R. Doc. No. R11-2845; Filed June 10, 2011, 3:01 p.m.

Final Regulation

Titles of Regulations: **14VAC5-215. Rules Governing Independent External Review of Final Adverse Utilization Review Decisions (amending 14VAC5-215-10).**

14VAC5-216. Rules Governing Internal Appeal and External Review (adding 14VAC5-216-10, 14VAC5-216-20, 14VAC5-216-30, 14VAC5-216-40, 14VAC5-216-50, 14VAC5-216-60, 14VAC5-216-70, 14VAC5-216-80, 14VAC5-216-90, 14VAC5-216-100, 14VAC5-216-110, 14VAC5-216-120, 14VAC5-216-130).

Statutory Authority: §§ 12.1-13 and 38.2-223 of the Code of Virginia.

Effective Date: July 1, 2011.

Agency Contact: Julie Blauvelt, Senior Insurance Market Examiner, Bureau of Insurance, State Corporation Commission, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9865, FAX (804) 371-9944, or email julie.blauvelt@scc.virginia.gov.

Summary:

This regulatory action (i) amends 14VAC5-215-10 by limiting the chapter's application to final adverse decisions made before or on June 30, 2011, and (ii) adds a new chapter, 14VAC5-216, Rules Governing Internal Appeal and External Review, to conform the state's external review program with the Uniform Health Carrier External Review Model Act, prepared by the National Association of

Insurance Commissioners, as required by the federal Patient Protection and Affordable Care Act. The rules clarify and implement the provisions of Chapter 788 of the 2011 Acts of Assembly which become effective on July 1, 2011, and conform Virginia's internal appeal and external review processes to meet the federal requirements.

Specifically, the rules (i) contain provisions that apply the internal appeal and external review requirements to all health carriers, unless specifically excepted; (ii) set forth guidelines and standards for an internal appeal process that is in conformity with federal Department of Labor regulations that provide for a full and fair review of any adverse benefit determination; and (iii) provide for urgent care appeals, concurrent review decisions, and notification requirements. Although the external review process is outlined in Chapter 35.1 (38.2-3556 et seq.) of Title 38.2 of the Code of Virginia, the proposed rules clarify these provisions and provide forms for this process.

Since publication of the proposed rules, the following changes were made:

1. 14VAC5-216-20: The definitions of "pre-service claim" and "post-service claim" were amended to reflect more accurately definitions under federal requirements

2. 14VAC5-216-100 A: The provision that requires that an application fee of $500 for an independent review organization was amended to reflect that an application fee of up to $500 may be required.

3. Form 216-E: This form was amended to reflect the change noted above in 14VAC5-216-100 A.

AT RICHMOND, JUNE 10, 2011

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. INS-2011-00070

Ex Parte: In the matter of
Amending Rules Governing Independent
External Review of Final Adverse Utilization
Review Decisions and Adopting New Rules
Governing Internal Appeal and External Review

ORDER ADOPTING RULES

By Order entered herein May 2, 2011, all interested persons were ordered to take notice that subsequent to June 1, 2011, the State Corporation Commission ("Commission") would consider the entry of an order to amend section 10 in Chapter 215 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Independent External Review of Final Adverse Utilization Review Decisions" ("Rules") and adopt a new chapter, Chapter 216 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Internal Appeal and External Review," ("new Rules") set forth at 14 VAC 5-216-10 through 14 VAC 5-216-130 and accompanying forms. These amended Rules and new Rules were proposed by the Bureau of Insurance ("Bureau"). The Order to Take Notice required that on or before June 1, 2011, any person objecting to the amended Rules and adoption of the new Rules shall have filed a request for hearing with the Clerk of the Commission ("Clerk").

The Order to Take Notice also required all interested persons to file their comments in support of or in opposition to amending the Rules and adoption of the new Rules on or before June 1, 2011.

No comments were filed with the Clerk of the Commission. Comments were sent to the Bureau from CareFirst BlueCross BlueShield by letter dated May 26, 2011, and from AARP by letter dated June 1, 2011. No request for a hearing was filed with the Clerk.

The Bureau considered the comments sent by both CareFirst and the AARP, and responded to these comments in respective letters back to each of these organizations. No changes to the amended Rules or new Rules were made as a result of the comments received. However, the Bureau recommends that the proposed new Rules be amended as follows:

(1) 14 VAC 5-216-20: The definitions of "pre-service claim" and "post-service claim" be amended to reflect more accurately definitions under federal requirements;

(2) 14 VAC 5-216-100 A: The provision that requires that an application fee of $500 for an independent review organization be amended to reflect that an application fee of up to $500 may be required.

(3) Form 216-E be amended to reflect the change noted above in 14 VAC 5-216-100 A.

The Bureau recommends that the amendment to the Rules and all other sections of the new Rules remain as proposed.

The amendment to section 10 in Chapter 215 is necessary to limit the chapter's application to final adverse decisions made before or on June 30, 2011.

The proposed new Rules in Chapter 216 are necessary because the federal Patient Protection and Affordable Care Act requires that the state's external review program be in conformity with the Uniform Health Carrier External Review Model Act prepared by the National Association of Insurance Commissioners. The 2011 Acts of Assembly Chapter 788 conform Virginia's internal appeal and external review processes to meet these federal requirements. These new Rules clarify and implement the provisions contained in Acts of Assembly Chapter 788, which becomes effective on July 1, 2011.

NOW THE COMMISSION, having considered the amendment to the Rules, the proposed new Rules, and the Bureau's recommendation for additional amendments to the new Rules, is of the opinion that the amendment to the Rules in Chapter 215 and the new Rules set forth in Chapter 216 of the Virginia Administrative Code be adopted.

Accordingly, IT IS ORDERED THAT:

(1) The amendment to section 10 in Chapter 215 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Independent External Review of Final Adverse Utilization Review Decisions" and the new rules in Chapter 216 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Internal Appeal and External Review," set forth at 14 VAC 5-216-10 through 14 VAC 5-216-130 and accompanying forms, which are attached hereto and made a part hereof, should be, and they are hereby, ADOPTED effective on July 1, 2011;

(2) AN ATTESTED COPY hereof, together with a copy of the adopted amended Rules and new Rules, shall be sent by the Clerk of the Commission to Althelia Battle, Deputy Commissioner, Bureau of Insurance, State Corporation Commission, who forthwith shall give further notice of the adopted amended Rules and new Rules by mailing a copy of this Order, including a clean copy of the final amended Rules and new Rules, to all companies, HMOs and health services plans licensed by the Commission to write accident and sickness insurance in the Commonwealth of Virginia, as well as all interested parties;

(3) The Commission's Division of Information Resources shall cause a copy of this Order, together with the adopted amended Rules and adopted new Rules, to be forwarded to the Virginia Registrar for appropriate publication in the Virginia Register;

(4) The Commission's Division of Information Resources shall make available this Order and the attached adopted amended Rules and new Rules on the Commission's website: http://www.scc.virginia.gov/case; and

(5) The Bureau of Insurance shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of paragraph (2) above.

14VAC5-215-10. Scope and purpose.

A. This chapter shall apply to all utilization review entities as that term is defined in 14VAC5-215-30, the issuer of a covered person's policy or contract of health benefits, and covered persons.

B. This chapter shall not apply to utilization review performed under contract with the federal government for patients eligible for health care services under Title XVIII of the Social Security Act (42 USC § 1395 et seq.), utilization review performed under contract with the federal government for patients eligible for health care services under the TRICARE program (10 USC § 1071 et seq.), or utilization review performed under contract with a plan otherwise exempt from the operation of this chapter pursuant to the Employee Retirement Income Security Act of 1974 (29 USC § 1001 et seq.).

This chapter shall not apply to programs administered by the Department of Medical Assistance Services or under contract with the Department of Medical Assistance Services.

C. The purpose of this chapter is to set forth rules to carry out the provisions of Chapter 59 (§ 38.2-5900 et seq.) of Title 38.2 of the Code of Virginia so as to provide (i) a process for appeals to be made to the Bureau of Insurance to obtain an independent external review of final adverse decisions made by a utilization review entity; (ii) procedures for expedited consideration of appeals in cases of emergency health care; and (iii) standards, credentials, and qualifications for impartial health entities.

D. This chapter shall apply to any final adverse decision made on or before June 30, 2011.

CHAPTER 216
RULES GOVERNING INTERNAL APPEAL AND EXTERNAL REVIEW

Part I
General

14VAC5-216-10. Scope and purpose.

A. This chapter shall apply to all health carriers, except that the provisions of this chapter shall not apply to a policy or certificate that provides coverage only for a specified disease, specified accident or accident-only coverage; credit; disability income; hospital indemnity; long-term care; dental, vision care, or any other limited supplemental benefit or to a Medicare supplement policy of insurance; coverage under a plan through Medicare, Medicaid, or the federal employees health benefits program; self-insured plans except that a self-insured employee welfare benefit plan may elect to use the state external review process; any coverage issued under Chapter 55 of Title 10 of the U.S. Code (TRICARE), and any coverage issued as supplemental to that coverage; any coverage issued as supplemental to liability insurance, workers' compensation or similar insurance; and automobile medical payment insurance or any insurance under which benefits are payable with or without regard to fault, whether written on a group or individual basis.

B. The purpose of this chapter is to set forth rules to carry out the provisions of Chapter 35.1 (§ 38.2-3556 et seq.) of Title 38.2 of the Code of Virginia as well as federal law to provide a health carrier with guidelines to assist with establishing a procedure for an internal appeals process under which there will be a full and fair review of any adverse benefit determination. This chapter also sets forth requirements for the external review process.

C. This chapter shall apply to any adverse benefit determination made on or after July 1, 2011, by any health carrier for a grandfathered or non-grandfathered health benefit plan, as defined by the PPACA.

14VAC5-216-20. Definitions.

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

"Adverse benefit determination" in the context of the internal appeals process means (i) a determination by a health carrier or its designee utilization review entity that, based on the information provided, a request for, a benefit under the health carrier's health benefit plan upon application of any utilization review technique does not meet the health carrier's requirements for medical necessity, appropriateness, health care setting, level of care, or effectiveness or is determined to be experimental or investigational and the requested benefit is therefore denied, reduced, or terminated or payment is not provided or made, in whole or in part, for the requested benefit; (ii) the denial, reduction, or termination of, or failure to provide or make payment in whole or in part for, a benefit based on a determination by a health carrier or its designee utilization review entity of a covered person's eligibility to participate in the health carrier's health benefit plan; (iii) any review determination that denies, reduces, or terminates or fails to provide or make payment, in whole or in part, for a benefit; (iv) a rescission of coverage determination as defined in § 38.2-3438 of the Code of Virginia; or (v) any decision to deny individual coverage in an initial eligibility determination.

"Adverse determination" in the context of external review means a determination by a health carrier or its designee utilization review entity that an admission, availability of care, continued stay, or other health care service that is a covered benefit has been reviewed and, based upon the information provided, does not meet the health carrier's requirements for medical necessity, appropriateness, health care setting, level of care, or effectiveness or is determined to be experimental or investigational and the requested service or payment for the service is therefore denied, reduced, or terminated.

"Authorized representative" means (i) a person to whom a covered person has given express written consent to represent the covered person; (ii) a person authorized by law to provide substituted consent for a covered person; (iii) a family member of a covered person or the covered person's treating health care professional when the covered person is unable to provide consent; (iv) a health care professional when the covered person's health benefit plan requires that a request for a benefit under the plan be initiated by the health care professional; or (v) in the case of an urgent care internal appeal, a health care professional with knowledge of the covered person's medical condition.

"Clinical peer reviewer" means a practicing health care professional who holds a nonrestricted license in a state, district, or territory of the United States and in the same or similar specialty as typically manages the medical condition, procedure, or treatment under appeal.

"Commission" means the State Corporation Commission.

"Concurrent review" means utilization review conducted during a patient's stay or course of treatment in a facility, the office of a health care professional, or other inpatient or outpatient health care setting.

"Covered person" means a policyholder, subscriber, enrollee, or other individual participating in a health benefit plan. For purposes of this chapter with respect to the administration of appeals, references to a covered person include a covered person's authorized representative, if any.

"Emergency services" means those health care services that are rendered after the sudden onset of a medical condition that manifests itself by symptoms of sufficient severity, including severe pain, that the absence of immediate medical attention could reasonably be expected by a prudent layperson who possesses an average knowledge of health and medicine to result in (i) serious jeopardy to the mental or physical health of the individual, (ii) danger of serious impairment of the individual's bodily functions, (iii) serious dysfunction of any of the individual's bodily organs, or (iv) in the case of a pregnant woman, serious jeopardy to the health of the fetus.

"Final adverse determination" means an adverse determination involving a covered benefit that has been upheld by a health carrier, or its designee utilization review entity, at the completion of the health carrier's internal appeal process.

"Group health plan" means an employee welfare benefit plan (as defined in the Employee Retirement Income Security Act of 1974 (29 USC § 1002(1)), to the extent that the plan provides medical care and including items and services paid for as medical care to employees or their dependents (as defined under the terms of the plan) directly or through insurance, reimbursement, or otherwise.

"Health benefit plan" means a policy, contract, certificate, or agreement offered or issued by a health carrier to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services. "Health benefit plan" does not include accident only, credit, or disability insurance; coverage of Medicare services or federal employee health plans pursuant to contracts with the United States government; Medicare supplement or long-term care insurance; Medicaid coverage; dental only or vision only insurance; specified disease insurance; hospital indemnity coverage; limited benefit health coverage; coverage issued as a supplement to liability insurance; insurance arising out of a workers' compensation or similar law; automobile medical payment insurance;

medical expense and loss of income benefits; or insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

"Health care professional" means a physician or other health care practitioner licensed, accredited, or certified to perform specified health care services consistent with the laws of the Commonwealth.

"Health carrier" means an entity, subject to the insurance laws and regulations of the Commonwealth or subject to the jurisdiction of the commission, that contracts or offers to contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including an accident and sickness insurance company, a health maintenance organization, a nonprofit hospital and health service corporation, or a nonstock corporation offering or administering a health services plan, a hospital services plan, or a medical or surgical services plan, or any other entity providing a plan of health insurance, health benefits, or health care services except as excluded under § 38.2-3557 of the Code of Virginia.

"Independent review organization" means an entity that conducts independent external reviews of adverse determinations and final adverse determinations.

"PPACA" means the Patient Protection and Affordable Care Act (P.L. 111-148), as amended by the Health Care and Education Reconciliation Act of 2010 (P.L. 111-152).

"Pre-service claim" means a claim for a benefit under a health benefit plan that requires [~~or allows for~~] approval of the benefit [in whole or in part,] in advance of obtaining the service or treatment.

"Post-service claim" means a claim for a benefit under a health benefit plan [~~for which~~ that is not a pre-service claim, or] the service or treatment has been provided to the covered person.

"Self-insured plan" means an "employee welfare benefit plan" that has the meaning set forth in the Employee Retirement Income Security Act of 1974, 29 USC § 1002(1).

"Urgent care appeal" means an appeal for medical care or treatment with respect to which the application of the time periods for making non-urgent care determinations (i) could seriously jeopardize the life or health of the covered person or the ability of the covered person to regain maximum function; or (ii) in the opinion of the treating health care professional with knowledge of the covered person's medical condition, would subject the covered person to severe pain that cannot be adequately managed without the care or treatment that is the subject of the appeal. An urgent care appeal shall not be available for any post-service claim or retrospective adverse benefit determination.

"Utilization review" means a set of formal techniques designed to monitor the use of or evaluate the clinical necessity, appropriateness, efficacy, or efficiency of health care services, procedures or settings. Techniques may include ambulatory review, prospective review, second opinion, certification, concurrent review, case management, discharge planning, or retrospective review.

Part II
Internal Appeal

14VAC5-216-30. General requirements.

A. Each health carrier offering a health benefit plan shall establish and maintain an internal appeals procedure in accordance with this chapter, 29 USC § 2560.503-1, and 45 CFR 147.136 to provide a full and fair review of any adverse benefit determination.

B. As part of each health carrier's health benefit plan and any adverse benefit determination, each health carrier shall provide notice of its available internal appeals procedures (including urgent care appeals), including timeframes for submission of an appeal, the health carrier's review and response. Such notice shall also include the name, address, and telephone number of the person or organizational unit designated to coordinate the review of the appeal for the health carrier, and contact information for the Bureau of Insurance. If the plan is a managed care health insurance plan (MCHIP), the mailing address, telephone number, and email address for the Office of the Managed Care Ombudsman shall also be included.

C. The internal appeals procedure shall not contain any provision, or be administered in a way that unduly inhibits or hampers the initiation or processing of claims for benefits.

D. The internal appeals procedure shall provide for an authorized representative of a covered person to act on behalf of the covered person in pursuing a benefit claim or appeal of an adverse benefit determination. A health carrier may establish reasonable procedures for determining whether an individual has been authorized to act on behalf of a covered person. In the case of an urgent care appeal, a health care professional shall be permitted to act as the authorized representative of the covered person, in accordance with this chapter.

E. The internal appeals procedure shall contain administrative processes and safeguards designed to ensure and to verify that benefit determinations are made in accordance with the provisions of the health benefit plan and, where appropriate, the health benefit plan provisions have been applied consistently with respect to similarly situated covered persons.

14VAC5-216-40. Minimum appeal requirements.

A. Each covered person shall be entitled to a full and fair review of an adverse benefit determination. Within 180 days

after the date of receipt of a notice of an adverse benefit determination, a covered person may file an appeal with the health carrier. A health carrier may designate a utilization review entity to coordinate the review. For purposes of this chapter, "health carrier" may also mean its designated utilization review entity.

B. The health carrier shall conduct the appeal in a manner to ensure the independence and impartiality of the individuals involved in reviewing the appeal. In ensuring the independence and impartiality of such individuals, the health carrier shall not make decisions regarding hiring, compensation, termination, promotion, or other similar matters based upon the likelihood that an individual will support the denial of benefits.

C. 1. In deciding an appeal of any adverse benefit determination that is based in whole or in part on a medical judgment, including determinations with regard to whether a particular treatment, drug, or other service is experimental, investigational, or not medically necessary or appropriate, the health carrier shall designate a clinical peer reviewer to review the appeal. The clinical peer reviewer shall not have been involved in any previous adverse benefit determination with respect to the claim.

2. A reviewer of any other type of adverse benefit determination shall be an appropriate person designated by the health carrier. The reviewer of the appeal shall not be the individual who made any previous adverse benefit determination of the subject appeal nor the subordinate of such individual and shall not defer to any prior adverse benefit determination.

D. A full and fair review shall also provide for:

1. The covered person to have an opportunity to submit written comments, documents, records, and other information relating to the appeal for the reviewer or reviewers to consider when reviewing the appeal;

2. Upon request to the health carrier, the covered person to have reasonable access to and free of charge copies of all documents, records, and other information relevant to the covered person's request for benefits (note that any request for diagnosis and treatment codes, in itself, should not be considered to be a request for an internal appeal);

3. An appeal process that takes into account all comments, documents, records, and other information submitted by the covered person relating to the appeal, without regard to whether such information was submitted or considered in the initial benefit determination.

4. The identification of medical or vocational experts whose advice was obtained on behalf of the health benefit plan in connection with a covered person's adverse benefit determination, without regard to whether the advice was relied upon in making the benefit determination.

5. An urgent care appeal process.

6. Prior to issuing a final adverse benefit determination, the health carrier to provide free of charge to the covered person any new or additional evidence relied upon or generated by the health carrier or at the direction of the health carrier, in connection with the internal appeal sufficiently in advance of the date the determination is required to be provided to permit the covered person a reasonable opportunity to respond prior to that date.

E. A health carrier shall notify the covered person of the final benefit determination within a reasonable period of time appropriate to the medical circumstances, but not later than the timeframes established in subdivisions 1 and 2 of this subsection.

1. If an internal appeal involves a pre-service claim review request, the health carrier shall notify the covered person of its decision within 30 days after receipt of the appeal. A health carrier may provide a second level of internal appeal for group health plans only, provided that a maximum of 15 days is allowed for a benefit determination and notification from each level of the appeal.

2. If an internal appeal involves a post-service claim review request, the health carrier shall notify the covered person of its decision within 60 days after receipt of the appeal. A health carrier may provide a second level of internal appeal for group health plans only, provided that a maximum of 30 days is allowed for a benefit determination and notification from each level of the appeal.

14VAC5-216-50. Urgent care appeals.

A. The health carrier shall notify the covered person of its initial benefit determination as soon as possible taking into account medical exigencies, but not later than 72 hours after receipt of the request, unless the covered person fails to provide sufficient information to determine whether, or to what extent, benefits are covered or payable under the health benefit plan. In the case of such failure, the health carrier shall notify the covered person as soon as possible, but not later than 24 hours after receipt of the request, of the specific information necessary to complete the claim. The covered person shall be afforded a reasonable amount of time, taking into account the circumstances, but not less than 48 hours to provide the specified information. The health carrier shall notify the covered person of its benefit determination not later than 48 hours after the earlier of (i) its receipt of the specified information or (ii) the end of the period afforded to the covered person to provide the specified additional information.

B. The notification of an urgent care adverse benefit determination that is based on a medical necessity, appropriateness, health care setting, level of care, effectiveness, experimental or investigational service or treatment, or similar exclusion or limit, shall include a

description of the health carrier's urgent care appeal process including any time limits applicable to those procedures and the availability of and procedures for an expedited external review.

C. Upon receipt of an adverse benefit determination, a covered person may submit a request for an urgent care appeal either orally or in writing to the health carrier.

D. All necessary information, including the benefit determination on appeal, shall be transmitted between the health carrier and the covered person by telephone, facsimile, or the most expeditious method available.

E. The health carrier shall notify the covered person and the treating health care professional of its benefit determination as soon as possible, taking into account the medical exigencies, but not later than 72 hours after receipt of an urgent care appeal.

14VAC5-216-60. Concurrent review decisions.

A. A health carrier shall provide continued coverage pending the outcome of an internal appeal of a concurrent review decision.

B. Any reduction or termination by a health carrier of an approved course of treatment (other than by health benefit plan amendment or termination) to be provided over a period of time or number of treatments shall constitute an adverse benefit determination. The health carrier shall notify the covered person of the adverse benefit determination at a time sufficiently in advance of the reduction or termination to allow the covered person to file an internal appeal and obtain a determination before the benefit is reduced or terminated.

C. Any request by a covered person to extend the course of treatment beyond the period of time or number of treatments that is an urgent care appeal shall be decided as soon as possible, taking into account the medical exigencies. The covered person and the treating health care professional shall be notified of the benefit determination within 72 hours after receipt of the internal appeal.

14VAC5-216-70. Notification requirements.

A. A health carrier shall provide a covered person with written or electronic notification of its benefit determination on appeal. The notification of an adverse benefit determination shall be written in easily understandable language and shall set forth the following:

1. Information sufficient to identify the claim involved with respect to the appeal, including the date of service, the health care provider, and the claim amount;

2. The specific reason or reasons for the adverse benefit determination;

3. Reference to the specific plan provisions on which the adverse benefit determination is made;

4. A statement that the covered person is entitled to receive, upon request and free of charge, reasonable access to and copies of all documents, records, and other information relevant to the covered person's claim for benefits;

5. A statement indicating whether any additional internal appeals are available or whether the covered person has received a final adverse determination. If internal appeals are available, contact information on where to submit the appeal;

6. A statement describing the external review procedures offered by the health carrier and the covered person's right to obtain information about such procedures and the covered person's right to bring a civil action under § 502(a) of ERISA (29 USC § 1001 et seq.), if applicable; and

7. A statement indicating that the covered person has the right to request an external review if the covered person has not received a final benefit determination within the timeframes provided in 14VAC5-216-40 E, unless the covered person requests or agrees to a delay.

B. In the case of a group health plan, the required notification shall also set forth the following:

1. If an internal rule, guideline, protocol, or other similar criterion (collectively "rule") was relied upon in making the adverse benefit determination, either the specific rule or a statement that such rule was relied upon in making the adverse benefit determination and that a copy of the rule will be provided free of charge to the covered person upon request;

2. If the adverse benefit determination is based on a medical necessity or experimental treatment or similar exclusion or limit, either an explanation of the scientific or clinical judgment for the determination, applying the terms of the plan to the covered person's medical circumstances, or a statement that such explanation will be provided free of charge upon request; and

3. Include a statement indicating that the covered person may have other voluntary alternative dispute resolution options, such as mediation. The covered person should be referred to the appropriate federal or state agency, his plan administrator, or the health carrier, as appropriate.

C. Electronic notification shall be in accordance with the provisions of the Uniform Electronic Transactions Act (§ 59.1-479 et seq. of the Code of Virginia).

Part III
External Review

14VAC5-216-80. Incomplete or ineligible determinations.

A. After the covered person has requested an external review, and if he is notified by the health carrier that the request is incomplete in accordance with § 38.2-3561 B 4 or

38.2-3563 D 6 of the Code of Virginia, the covered person shall have five business days from receipt of such notice to return the requested materials necessary to complete the request to the health carrier. The health carrier shall then have five business days to conduct the preliminary review for eligibility. Notification shall be in accordance with the provisions of § 38.2-3561 C or 38.2-3563 E of the Code of Virginia.

B. If the health carrier determines that a covered person's request for external review is complete but ineligible, the covered person may request that the commission review the ineligibility determination.

1. Within five business days from the date the covered person receives notification from the health carrier, the covered person may request in writing that the commission review the ineligibility determination by the health carrier.

2. Within one business day after receipt of a notification from the covered person, the commission shall notify the health carrier of such request.

3. Within three business days of receipt of the commission's notice to the health carrier, the health carrier shall forward all information and materials used to make the ineligibility determination to the commission.

4. Within five business days of receipt of all materials necessary to make an eligibility determination, the commission shall review the file and make such decision.

5. Within one business day of such decision, the commission shall notify the covered person and the health carrier, and the assigned independent review organization if eligible.

C. If the covered person has requested an expedited external review or an expedited external review of experimental or investigational treatment, and is notified by the health carrier that the request for such expedited external review is incomplete, the covered person shall promptly return the requested materials necessary to complete the request to the health carrier. The health carrier shall then promptly conduct the preliminary review for eligibility.

D. If the health carrier determines that a covered person's request for expedited external review is complete but ineligible, the covered person may promptly request, orally or in writing, that the commission review the ineligibility determination.

1. Upon receipt of an eligibility request from a covered person, the commission shall promptly notify the health carrier of such request.

2. The health carrier shall promptly forward all information and materials used to make the ineligibility determination to the commission.

3. Upon receipt of all information and materials from the health carrier, the commission shall promptly review the file and make an eligibility determination.

4. The commission shall promptly notify the covered person and the health carrier, and the assigned independent review organization if eligible.

E. If the request for a standard external review does not contain sufficient information to allow the commission to send the request to the health carrier, the commission shall have one business day from the date the sufficient information is received to provide notice to the health carrier.

14VAC5-216-90. Expedited external review.

A. If a covered person files a request with the commission for an expedited external review in accordance with § 38.2-3560 C of the Code of Virginia, the health carrier shall promptly conduct an eligibility determination in accordance with 14VAC5-216-80 prior to review by an independent review organization.

B. When an independent review organization is requested by the commission in accordance with § 38.2-3562 of the Code of Virginia to conduct an expedited external review of an adverse determination under § 38.2-3560 C of the Code of Virginia, the independent review organization shall determine whether the timeframes for sequential completion of the expedited internal appeal and expedited external review (i) could seriously jeopardize the life or health of the covered person or the ability of the covered person to regain maximum function; or (ii) would subject the covered person to severe pain that cannot be adequately managed without the care or treatment that is the subject of the appeal, as compared to the timeframes for simultaneous completion of the expedited appeal and review. The independent review organization shall promptly make such determination and shall promptly notify the covered person, the health carrier, and the commission.

14VAC5-216-100. Qualifications for independent review organizations.

A. An independent review organization that desires to conduct external reviews for the Commonwealth shall submit an application [~~and $500 application fee~~] using Form 216-E to the commission for review and approval. [An application fee of up to $500 may be required.]

B. An independent review organization shall meet all the qualification requirements in § 38.2-3565 of the Code of Virginia.

C. An independent review organization that does not maintain required accreditation status shall provide notice to the commission within 30 days of any change in such status.

14VAC5-216-110. External review reporting requirements.

In accordance with § 38.2-3568 of the Code of Virginia, each health carrier and each independent review organization shall file with the commission a report by April 1 of each calendar year using Form 216-F or 216-G as appropriate.

14VAC5-216-120. Funding of external review.

Failure of a health carrier to timely pay any independent review organization for a completed external review shall be a violation of this section and shall subject the health carrier to penalties imposed under Title 38.2 of the Code of Virginia.

14VAC5-216-130. Self-insured plans.

A. Any self-insured plan whose plan sponsor's headquarters is located in Virginia may choose to utilize the external review processes outlined in Chapter 35.1 (§ 38.2-3556 et seq.) of Title 38.2 of the Code of Virginia. For purposes of Part III of this chapter, "health carrier" shall mean a self-insured plan or its third-party administrator if any, that opts in to the state external review process.

B. A self-insured plan utilizing such external review processes shall notify the commission that it will opt-in to the state external review process by completing Form 216-H. A new form shall be completed for each plan year.

C. A self-insured plan that opts in to the state external review process shall comply with all statutes and regulations pertaining to such process. Plan materials and appropriate denial notices shall contain required information regarding the state external review processes.

D. A self-insured plan that opts into the state external review process but fails to comply with the requirements outlined in this chapter and applicable state statutes pertaining to the external review process may be terminated from use of such process by the commission.

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 (14VAC5-216)

External Review Request Form, Form 216-A (7/11).

Appointment of Authorized Representative, Form 216-B (7/11).

Physician Certification Expedited External Review Request, Form 216-C (7/11).

Physician Certification Experimental or Investigational Denials, Form 216-D (7/11).

[Independent Review Organization Application for Registration, Form 216-E (7/11)

Independent Review Organization Application for Registration, Form 216-E (7/11).]

Health Carrier External Review Annual Report Form, Form 216-F (7/11).

Independent Review Organization External Review Annual Report Form, Form 216-G (7/11).

Self-Insured Plan Opt-In to Virginia External Review Process, Form 216-H (7/11).

VA.R. Doc. No. R11-2809; Filed June 13, 2011, 11:14 a.m.

EXECUTIVE ORDER NUMBER 34 (2011)

Allocation of a Portion of the Commonwealth's Share of the Calendar Year 2009 and 2010 National Limitation for Qualified School Construction Bonds Under the American Recovery and Reinvestment Act of 2009

The American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5, 123 Stat. 355 (2009)) was enacted on February 17, 2009 ("ARRA"). ARRA added Section 54F to the Internal Revenue Code of 1986, as amended ("IRC"), to provide for the issuance of qualified school construction bonds ("QSCBs"). QSCBs are tax credit bonds that may be issued to finance the construction, rehabilitation, or repair of a public school facility or for qualifying public school facility land acquisitions ("Qualified Projects"). QSCBs were originally designed as taxable bonds providing the QSCB holder with a federal tax credit in lieu of interest. In the Hiring Incentives to Restore Employment Act (Pub. L. No. 111-147, 124 Stat. 71 (2010)), enacted March 18, 2010, Congress provided a direct payment subsidy option whereby an issuer of QSCBs could elect to receive a subsidy payment from the federal government on each interest payment date intended to be equal to the amount of coupon interest payable on such date.

One of the conditions for the valid issuance of QSCBs is the receipt of an allocation of the national limitation under IRC Section 54F(c) sufficient to cover the maximum face amount of the QSCBs to be issued (a "Volume Cap Allocation"). IRC Section 54F created a national limitation of $11 billion for each of calendar years 2009 and 2010, with a provision allowing carryforwards of any unused limitation amounts to calendar years after 2010. The U.S. Secretary of the Treasury made allocations of the calendar year 2009 and 2010 national limitation amounts to the states and certain "large local education agencies" in accordance the formulae set forth in IRC Section 54F. Pursuant to Notice 2009-35 of the Internal Revenue Service (IRB 2009-17, dated April 27, 2009) (the "Notice"), the share of the calendar year 2009 national limitation allocated to the Commonwealth of Virginia (the "Commonwealth" or "Virginia") is $191,077,000 (the "2009 Commonwealth Share") and, pursuant to Notice 2010-17 (IRB 2010-14, dated March 17, 2010), the share of the calendar year 2010 national limitation allocated to the Commonwealth is $172,249,000 (the "2010 Commonwealth Share"). The 2010 Commonwealth Share is less than the 2009 Commonwealth Share primarily because two Virginia localities were determined to be large local education agencies for calendar year 2010 and thereby directly received allocations of the national limitation amount that otherwise would have been added to the 2010 Commonwealth Share. The two localities and the amounts received are the City of Norfolk, which received $15,092,000, and the City of Richmond, which received $14,983,000.

IRC Section 54F(d)(1) also provides that the national limitation amount allocated to a state for any calendar year shall be allocated by a "state agency" to qualified issuers within the state. The General Assembly has provided no specific guidance on how such allocations are to be made in Virginia.

From the $191,077,000 2009 Commonwealth Share, Executive Order 90 (2009) made a Volume Cap Allocation to the Virginia Public School Authority ("VPSA") in an amount sufficient to cover QSCBs to be issued by VPSA to finance certain qualifying projects in certain localities that were on the Literary Fund First Priority Waiting List approved by the Virginia Board of Education. On November 13, 2009, VPSA issued its School Tax Credit Bonds (Qualified School Construction Bonds), Series 2009-1 (the "2009 VPSA QSCBs"), pursuant to such Volume Cap Allocation. The 2009 VPSA QSCBs consumed $61,120,000 of the 2009 Commonwealth Share.

Also from the 2009 Commonwealth Share, Executive Order 12 (2010) made a Volume Cap Allocation to VPSA in an amount sufficient to cover QSCBs to be issued by VPSA to finance certain qualifying projects in certain localities that went through a competitive evaluation process to finance energy efficiency improvements and renovations, as well as renewable energy projects, for public school buildings. The application process was supervised by the Virginia Department of Education ("VDOE") and the Virginia Department of Mines, Minerals and Energy. On July 8, 2011, VPSA issued its School Tax Credit Bonds (Direct-Pay Qualified School Construction Bonds), Series 2010-1 (the "2010 VPSA QSCBs"), pursuant to such Volume Cap Allocation. The 2010 VPSA QSCBs consumed an additional $72,655,000 of the 2009 Commonwealth Share.

After accounting for the issuance of the 2009 VPSA QSCBs and the 2010 VPSA QSCBs, there remains unused $57,302,000 of the 2009 Commonwealth Share. When combined with the completely unused $172,249,000 2010 Commonwealth Share, Virginia has $229,551,000 remaining in unused limitation amount, all of which has carried forward into calendar year 2011 (the "Carryforward Amount").

On March 2, 2011, VDOE announced the allocation of the entire Carryforward Amount to fully or partially fund 41 new construction, renovation, and expansion application-based projects in 33 school divisions. Allocations were capped at $15.0 million per division. The application process gave priority to consolidation projects, projects eliminating overcrowding, projects in economically stressed localities, projects replacing facilities more than 35 years old, projects creating school-wide, high-speed computer networks, and projects in divisions not receiving prior QSCB allocations. Priority was also given to projects related to health and safety and projects on the July 2010 first-priority waiting list for

Literary Fund loans. It was anticipated that VPSA would issue the QSCBs supported by such allocation.

Since spend-down requirements for QSCBs under the IRC are stringent, and recognizing that some localities needed additional time to complete planning for their projects, VPSA offered the awarded localities the option to participate in one of two separate QSCB sales in calendar year 2011 and, if necessary, will schedule one or more additional sales in calendar year 2012.

VPSA is scheduled to sell the first calendar year 2011 QSCBs series (the "2011-1 QSCBs") by mid-June 2011, and to close by the end of June 2011.

The allocations to the school divisions and projects announced by VDOE on March 2, 2011, were deemed to be preliminary until the eligibility of each project for QSCB financing was determined through detailed project review. VDOE advised that prior to the sale of the applicable QSCBs, the final qualifying projects and project issuance amounts would be formally set out in an Executive Order. VDOE has advised me of the qualifying projects and maximum face amounts of QSCBs for each such project proposed to be included in the 2011-1 QSCBs. Such projects and the localities in which they are located will be referred to below respectively as the "2011-1 Awarded Projects" and the "2011-1 Awarded Localities." An additional Executive Order is anticipated to be issued prior to each future sale of QSCBs by VPSA.

Accordingly, by virtue of the powers invested in me by Article V of the Constitution of Virginia and Section 2.2-103 of the Code of Virginia of 1950, as amended, as Governor of the Commonwealth of Virginia, I hereby provide a Volume Cap Allocation to VPSA pursuant to IRC Section 54F(d)(1) from the Carryforward Amount in an amount sufficient for VPSA to issue QSCBs for the benefit of each of the 2011-1 Awarded Localities listed below in an aggregate face amount up to the respective maximum face amount listed below. Although it is anticipated that the 2011-1 Awarded Localities will participate in VPSA's 2011-1 QSCBs sale, the portion of the Volume Cap Allocation provided for any 2011-1 Awarded Locality will remain in effect and can be used in any VPSA QSCB sale until the expiration date described below. The first priority use of the sale and investment proceeds of such QSCBs (the "Local Available Project Proceeds") shall be to finance qualifying costs of the respective 2011-1 Awarded Projects, as listed below.

The 2011-1 Awarded Localities and 2011-1 Awarded Projects:

2011-1 Awarded Locality	2011-1 Awarded Project	Maximum Face Amount
Appomattox County	Expansion and renovation of Appomattox Primary	$ 10,000,000
Augusta County	Expansion and renovation of Wilson Elementary	7,500,000
City of Bristol	Construction of an ADA-compliant education/central office facility	3,000,000
Buckingham County	Expansion and renovation of Dillwyn Elementary and renovation of Dillwyn Lower Elementary	10,000,000
Caroline County	Expansion and renovation of Bowling Green Primary	6,000,000
Carroll County	Expansion and renovation of Carroll County Intermediate and Carroll County High	15,000,000
Henry County	HVAC upgrade at Magna Vista High; roof replacement at John Redd Smith Elementary and Sanville Elementary	3,400,000
City of Hopewell	Expansion and renovation of Hopewell High	5,000,000
Isle of Wight County	Construction of New Windsor Middle	7,500,000

In addition, pursuant to the request of the affected localities, VDOE and VPSA staff, I hereby provide Volume Cap Allocations from the Carryforward Amount directly to certain localities to finance on a first-priority basis certain projects in the maximum face amounts set forth in the chart below.

The Separate Awarded Localities and the Separate Awarded Projects:

Separate Awarded Locality	Separate Awarded Project	Maximum Face Amount
City of Buena Vista	Renovation of Parry McCluer Middle	$ 510,000
City of Norfolk	Construction of new Crossroads Elementary	7,500,000
City of Richmond	Expansion and Renovation of Martin Luther King, Jr. Middle	7,500,000

The above-listed localities and projects shall be referred to herein separately as the "Separate Awarded Localities" and "Separate Awarded Projects" and, collectively with the 2011-1 Awarded Localities and the 2011-1 Awarded Projects, as the "Awarded Localities" and "Awarded Projects," respectively. The sale and investment proceeds of the QSCBs issued by the Separate Awarded Localities shall also be referred to as "Local Available Project Proceeds."

An Awarded Locality must give first priority to the application of its Local Available Project Proceeds to complete the scope of work described in the approved project application for its Awarded Project.

VDOE is directed to establish a procedure to ensure that the Local Available Project Proceeds are used to finance public school projects within an Awarded Locality ("Additional Projects") to the extent such proceeds are in excess of the amounts needed to complete the scope of work on the locality's Awarded Project. Such Additional Projects (i) must be projects that will qualify for QSCB financing under the applicable provisions of federal and Virginia law, (ii) must be able to utilize the unspent Local Available Project Proceeds within the three years after the issue date of the respective QSCBs and (iii) should be evaluated against the following criteria: consolidation projects, projects eliminating overcrowding, projects replacing facilities more than 35 years old, and projects creating school-wide, high-speed computer networks.

By June 30, 2012, VPSA and the Separate Awarded Localities shall provide to the Superintendent of Public Instruction the completed Internal Revenue Service reporting form or forms (then in effect for the QSCBs) for those QSCBs issued pursuant to the Volume Cap Allocations made to VPSA and the Separate Awarded Localities pursuant to this order. Any portion of such Volume Cap Allocations not used by June 30, 2012 will expire and be deemed waived by the VPSA and the Separate Awarded Localities, and I will direct VDOE to establish procedures for reallocating the waived Volume Cap Allocations.

I hereby authorize the Superintendent of Public Instruction to provide certificates of compliance with IRC Section 54F(c) as may be requested by the VPSA and any of the Separate Awarded Localities.

Effective Date of the Executive Order

This Executive Order shall be effective as of June 10, 2011, without any further act or filing.

Given under my hand and under the Seal of the Commonwealth of Virginia this ____ day of June, 2011.

/s/ Robert F. McDonnell
Governor

STATE CORPORATION COMMISSION

Bureau of Insurance

June 8, 2011

Administrative Letter 2011-04

To: All Insurers and Other Interested Parties

Re: Legislation Enacted by the 2011 Virginia General Assembly

We have attached for your reference summaries of certain statutes enacted or amended and re-enacted during the 2011 Session of the Virginia General Assembly. The effective date of these statutes is July 1, 2011, except as otherwise indicated in this letter. Each organization to which this letter is being sent should review the summaries carefully and see that notice of these laws is directed to the proper persons, including appointed representatives, to ensure that appropriate action is taken to effect compliance with these new legal requirements. Copies of individual bills may be obtained at http://legis.state.va.us/. You may enter the bill number (not the chapter number) on the Virginia General Assembly Home Page, and you will be linked to the Legislative Information System. You may also link from the Legislative Information System to any existing section of the Code of Virginia. All statutory references made in the letter are to Title 38.2 (Insurance) of the Code of Virginia unless otherwise noted. All references to the Commission refer to the State Corporation Commission. The federal Patient Protection and Affordable Care Act is referred to as PPACA.

Please note that this document is a summary of legislation. It is neither a legal review and interpretation nor a full description of the legislative amendments affecting insurance-related laws during the 2011 Session. Each organization is responsible for review of the statutes pertinent to its operations.

/s/ Jacqueline K. Cunningham
Commissioner of Insurance

Chapter 107 (House Bill 1985)
This bill amends § 38.2-2206 (Uninsured Motorist Coverage) to provide that a liability insurer may make irrevocable offers of its limits contingent upon a final judgment that is at least equal to the liability insurer's offer or may make such offer of its limits contingent upon the underinsured motorist insurer's waiver of subrogation.

Chapter 186 (Senate Bill 1390)
The bill amends the definition of "life insurance" in § 38.2-102 (General Provisions) to include additional benefits that provide specified disease or limited benefit health coverage, subject to compliance with the minimum standards for individual accident and sickness policies set forth in § 38.2-3519. Such additional benefits may be combined in an individual policy or added as a rider to the policy if the insurer is licensed to transact the business of accident and sickness insurance in Virginia and complies with the rate and form filing requirements contained in the Commission's Rules Governing the Filing of Rates for Individual and Certain Group Accident and Sickness Insurance Policy Forms (14 VAC 5-130-10 et seq.)

Chapter 194 (House Bill 1458) and Chapter 227 (Senate Bill 1388)
The bill adds a new article to the Life Insurance chapter (§§ 38.2-3100 et seq.) to establish requirements for use of retained asset accounts by insurers licensed in Virginia. The insurer shall provide, at the time a claim is made, written information describing the settlement options available under the policy and how to obtain specific details relevant to the options. The insurer shall also provide certain written disclosures to the beneficiary of a policy before the retained asset account option is selected, if optional, or established, if not optional. If the insurer settles benefits through a retained asset account, the insurer shall provide the beneficiary with a supplemental contract that clearly discloses the rights of the beneficiary and the obligations of the insurer under the supplemental contract.

Chapter 198 (House Bill 1504)
The bill amends provisions in the Investments chapter (§§ 38.2-1400 et seq.), amends § 38.2-1501, and adds § 38.2-1522 to the Rehabilitation & Liquidation of Insurers chapter to establish the criteria to be met by domestic insurers in order to engage in hedging and replication transactions involving derivative instruments. The bill includes an enactment clause that allows insurers currently investing in derivative instruments to continue doing so after the effective date of this act provided they submit guidelines to the Commission for review by April 1, 2011.

Chapter 222 (House Bill 2480)
The bill adds a new article to the Insurance Agents chapter (§§ 38.2-1800 et seq.) to allow the sale of Portable Electronics Insurance (PEI) for the repair or replacement of portable electronic devices by vendors of such devices. The bill also amends § 38.2-1800 to include "portable electronics insurance authority" in the lines of insurance that may be sold by limited lines property and casualty (P&C) insurance agents. Vendors of portable electronic devices holding a limited lines P&C license may sell PEI.

Chapter 298 (Senate Bill 1387)
The bill adds § 13.1-400.10 (Automobile Clubs), which provides an exemption to legal entities from the automobile club licensing requirements in the chapter. This exemption applies if the legal entity contracts with an automobile club that is licensed in Virginia to provide emergency road and towing service to the legal entity's customers.

Chapter 306 (Senate Bill 916)
The bill amends § 38.2-1715 (Life, Accident & Sickness Insurance Guaranty Association {Association}) to require posting of its summary document prepared pursuant to subsection B of § 38.2-1715 on the Association's website.

Chapter 329 (House Bill 1538)
The bill amends § 38.2-3420 (Accident and Sickness Insurance) to exempt multiple employer welfare arrangements (MEWAs) that are comprised of banks and their plan-sponsoring organization, and their respective employees, from Title 38.2. A "plan-sponsoring organization" is defined, in part, as an association that sponsors a MEWA comprised only of banks which have been in existence for at least five years and were formed for a purpose other than obtaining insurance.

Chapter 498 (House Bill 2286)
The bill amends various provisions of the Insurance Agents (§§ 38.2-1800 et seq.) chapter and amends and enacts various provisions of the Surplus Lines and Insurance Law chapter (§§ 38.2-4800 et seq.) in accordance with provisions of the federal Nonadmitted and Reinsurance Reform Act of 2010. The bill eliminates the requirement that a surplus lines broker be licensed in Virginia unless the broker is selling, soliciting, or negotiating contracts of insurance for insureds whose home state is Virginia. The bill states that surplus lines premium taxes will be collected for risks for which the home state is Virginia. The bill also establishes uniform eligibility requirements for the approval of nonadmitted or unlicensed insurers.

Chapter 618 (House Bill 1586) and Chapter 636 (Senate Bill 1015)
The bill amends § 38.2-1903.1 by making professional liability insurance policies eligible for the exemptions that currently exist for most types of policies written for large commercial risks. The bill also eliminates the requirement that insurers issuing policies under the exemption for large commercial risks report annually to the Commission on the number of exempted policyholders.

Chapter 623 (House Bill 2437)
The bill amends § 9.1-185.8 (Bail Bondsmen) to require premiums charged by bail bondsmen to be no less than 10 percent and no more than 15 percent of the amount of the bond. Bail bondsmen shall not loan money with interest for the purpose of helping another obtain a bail bond. A bail bond premium is defined as the amount of money paid to a licensed bail bondsman for the execution of a bail bond.

Chapter 682 (Senate Bill 1482)
The bill amends § 38.2-1705 (Life, Accident & Sickness Insurance Guaranty Association {Association}) to establish new procedure by which the Association would dispose of any surplus funds on hand with respect to an insurer insolvency. The bill requires the Association to reimburse member insurers for assessment costs not otherwise amortized and offset and then to pay the remaining surplus to the Commission for deposit in the Commonwealth's general fund.

Chapter 758 (House Bill 1459) and Chapter 759 (Senate Bill 771)
The bill amends § 8.01-581.15 (Medical Malpractice) to increase the cap on the amount an injured person may receive from a judgment in a medical malpractice action for acts occurring after July 1, 2012. The new cap as of July 1, 2012 will be $ 2.05 million, and the cap will increase annually on July 1 by $50,000 through July 1, 2031. (Refer to Administrative Letter 2011-03 for further guidance).

Chapter 788 (House Bill 1928)
The bill substantially revises various provisions of Title 38.2 regarding independent external review of a health carrier's final adverse determination regarding covered benefits. The bill also revises some provisions of Title, 32.1, Article 1.1 and Article 1.2. The bill also enacts a new chapter that requires a health carrier to establish an internal appeals process and adds requirements for external review consistent with the requirements set forth in the federal Patient Protection and Affordable Care Act (PPACA). The provisions of the bill expire on July 1, 2014.

Chapter 823 (House Bill 2434)
The bill expresses the intent of the Virginia General Assembly that the Commonwealth create and operate its own health benefits exchange or exchanges, and, at a minimum, the exchange will meet the relevant requirements of the federal PPACA. The Governor, through the Secretary of Health and Human Resources, and with the Bureau of Insurance, will work with the General Assembly, relevant experts and stakeholders to provide recommendations for consideration by the 2012 General Assembly regarding the structure and governance of the Virginia Exchange. The recommendations are due by October 1, 2011. The bill expires on July 1, 2014.

Chapter 850 (Senate Bill 1124)
The bill amends various provisions of Title 38.2 and adds new provisions in the Surplus Lines Insurance Law (§§ 38.2-4800 et seq.) to transfer the responsibility for the administration of gross premium taxation from the Commission to the Department of Taxation. The provisions become effective for the taxable year on or after January 1, 2013, except for the provisions in subdivisions A 1 through A 4 of § 38.2-4809 and § 38.2-4809.1 of the act, regarding the tax on surplus lines insurance policies, which are effective on July 1, 2011.

Chapter 876 (House Bill 2467) and Chapter 878 (Senate Bill 1062)
The bill adds a provision to the Accident and Sickness Insurance chapter (§§ 38.2-3400 et seq.) and amends § 38.2-4319 (HMOs) to require health insurers, health care subscription plans, and health maintenance organizations to

provide coverage for the diagnosis of autism spectrum disorder (ASD) and treatment for ASD in individuals from age two to six. There is an annual maximum benefit of $35,000 or greater for coverage of applied behavior analysis. The mandate to provide coverage shall not apply to individual or small employer group policies, contracts, or plans. The bill will not apply to an insurer, corporation, or health maintenance organization, or to the state employee health benefit plan if the costs associated with coverage for behavioral health treatment exceed one percent of premiums charged over the experience period. The bill is effective January 1, 2012.

Chapter 882 (House Bill 1958)

The bill conforms health insurance provisions of the Accident and Sickness Insurance chapter (§§ 38.2-3400 et seq.) with corresponding provisions of the federal PPACA which became effective on September 23, 2010. The provisions include (i) requirements that policies providing dependent coverage for a child provide such coverage until the child reaches age 26; (ii) limitations on annual and lifetime dollar limits on essential benefits; (iii) a prohibition on the rescission of health insurance policies except in cases of fraud or misrepresentation of a material fact; (iv) requirements that nongrandfathered plans cover preventive services without out-of-pocket cost-sharing for the insured; (v) requirements that nongrandfathered plans permit covered persons to designate any participating primary health care professional who is available to accept the covered person and prohibitions of such plans requiring authorizations or referrals for obstetrical or gynecological care by in-network health care professionals specializing in obstetrics or gynecology; (vi) prohibitions on nongrandfathered plans imposing preexisting condition exclusions for enrollees who are under 19 years of age, except a grandfathered plan providing individual health insurance coverage; and (vii) prohibitions on nongrandfathered plans charging higher cost-sharing for emergency services that are obtained out of a plan's network and from requiring preauthorization for emergency services. The provisions expire July 1, 2014.

NOTE: If a health carrier providing individual health insurance coverage offers child only policies, the carrier must offer (i) coverage continuously throughout the year; or (ii) a limited open enrollment period each calendar year from April 1-May 31 or from October 31-November 30.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Proposed Consent Order for Charlottesville-Albemarle Airport Authority

An enforcement action has been proposed for the Charlottesville-Albemarle Airport Authority for violations in Albemarle County. A proposed consent order describes a settlement to resolve unpermitted discharge of fill material at its runway extension project. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Steven W. Hetrick will accept comments by email at steven.hetrick@deq.virginia.gov, FAX at (540) 574-7878, or postal mail at Department of Environmental Quality, Valley Regional Office, P.O. Box 3000, 4411 Early Road, Harrisonburg, VA 22801, from July 4, 2011, to August 3, 2011.

DEPARTMENT OF FORENSIC SCIENCE

Approval of Field Tests for Detection of Drugs

In accordance with 6VAC40-30, the Regulations for the Approval of Field Tests for Detection of Drugs, and under the authority of the Code of Virginia, the following field tests for detection of drugs are approved field tests:

O D V INCORPORATED 13386 INTERNATIONAL PARKWAY JACKSONVILLE, FLORIDA 32218-2383	
ODV NarcoPouch	
Drug or Drug Type:	Manufacturer's Field Test:
Heroin	902 – Marquis Reagent
Amphetamine	902 – Marquis Reagent
Methamphetamine	902 – Marquis Reagent
3,4–Methylenedioxymethamphetamine (MDMA)	902 – Marquis Reagent
Cocaine Hydrochloride	904 or 904B – Cocaine HCl and Base Reagent
Cocaine Base	904 or 904B – Cocaine HCl and Base Reagent
Barbiturates	905 – Dille-Koppanyi Reagent
Lysergic Acid Diethylamide (LSD)	907 – Ehrlich's (Modified) Reagent
Marijuana	908 – Duquenois – Levine Reagent
Hashish Oil	908 – Duquenois – Levine Reagent
Marijuana	909 – K N Reagent
Hashish Oil	909 – K N Reagent
Phencyclidine (PCP)	914 – PCP Methaqualone Reagent
Heroin	922 – Opiates Reagent
Methamphetamine	923 – Methamphetamine/Ecstasy Reagent
3,4–Methylenedioxymethamphetamine (MDMA)	923 – Methamphetamine/Ecstasy Reagent
Heroin	924 – Mecke's (Modified) Reagent
Diazepam	925 – Valium/Ketamine Reagent
Ketamine	925 – Valium/Ketamine Reagent
Ephedrine	927 – Ephedrine Reagent
gamma – Hydroxybutyrate (GHB)	928 – GHB Reagent
ODV NarcoTest	
Drug or Drug Type:	Manufacturer's Field Test:
Heroin	7602 – Marquis Reagent
Amphetamine	7602 – Marquis Reagent
Methamphetamine	7602 – Marquis Reagent
3,4–Methylenedioxymethamphetamine (MDMA)	7602 – Marquis Reagent
Barbiturates	7605 – Dille-Koppanyi Reagent
Lysergic Acid Diethylamide (LSD)	7607 – Ehrlich's (Modified) Reagent
Marijuana	7608 – Duquenois Reagent
Hashish Oil	7608 – Duquenois Reagent
Marijuana	7609 – K N Reagent
Hashish Oil	7609 – K N Reagent
Cocaine Hydrochloride	7613 – Scott (Modified) Reagent
Cocaine Base	7613 – Scott (Modified) Reagent
Phencyclidine (PCP)	7614 – PCP Methaqualone Reagent
Heroin	7622 – Opiates Reagent
Methamphetamine	7623– Methamphetamine/Ecstasy Reagent
3,4–Methylenedioxymethamphetamine (MDMA)	7623– Methamphetamine/Ecstasy Reagent

Heroin	7624 – Mecke's Reagent
Diazepam	7625 – Valium/Ketamine Reagent
Ketamine	7625 – Valium/Ketamine Reagent
Ephedrine	7627 – Chen's Reagent - Ephedrine
gamma – Hydroxybutyrate (GHB)	7628 – GHB Reagent
SIRCHIE FINGERPRINT LABORATORIES 100 HUNTER PLACE YOUNGSVILLE, NORTH CAROLINA 27596	
Drug or Drug Type:	Manufacturer's Field Test:
Narcotic Alkaloids	1 – Mayer's Reagent
Heroin	1 – Mayer's Reagent
Morphine	1 – Mayer's Reagent
Amphetamine	1 – Mayer's Reagent
Methamphetamine	1 – Mayer's Reagent
Opium Alkaloids	2 – Marquis Reagent
Heroin	2 – Marquis Reagent
Morphine	2 – Marquis Reagent
Amphetamine	2 – Marquis Reagent
Methamphetamine	2 – Marquis Reagent
3,4–Methylenedioxymethamphetamine (MDMA)	2 – Marquis Reagent
Meperidine (Demerol) (Pethidine)	2 – Marquis Reagent
Heroin	3 – Nitric Acid
Morphine	3 – Nitric Acid
Cocaine Hydrochloride	4 – Cobalt Thiocyanate Reagent
Cocaine Base	4 – Cobalt Thiocyanate Reagent
Procaine	4 – Cobalt Thiocyanate Reagent
Tetracaine	4 – Cobalt Thiocyanate Reagent
Barbiturates	5 – Dille-Koppanyi Reagent
Heroin	6 – Mandelin Reagent
Morphine	6 – Mandelin Reagent
Amphetamine	6 – Mandelin Reagent
Methamphetamine	6 – Mandelin Reagent
Lysergic Acid Diethylamide (LSD)	7 – Ehrlich's Reagent
Marijuana	8 – Duquenois Reagent
Hashish	8 – Duquenois Reagent
Hashish Oil	8 – Duquenois Reagent
Tetrahydrocannabinol (THC)	8 – Duquenois Reagent
Marijuana	9 – NDB (Fast Blue B Salt) Reagent
Hashish	9 – NDB (Fast Blue B Salt) Reagent
Hashish Oil	9 – NDB (Fast Blue B Salt) Reagent
Tetrahydrocannabinol (THC)	9 – NDB (Fast Blue B Salt) Reagent
Cocaine Base	13 – Cobalt Thiocyanate/Crack Test
Drug or Drug Type:	Manufacturer's Field Test:
Narcotic Alkaloids	01 – Marquis Reagent
Heroin	01 – Marquis Reagent
Morphine	01 – Marquis Reagent
Amphetamine	01 – Marquis Reagent
Methamphetamine	01 – Marquis Reagent
3,4–Methylenedioxymethamphetamine (MDMA)	01 – Marquis Reagent
Morphine	02 – Nitric Acid

Heroin	02 – Nitric Acid
Barbiturates	03 – Dille-Koppanyi Reagent
Lysergic Acid Diethylamide (LSD)	04 – Ehrlich's Reagent
Marijuana	05 – Duquenois – Levine Reagent
Hashish	05 – Duquenois – Levine Reagent
Hashish Oil	05 – Duquenois – Levine Reagent
Tetrahydrocannabinol (THC)	05 – Duquenois – Levine Reagent
Cocaine Hydrochloride	07 – Scott's (Modified) Reagent
Cocaine Base	07 – Scott's (Modified) Reagent
Phencyclidine (PCP)	09 – Phencyclidine Reagent
Opiates	10 – Opiates Reagent
Heroin	10 – Opiates Reagent
Morphine	10 – Opiates Reagent
Heroin	11 – Mecke's Reagent
3,4–Methylenedioxymethamphetamine (MDMA)	11 – Mecke's Reagent
Pentazocine	12 – Talwin/ Pentazocine Reagent
Ephedrine	13 – Ephedrine Reagent
Diazepam	14 – Valium Reagent
Methamphetamine	15 – Methamphetamine (Secondary Amines Reagent)
Narcotic Alkaloids	19 – Mayer's Reagent
Heroin	19 – Mayer's Reagent
Morphine	19 – Mayer's Reagent
Amphetamine	19 – Mayer's Reagent
Methamphetamine	19 – Mayer's Reagent
3,4-Methylenedioxypyrovalerone (MDPV)	24 – MDPV (Bath Salts) Reagent
ARMOR HOLDINGS, INCORPORATED 13386 INTERNATIONAL PARKWAY JACKSONVILLE, FLORIDA 32218-2383	
NIK	
Drug or Drug Type:	Manufacturer's Field Test:
Heroin	Test A 6071 – Marquis Reagent
Amphetamine	Test A 6071 – Marquis Reagent
Methamphetamine	Test A 6071 – Marquis Reagent
3,4–Methylenedioxymethamphetamine (MDMA)	Test A 6071 – Marquis Reagent
Morphine	Test B 6072 – Nitric Acid Reagent
Barbiturates	Test C 6073 – Dille-Koppanyi Reagent
Lysergic Acid Diethylamide (LSD)	Test D 6074 – LSD Reagent System
Marijuana	Test E 6075 – Duquenois – Levine Reagent
Hashish Oil	Test E 6075 – Duquenois – Levine Reagent
Tetrahydrocannabinol	Test E 6075 – Duquenois – Levine Reagent
Cocaine Hydrochloride	Test G 6077 – Scott (Modified) Reagent
Cocaine Base	Test G 6077 – Scott (Modified) Reagent
Cocaine Hydrochloride	6500 or 6501 – Cocaine ID Swab
Cocaine Base	6500 or 6501 – Cocaine ID Swab
Phencyclidine (PCP)	Test J 6079 – PCP Reagent System
Heroin	Test K 6080 – Opiates Reagent
Heroin	Test L 6081 – Brown Heroin Reagent System
gamma – Hydroxybutyrate (GHB)	Test O 6090 – GHB Reagent
Ephedrine	Test Q 6085 – Ephedrine Reagent
Pseudoephedrine	Test Q 6085 – Ephedrine Reagent
Diazepam	Test R 6085 – Valium Reagent
Methamphetamine	Test U 6087 – Methamphetamine Reagent

3,4–Methylenedioxymethamphetamine (MDMA)	Test U 6087 – Methamphetamine Reagent
Methadone	Test W 6088 – Mandelin Reagent System
MISTRAL SECURITY INCORPORATED 7910 WOODMONT AVENUE SUITE 820 BETHESDA, MARYLAND 20814	
Drug or Drug Type:	Manufacturer's Field Test:
Heroin	Detect 4 Drugs Aerosol
Amphetamine	Detect 4 Drugs Aerosol
Methamphetamine	Detect 4 Drugs Aerosol
Marijuana	Detect 4 Drugs Aerosol
Hashish Oil	Detect 4 Drugs Aerosol
Methamphetamine	Meth 1 and 2 Aerosol
Heroin	Herosol Aerosol
Marijuana	Cannabispray 1 and 2 Aerosol
Hashish Oil	Cannabispray 1 and 2 Aerosol
Cocaine Hydrochloride	Coca-Test Aerosol
Cocaine Base	Coca-Test Aerosol
Marijuana	Pen Test – D4D
Phencyclidine	Pen Test – D4D
Amphetamine	Pen Test – D4D
Ketamine	Pen Test – D4D
Methamphetamine	Pen Test – D4D
Ephedrine	Pen Test – D4D
Heroin	Pen Test – D4D
Methadone	Pen Test – D4D
Buprenorphine	Pen Test – D4D
Opium	Pen Test – D4D
Phenobarbital	Pen Test – Barbitusol
Marijuana	Pen Test – Cannabis Test
Phencyclidine	Pen Test – Coca Test
Cocaine Hydrochloride	Pen Test – Coca Test
Cocaine base	Pen Test – Coca Test
Buprenorphine	Pen Test – C&H Test
Cocaine Hydrochloride	Pen Test – C&H Test
Cocaine base	Pen Test – C&H Test
Ephedrine	Pen Test – C&H Test
Ketamine	Pen Test – C&H Test
Heroin	Pen Test – C&H Test
Lysergic Acid Diethylamide (LSD)	Pen Test – C&H Test
Methadone	Pen Test – C&H Test
Methamphetamine	Pen Test – C&H Test
Heroin	Pen Test – Herosol
Methadone	Pen Test – Herosol
Lysergic Acid Diethylamide	Pen Test – LSD Test
Methamphetamine	Pen Test – Meth/X Test
3,4-Methylenedioxymethamphetamine (MDMA)	Pen Test – Meth/X Test
Morphine	Pen Test – Opiatest
Opium	Pen Test – Opiatest
Diazepam	Pen Test – BZO
Ephedrine	Pen Test – Ephedrine
Pseudoephedrine	Pen Test – Ephedrine

JANT PHARMACAL CORPORATION 16255 VENTURA BLVD., #505 ENCINO, CA 91436	
Formerly available through: MILLENNIUM SECURITY GROUP	
Accutest IDenta	
Drug or Drug Type:	Manufacturer's Field Test:
Marijuana	Marijuana/Hashish (Duquenois-Levine Reagent)
Hashish Oil	Marijuana/Hashish (Duquenois-Levine Reagent)
Heroin	Heroin Step 1 and Step 2
Cocaine Hydrochloride	Cocaine/Crack Step 1 and Step 2
Cocaine Base	Cocaine/Crack Step 1 and Step 2
3,4–Methylenedioxymethamphetamine (MDMA)	MDMA Step 1 and Step 2
Methamphetamine	Methamphetamine Step 1 and Step 2
COZART PLC 92 MILTON PARK ABINGDON, OXFORDSHIRE ENGLAND OX14 4RY	
Drug or Drug Type:	Manufacturer's Field Test:
Cocaine	Cocaine Solid Field Test
LYNN PEAVEY COMPANY 10749 WEST 84th TERRACE LEXEXA, KS 66214	
QuickCheck	
Drug or Drug Type:	Manufacturer's Field Test:
Marijuana	Marijuana – 10120
Marijuana	Marijuana – 10121
Hashish Oil	Marijuana – 10120
Hashish Oil	Marijuana – 10121
Heroin	Marquis – 10123
Heroin	Heroin - 10125
Cocaine Hydrochloride	Cocaine – 10124
Cocaine Base	Cocaine – 10124
Methamphetamine	Meth/Ecstasy – 10122
Methamphetamine	Marquis – 10123
MDMA	Meth/Ecstasy – 10122
MDMA	Marquis - 10123

STATE LOTTERY DEPARTMENT

Director's Orders

The following Director's Orders of the State Lottery Department were filed with the Virginia Registrar of Regulations on June 6, 2011, and June 13, 2011. The orders may be viewed at the State Lottery Department, 900 East Main Street, Richmond, VA, or at the office of the Registrar of Regulations, 910 Capitol Street, 2nd Floor, Richmond, VA.

Director's Order Number Forty-Five (11)

Virginia's Twenty-Seventh Online Game Lottery; "Fast Play 3-Card Bingo" Final Rules for Game Operation (effective on the first sale date of the Matrix set forth in the "Fast Play 3-Card Bingo" Official Game Rules, as adopted)

Director's Order Number Forty-Seven (11)

Virginia's Instant Game Lottery 1275; "Lady Bucks" Final Rules for Game Operation (effective June 13, 2011)

STATE WATER CONTROL BOARD

Public Notice - Approval of Water Quality Management Planning Actions

Notice of action: The State Water Control Board (board) is considering the approval of eight total maximum daily load (TMDL) implementation plans (IPs) and granting

authorization to include the TMDL IPs in the appropriate water quality management plans (WQMPs).

Purpose of notice: The board is seeking comment on the proposed approvals and authorizations. The purpose of these actions is to approve eight TMDL IPs as Virginia's plans for the management actions necessary for attainment of water quality goals in several impaired waterbodies. These actions are taken in accordance with the Public Participation Procedures for Water Quality Management Planning.

Public comment period: July 4, 2011, to August 3, 2011.

Description of proposed action: Department of Environmental Quality (DEQ) staff intends to recommend (i) that the DEQ director approve the TMDL IPs listed below as Virginia's plans for the management actions necessary for attainment of water quality goals in the impaired segments, and (ii) that the DEQ director authorize inclusion of the TMDL IPs in the appropriate WQMPs. No regulatory amendments are required for these TMDL IPs.

At previous meetings, the board voted unanimously to delegate to the DEQ director the authority to approve TMDL IPs, provided that a summary report of the action the director plans to take is presented to the board prior to the director's approval. The TMDL IPs included in this public notice will be approved using this delegation of authority.

The TMDLs listed below were developed in accordance with 1997 Water Quality Monitoring, Information and Restoration Act (WQMIRA, §§ 62.1-44.-19:4 through 62.1-44.-19:8 of the Code of Virginia) and federal recommendations. The TMDL IPs were developed in accordance with DEQ's Public Participation Procedures for Water Quality Management Planning. Extensive public participation was solicited during the development of the plans, and the public comment process provided the affected stakeholders with opportunities for comment on the proposed plans. The final TMDL IPs can be found at http://www.deq.virginia.gov/tmdl/iprpts.html.

Affected Waterbodies and Localities:

In the Potomac/Shenandoah River Basin:

1. "Hays, Moffatts, Walker, and Otts Creeks Water Quality Improvement Plan"
   - The IP proposes management actions needed to reduce bacteria and restore the primary contact (swimming) use in Hays Creek, Moffatts Creek, Walker Creek, and Otts Creek located in Rockingham and Augusta Counties.

2. "South River and Christians Creek Water Quality Improvement Plan"
   - The IP proposes management actions needed to reduce bacteria, sediment, and phosphorus and restore the primary contact (swimming) use and aquatic life use in the South River and Christians Creek located in Augusta County.

In the James River Basin:

3. "James River and Tributaries TMDL Implementation Plan"
   - The IP proposes management actions needed to reduce bacteria and restore the primary contact (swimming) use in the James River, Ivy Creek, Tomahawk Creek, Burton Creek, Judith Creek, Fishing Creek, Blackwater Creek, and Beaver Creek located in the city of Lynchburg and Campbell, Bedford, and Amherst Counties.

4. "Implementation Plan for the Fecal Coliform TMDL for Mill Creek and Powhatan Creek"
   - The IP proposes management actions needed to reduce bacteria and restore the primary contact (swimming) use in Mill Creek and Powhatan Creek located in James City County.

5. "Slate River and Rock Island Creek Bacteria Total Maximum Daily Load Implementation Plan"
   - The IP proposes management actions needed to reduce bacteria and restore the primary contact (swimming) use in the Slate River and Rock Island Creek located in Buckingham County.

In the Rappahannock River Basin:

6. "Craig Run, Browns Run, and Marsh Run Bacteria Total Maximum Daily Load Implementation Plan"
   - The IP proposes management actions needed to reduce bacteria and restore the primary contact (swimming) use in Craig Run, Browns Run, and Marsh Run located in Fauquier County.

7. "Little Dark Run and Robinson River Bacteria Total Maximum Daily Load Implementation Plan"
   - The IP proposes management actions needed to reduce bacteria and restore the primary contact (swimming) use in the Little Dark Run and Robinson River located in Madison and Culpeper Counties.

In the Tennessee/Big Sandy River Basin:

8. "Lewis Creek Sediment Total Maximum Daily Load Implementation Plan"
   - The IP proposes management actions needed to reduce sediment and restore the aquatic life use in Lewis Creek located in Russell County.

How to comment: DEQ accepts written comments by email, fax, and postal mail. All written comments must include the full name, address, and telephone number of the person commenting and be received by DEQ by 5 p.m. on the last day of the comment period.

How a decision is made: After comments have been considered, the board will make the final decision.

To review documents: The TMDL implementation plans are available on the DEQ website at http://www.deq.virginia.gov/tmdl/iprpts.html and by contacting the DEQ representative named below. The electronic copies are in PDF format and may be read online or downloaded.

Contact for public comments, document requests, and additional information: David S. Lazarus, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4299, FAX (804) 698-4116, or email david.lazarus@deq.virginia.gov.

Public Notice - Approval of Water Quality Management Planning Actions

Notice of action: The State Water Control Board (board) is considering the approval of three total maximum daily load (TMDL) reports and six TMDL modifications, and granting authorization to include the TMDL reports and modifications in the appropriate water quality management plans (WQMPs).

Purpose of notice: The board is seeking comment on the proposed approvals and authorizations. The purpose of these actions is to approve three TMDL reports and six TMDL modifications as Virginia's plans for the pollutant reductions necessary for attainment of water quality goals in several impaired waterbodies. These actions are taken in accordance with the Public Participation Procedures for Water Quality Management Planning.

Public comment period: July 4, 2011, to August 3, 2011.

Description of proposed action: Department of Environmental Quality (DEQ) staff intends to recommend (i) that the DEQ director approve the TMDL reports and TMDL modifications listed below as Virginia's plans for the pollutant reductions necessary for attainment of water quality goals in the impaired segments, and (ii) that the DEQ director authorize inclusion of the TMDL reports and TMDL modifications in the appropriate WQMPs. No regulatory amendments are required for these TMDLs and their associated waste load allocations.

At previous meetings, the board voted unanimously to delegate to the DEQ director the authority to approve TMDLs that do not include waste load allocations requiring regulatory adoption by the board, provided that a summary report of the action the director plans to take is presented to the board prior to the director approving the TMDL reports. The TMDLs included in this public notice will be approved using this delegation of authority.

The TMDLs listed below were developed in accordance with federal regulations (40 CFR § 130.7) and are exempt from the provisions of Article 2 (§ 2.2-4006 et seq. of the Code of Virginia) of the Virginia Administrative Process Act. The TMDLs have been through the TMDL public participation process contained in DEQ's Public Participation Procedures for Water Quality Management Planning. The public comment process provides the affected stakeholders an opportunity for public appeal of the TMDLs. EPA approved all TMDL reports presented under this public notice. The approved reports can be found at https://www.deq.virginia.gov/TMDLDataSearch/ReportSearch.jspx.

Affected Waterbodies and Localities:

In the Potomac River & Shenandoah River Basins:

1. "Bacteria TMDLs for the Hunting Creek, Cameron Run, and Holmes Run Watersheds"
- 3 bacteria TMDLs, located in Arlington, Alexandria, Falls Church, and Fairfax, propose bacteria reductions for portions of the watersheds to address primary contact (swimming) use.

In the James River Basin:

2. Modification for "Total Maximum Daily Load for the Appomattox River Basin"
- 19 bacteria TMDLs, located in Chesterfield, Colonial Heights, Petersburg, and Hopewell, propose bacteria reductions for portions of the watersheds to address primary contact (swimming use) impairments.

In the Rappahannock River Basin:

3. Modification for "Totuskey and Richardson Creeks Total Maximum Daily Load Report for Shellfish Condemnation Areas Listed Due to Bacteria Pollution"
- 2 bacteria TMDLs, located in Richmond County, propose bacteria reductions for portions of the watersheds to address VDH Shellfish Area Condemnations and primary contact (swimming use) impairments.

4. Modification for "Bacteria Total Maximum Daily Load Development for the Hoskins Creek Watershed"
- 1 bacteria TMDL, located in Essex County, proposes bacteria reductions for portions of the watersheds to address the primary contact (swimming) use.

In the Roanoke River Basin:

5. Modification for "Bacteria TMDLs for the Cub Creek, Turnip Creek, Buffalo Creek, Buffalo Creek (UT), and Staunton River Watersheds, Virginia"
- 5 bacteria TMDLs, located in Halifax and Charlotte Counties, propose bacteria reductions for portions of the watersheds to the primary contact (swimming) use.

6. Modification for "Fecal Coliform TMDL (Total Maximum Daily Load) Development for Gills Creek, Virginia"

- 1 bacteria TMDL, located in Franklin County, proposes bacteria reductions for portions of the watersheds to address the primary contact (swimming) use.

In the Chowan River Basin:

7. "E. Coli Total Maximum Daily Load Development for Fontaine Creek in Greensville and Brunswick Counties, VA"

- 1 bacteria TMDL, located in Brunswick and Greensville Counties, proposes bacteria reductions for portions of the watersheds to address the primary contact (swimming) use.

8. "E. Coli Total Maximum Daily Load Development for Unnamed Tributary to Nebletts Mill Run and Hatcher Run in Sussex and Dinwiddie Counties, VA"

- 1 bacteria TMDL, located in Dinwiddie and Sussex Counties, proposes bacteria reductions for portions of the watersheds to address the primary contact (swimming) use.

In the Chesapeake Bay-Small Coastal-Eastern Shore Basin:

9. Modification for "Indian, Tabbs, Dymer, and Antipoison Creeks Total Maximum Daily Load (TMDL) report for Shellfish Condemnation Areas Listed Due to Bacteria Pollution"

- 14 bacteria TMDLs, located in Northumberland and Lancaster counties, propose bacteria reductions for portions of the watershed to address VDH Shellfish Area Condemnations and primary contact (swimming use) impairments.

How to comment: DEQ accepts written comments by email, fax, and postal mail. All written comments must include the full name, address, and telephone number of the person commenting and be received by DEQ by 5 p.m. on the last day of the comment period.

How a decision is made: After comments have been considered, the board will make the final decision.

To review documents: The TMDL reports and TMDL implementation plans are available on the DEQ website at https://www.deq.virginia.gov/TMDLDataSearch/ReportSearch.jspx and by contacting the DEQ representative named below. The electronic copies are in PDF format and may be read online or downloaded.

Contact for public comments, document requests, and additional information: David S. Lazarus, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4299, FAX (804) 698-4116, or email david.lazarus@deq.virginia.gov.

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.